cerned 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 Joined Cases

19/69

DENISE RICHEZ-PARISE, an official of the European Communities, residing at 12 villa Wagram-Saint-Honoré, Paris,

20/69

ANDRÉ SAUDRAY, an official of the European Communities, residing at 17, rue de la Grange, Sainte-Marie-de-Ré (France),

25/69

FRANÇOISE PADIEU, an official of the European Communities, residing at 2 bis, rue de la Pazoche, Tours (France),

30/69

HANNA SERMAN, an official of the European Communities, residing at 22, rue des Morillons, Paris,

represented by Jacques Mercier, Advocate at the Cour de Paris, with an address for service in Luxembourg at the Chambers of Georges Margue, 20 rue Philippe-II,

applicants,

v

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

defendant,

Application:

(1) In all four cases:

For a declaration restoring the interpretation originally adopted by the EEC of the pension rights provided for in Article 5 of Regulation No 259/68 of the Council of 29 February 1968 and for an order that the administration settle the applicants' claims in accordance with that interpretation;

(2) In Cases 19/69 and 20/69:

Alternatively, and should the principal claim be rejected, for the annulment of the decisions of 20 June 1968 of the EEC terminating the service of the applicants and accordingly for an order that they be reinstated in exactly the grades and posts which they held at the time of their departure from the service, together with all rights attaching thereto;

In Cases 25/69 and 30/69:

Alternatively, and should the principal claim be rejected, for the annulment of the decisions of 20 June 1968 of the Commission of the EEC terminating the service of the applicants and accordingly for an order that the EEC pay the applicants by way of damages sums amounting to three years' salary in each case,

THE COURT (First Chamber)

composed of: R. Monaco, President of Chamber, A. M. Donner (Rapporteur), 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 — Summary of facts and procedure

The facts and procedure may be summarized as follows:

According to Article 5 of Regulation No 259/68 an official with regard to whom a measure terminating his service has been taken as provided for by Article 4 is entitled for a period of six months from the date of termination of his service to a monthly allowance equal to his last remuneration and subsequently, for a specified period, to a decreasing monthly allowance.

The fourth subparagraph of Article 5 (7), stipulates 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 that an official affected by the measures provided for in Article 4 (1) who has not completed 11 years' service may irrevocably renounce his pension rights, in which case he shall receive a severance grant fixed under the conditions laid down in Article 12 of Annex VIII to the Staff Regulations. An official who proposes to opt for application of these provisions must declare his choice within six months from the date of notification of the measure terminating his service referred to in Article 4.

On 5 March 1968 the President of the Commission addressed a memorandum to staff indicating that requests for the application of Article 4 of Regulation No 259/68 should be sent before 6 April 1968 to the Directorate-General of Administration, and stating that 'Information concerning pecuniary rights resulting from the application of these particular provisions may be obtained from the competent departments of the administration' (there followed a list of the officials appointed to give such information).

At the end of March 1968 the applicants obtained an estimated account of their respective pecuniary rights from the competent departments. Those departments based their calculations in particular on an interpretation of the fourth subparagraph of Article 5 (7) of Regulation No 259/68 according to which entitlement to a full pension was to be acquired—in all circumstances—at the age of 55.

The applicants submitted their requests for termination of service respectively on 1 April 1968 (Mrs Richez-Parise), 21 March 1968 (Mr Saudray), 26 March 1968 (Mrs Padieu) and 11 March 1968 (Mrs Serman).

On 29 May 1968 the Director-General for Personnel and Administration informed them by circular which, however, was addressed to each applicant individually, that the Commission was prepared to meet their request, and stated that they would subsequently receive a table explaining their respective pecuniary rights.

On 21 June 1968 the Director-General, acting under the powers delegated to him for the purpose, notified the applicants of the decisions adopted by the Commission in its meeting of 20 June terminating their employment by virtue of Article 4 of Regulation No 259/68 with effect from 1 October 1968 and informed the applicants that they could obtain additional information on their respective financial situations from his colleagues.

On 13 January 1969 (Mrs Richez-Parise), 4 December 1968 (Mr Saudray), 22 November 1968 (Mrs Padieu) and 27 January 1969 (Mrs Serman) respectively, the applicants received a letter from the Director-General for Personnel and Administration headed 'Notice concerning settlement of claims for the allowance provided for in Article 5 of Regulation No 259/68 of the Council' and containing, besides a statement of the monthly allowances provided for by Article 5 (1) (b), a statement to the effect that their right to an unreduced pension would come into effect at the age of 60.

With the exception of Mr Saudray, the

applicants submitted a written request to the administration for the explanatory table mentioned in the letter of 29 May 1968, which, they thought, should contain some explanation in particular of the option provided for in Article 6 of Regulation No 259/68. Only Mrs Padieu received, on 21 January 1969, such a table which included the calculations for a possible serverance grant. Lastly, the four applicants are presumed to have opted for the right to a pension since the time-limit fixed by Article 6 of Regulation No 259/68 expired on 31 December 1968.

On 15 January 1969 (Mrs Richez-Parise), 26 December 1968 (Mr Saudray), 15 February 1969 (Mrs Padieu) and 27 February 1969 (Mrs Serman) respectively, the applicants submitted a complaint to the Director-General under Article 90 of the Staff Regulations seeking to be accorded the right to an unreduced pension at the age of 55. Mrs Richez-Parise and Mr Saudray further requested that in the absence of such a decision the decision of the Commission of 20 June 1968 should be annulled, which would thus result in their reinstatement.

In view of the failure of the administration to reply within two months to their respective complaints the applicants submitted applications to the Court of Justice dated respectively 21 April 1969 (Mrs Richez-Parise), 23 April 1969 (Mr Saudray), 10 June 1969 (Mrs Padieu) and 24 June 1969 (Mrs Serman).

The written procedure followed the normal course.

By an order of 1 October 1969 the First Chamber of the Court ordered that the cases be joined for the purposes of procedure and judgment.

After hearing the report of the Judge-Rapporteur and the views of the Advocate-General the Court decided to commence the oral proceedings without any preparatory inquiry.

The parties presented oral argument at the hearing on 17 February 1970.

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

II — Conclusions of the parties

The *applicants* claim that the Court should:

— Restore the interpretation originally adopted by the EEC concerning the pension rights provided for by Article 5 of Regulation No 259/68 of the Council of Ministers of 29 February 1968, and order the administration to settle their claims on the basis of that interpretation;

— In Cases 19/69 and 20/69:
Alternatively, should the above claim be rejected, annul the decisions of 20 June 1968 of the Commission of the EEC terminating their service and accordingly order their reinstatement in exactly the same grades and posts which they held at the time of their departure from the service, together with all their rights attaching thereto;

— In Cases 25/69 and 30/69:
Alternatively, should the above claim be rejected, annul the decisions of 20 June 1968 of the Commission of the EEC to pay the applicants by way of damages a sum equivalent to three years' salary in each case;

— Order the defendant to pay the costs.

The *defendant* contends that the Court should:

— In Cases 19/69 and 20/69:

(1) Dismiss the entire application as inadmissible or unfounded;

(2) Order the applicants to pay the costs;

— In Cases 25/69 and 30/69:

(1) Dismiss as inadmissible or unfounded the first head of the conclusions submitted as the principal claim in the application;

(2) Dismiss as inadmissible or unfounded the request for the annulment of the decision of the Commission of 20 June 1968 contained in the second head of the conclusions, submitted as an alternative claim in the application;

(3) Order the applicants to pay the costs.

In reply the *applicants* in Cases 19/69 and 20/69 withdrew their request for reinstatement and claimed that the Court should, as an alternative, order the EEC to pay them

by way of damages for the injury they have suffered a sum equivalent to three years' salary in each case.

III — Submissions and arguments of the parties

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

Admissibility of the application

The *defendant* contests the admissibility of the various claims in the application.

(a) Concerning the request that the Court should 'Restore the interpretation originally adopted by the EEC of the pension rights provided for by Article 5 of Regulation No 259/68', the Court is not competent to consider this request, according to the *defendant*, in the context of the procedure provided for by Article 91 of the Staff Regulations, bearing in mind that it would involve the Court's having to rule on the interpretation of provisions which could not have applied at the time to the case in question. Still on this point, the defendant claims that: 'The notice concerning settlement of claims for the allowance provided for in Article 5 of Regulation No 259/68 of the Council' concerned only settlement of rights already held at that time, that is to say, the right to the monthly allowance, and 'in no way affects settlement of pension rights which are at the moment only a future possibility, and thus the abovementioned notice cannot be considered as as decision which can be contested on the rights forming the subject-matter of the dispute'.

In their reply the *applicants* point out, in the first place, that the first sentence of the abovementioned notice is worded as follows:

> 'This is to inform you of your pecuniary rights following the application of Article 5 of Regulation 259/68 of the Council and of the provisions of the Staff Regulations currently in force',

and secondly that this notice gives the precise date from which the right to a retirement pension accrues. These official communications are, in fact, decisions fixing the pension rights in principle, even though the actual settlement of such claims lies in the future. In asking the Court to restore the interpretation of Article 5 originally adopted by the Commission the applicants were not, therefore, encouraging the Court to go beyond the unlimited jurisdiction accorded to it by Article 91 of the Staff Regulations.

In its rejoinder the *defendant* concedes that the terms of the judgment delivered on 10 December 1969 in Case 32/68 have introduced a new element capable of invalidating the arguments on which it has relied in claiming that the application directed against the notice is inadmissible.

(b) The *defendant* alleges that a well-established line of cases before the Court shows that the second half of the first head of the conclusions ('and order the administration to settle their claims on the basis of that interpretation') is inadmissible in that it asks the Court to issue instructions to the Commission of a kind which do not fall within the role and powers of the Court. Citing the judgment of the Court in Case 18/63 ([1964] E.C.R. 85 et seq.) the *applicants* state that Article 176 of the EEC Treaty allows the Court to order the administration to take the necessary measures to comply with its judgments.

(c) According to the *defendant* the second head of the conclusions is inadmissible because the applicants are out of time for the purpose of contesting the decisions of the Commission of 20 June 1968 (Article 91 of the Staff Regulations). The defendant goes on to say that the complaints submitted under Article 90 by applicants Mrs Richez-Parise and Mr Saudray cannot re-open the period for an appeal to the Court, since the complaints were themselves submitted out of time.

Apart from this the defendant claims that the applicants have not set out in their applications the grounds on which they rely in support of their request for the annulment of the decision of the Commission and therefore have failed to satisfy the

requirements of Article 38 (1) of the Rules of Procedure of the Court of Justice.
In their reply the *applicants* claim that their requests for the annulment of the abovementioned decisions are merely a consequence of the requested annulment of the decisions fixing their pension rights, so that the annulment of the decisions of 20 June forms part of the compensation required; this explains why they were not contested within the period laid down by the Staff Regulations.
In the rejoinder the *defendant* repeats that the applications are inadmissible and considers that the answers given in the reply are incomprehensible and contradictory.

The substance of the case

The first head of the application

1. As grounds for the request for the annulment of the 'notice concerning settlement of claims for the allowance provided for in Article 5 of Regulation No 259/68 of the Council' addressed to the applicants, the latter rely on the argument of *violation of vested rights.*
On this point the *applicants* claim that the interpretation of the fourth subparagraph of Article 5 (7) of Regulation No 259/68 is none other than that originally adopted by the Commission. This is shown in particular by, on the one hand, the interpretation given to this provision by the departments named by the President of the Commission, and on the other hand by a report on the progress made in implementing Regulation No 259/68 sent on 24 July 1968 by the Director-General for Personnel and Administration to the Chief Executive Assistants, in which it is stated that, bearing in mind the doubts which had arisen concerning the interpretation to be given to the fourth subparagraph of Article 5 (7) of this regulation, the Commission 'has decided to opt for an interpretation ... which makes it possible to give satisfaction to those affected'.
It was, moreover, essentially the exceptional financial advantages resulting from the pension rights in particular which had made the applicants decide to volunteer for measures terminating their service.
Accordingly, by revising the interpretation of the provision in question, a revision made for the most part after the applicants had submitted their requests and after the decisions terminating their services in each case, the administration is seriously interfering with the applicants' vested rights.
In its statement of defence the *defendant* sets out, first, its arguments in support of the interpretation of Article 5 finally adopted by it and goes on to deny that the applicants are entitled to rely on vested rights.

(a) Interpretation of the fourth subparagraph of Article 5 (7) of Regulation No 259/68

Concerning the above the *defendant* claims in particular that:

— the words of the text itself show that for the provision to apply the age of 55 must be reached prior to completion of the period of entitlement to the allowance;

— the interpretation favoured by the applicants amounts in fact to substituting the formula '... when he has reached the age of fifty-five' for the one actually adopted by the provision in question: 'provided that he has reached the age of fifty-five';

— this is confirmed by a comparison between the words adopted by the provision in question and those in, on the one hand, the fifth paragraph of Article 50 of the Staff Regulations, and on the other hand, Article 9 of Annex VIII to the Staff Regulations;

— lastly, Article 5 (8) of Regulation 259/68 is meaningless unless the fourth subparagraph of paragraph (7) is interpreted according to the Commission's view;

— this is because the 'if' at the beginning of paragraph (8) implies that this is a condition which will not always be fulfilled whereas the interpretation advocated by the applicants would mean that the right to a pension would always be acquired before the age of 60.

In their reply the *applicants* contest the interpretation put forward by the defendant, claiming principally:

— that the wording of the provision in question makes the sole condition for acquiring the right to a pension without reduction the fact that the age of 55 has been reached;

— the defendant's interpretation would give rise to discrimination between officials who, at the end of the period of entitlement to an allowance, had already reached the age of 55 or more, and those who had not reached that age at the time;

— in 1967 the Commission applied the fifth subparagraph of Article 50 of the Staff Regulations—the provision it now relies on to support its interpretation of Article 5 of Regulation No 259/68—in a manner wholly in conformity with that desired by the applicants;

— the 'if' at the beginning of Article 5 (8) of Regulation No 259/68 merely indicates that the exceptional measure laid down in the preceding paragraph applies only to those who benefit under Regulation No 259/68.

In its rejoinder the *defendant* states:

— that the applicants' interpretation of Article 5 ignores the opening phrase of the provision 'at the end of such period':

— they ignore the social considerations which led to the adoption of a provision, the aim of which is to help older officials who have earned their living with the Communities at least up to the age of 55 and who, in view of their age, would have extreme difficulty in finding fresh employment;

— the instance in 1967 referred to was the result of an error which was corected by a subsequent decision;

— the interpretation given by the applicants to the use of the word 'if' in paragraph (8) makes this part of the provision totally superfluous.

(b) Vested rights

The *defendant* claims in the first place that even if the information given to the applicants at the end of March 1968 is considered to amount to decisions conferring rights on them, it would have been entitled both according to the case-law of the Court on the withdrawal of unlawful measures (Joined Cases Nos 7/56 and 3 to 7/57, Rec. 1957, p. 81 et seq.) and specifically in the sphere of pension rights, under Article 41 of Annex VIII to the Staff Regulations, to withdraw such decisions at the beginning of 1969 if these had proved in the meantime to be unlawful.

Far from constituting individual decisions conferring rights the information supplied at the end of March to the applicants was given merely as a guide and without liability on the part of the Commission, as was expressly recalled in an official warning published in the supplement to No 16 of the Staff Courier of 1968. In addition to this the defendant goes on to point out other factors which should have alerted the applicants concerning this information:

— the fact that the circular letter of 29 May 1968 addressed to all those who had volunteered to leave the service indicated that the addressee would later receive an explanatory table informing him of his pecuniary rights, which shows clearly that in the view of the Commission the information supplied at the end of March could not be considered as decisions;

— the fact that in the report of 24 July 1968 on the progress of the implementation of Regulation No 259/68, a report of which the applicants have shown they were aware, there is mention of doubt concerning the interpretation of the regulation.

Lastly the defendant points out that whilst it is true that the deciding motives which led the applicants to volunteer cannot be subject to scrutiny, the advantages offered by Regulation No 259/68 are not limited to a special allowances, sickness benefits and the like.

In their reply the *applicants* maintain their position, claiming in particular:

— that whilst there is no denying that the

administration has the right to alter its interpretation of texts according to the changing requirements of its running, it cannot in so doing adopt measures with retroactive effect;

— by altering the interpretation of Regulation No 259/68 the Commission has encroached on the powers of the Council to amend this regulation should it prove necessary;

— Article 41 of Annex VIII to the Staff Regulations is without relevance to the present dispute for its first paragraph relates to errors or omissions made in calculating the amount of pension not those concerning principles, and its second paragraph implies that pensions are to be paid first and modified or withdrawn afterwards;

— the applicants have at no time claimed that the statements of account given to them at the end of March had the status of a decision, only that they amounted to information which could be relied on because it was supplied by the competent departments expressly named for the purpose by the Commission, information which was a deciding factor in the applicants' decision to volunteer to have their employment terminated;

— the defendant cannot rely on the warning in the Staff Courier, because that warning was not notified individually to the officials concerned.

In a first section of its rejoinder the *defendant* repudiates the suggestion that the Commission's conduct was at fault. It attempted to supply officials with the necessary information whilst at the same time alerting them to the fact that the information was issued merely as a guide. If the officials thought the information not sufficiently certain they had only to refrain from requesting a measure terminating their employment.
Moreover the insistence that the choice of options with all the consequences attaching thereto should be made completely clear and definite ignores the fact that the alternative, that is to say, to remain in the service of the Community, did not itself have clear or certain consequences, but involved all kinds of risks both regarding alteration in position under the Staff Regulations and career progress.
The defendant further states that:

— the figures in the information supplied in March 1968 do not constitute a decision having legal effect;

— the criticism that the position adopted by the Commission amounts to a modification of the Staff Regulations and thus encroaches on the powers of the Council displays an ignorance of the system of Community law and confuses modification of an interpretation with a textual amendment;

— if Article 41 of Annex VIII to the Staff Regulations permits pensions already awarded to be rectified, then *a fortiori* decisions may be taken not to pay pensions not yet calculated or awarded.

In the course of the oral procedure the parties repeated and elaborated the arguments already set out in their respective pleadings. Thus it was that the *applicants* claimed that, even if it could be accepted that the administration is not bound to give officials, whom it presents with an option, guaranteed information on the consequences of that option, it cannot be disputed that once it has in fact done so, it cannot, on changing its views later, interfere with the vested rights of those who have in the meantime exercised that option on the basis of the information. The administration cannot be allowed to exempt itself from the observance of this rule by arguing that a text which it has at least helped to draw up is obscure.

2. Formal defect

In their applications the *applicants* in Cases 19/69, 25/69 and 30/69 assert further that the Commission acted in such a way as to prevent the proper application of Regulation No 259/68. This is because, not having received the notices concerning settlement of claims until the month of January 1969,

they were not in a position to exercise the option granted to them by Article 6 of the said regulation in full possession of the facts until after expiry of the limitation period (on 31 December 1968). That, they claim, is contrary to the general rule of administrative law that a public administration cannot seek to make one of its officials exercise a right accorded him by law without first giving him full information on its consequences.

According to the *defendant* there is no such general rule of administrative law, on which in any case the applicants rely without adducing any evidence. Here the defendant points out that the concept of 'Fürsorgepflicht' is a concept belonging essentially to German law and is not common to the laws of the other Member States. The defendant goes on to allege that the wording of the first subparagraph of Article 6 (2) of Regulation No 259/68, which states that the limitation period runs from the date of notification of the decision terminating service, and not that of notification of full information on the consequences of exercising the option, shows that the applicants' theory is wrong.

In the reply the *applicants* state that when special measures such as Regulation No 259/68 are taken the normal course is for the Commission then to furnish the necessary information to enable officials affected to evaluate the consequences of the choice which they make. The Commission did in fact do so but only after so long a delay that the applicants found themselves precluded by expiry of the limitation period from exercising the option provided for in Article 6.

In its rejoinder the *defendant* reiterates its arguments, and maintains that it was under no obligation to supply the information sought.

The second head of the application: alternative conclusions

No express grounds were given for this head of the conclusions in the application.

In its statement of defence the *defendant* claimed that the application was inadmissible owing to the failure to state expressly the grounds or arguments supporting it. In any case the decisions were perfectly legal.

Similarly the claims for damages should be rejected.

In their reply the *applicants* state that the annulment of the decisions of 20 June 1968 is only requested as a means of repairing the damage done and that they are not being challenged in themselves.

The *defendant* declares itself puzzled as to the meaning, extent and validity of the second head of the conclusions and claims in its rejoinder:

— that the request contains one total and inescapable contradiction, in that the annulment of the decisions in question is supposed to have as a consequence in law the reinstatement of the applicants although the latter affirm elsewhere that they do not wish to be reinstated;

— it has not been established that in public law the fact that a request is made in error renders invalid any measure adopted on the basis of the request: French administrative case-law recognizes such an effect only in the case of some impediment such as to prevent the maker of the request from exercising his freedom of judgment;

— the claim for damages is without basis because the Commission has not been guilty of any fault such as to make it liable in law; in particular the fact that it gave through its departments wrong information involves no liability on the part of the Commission and, therefore, the Community, once an express reminder had been issued to the effect that the information was solely a guide;

— in this context it is as well to note that French and German case-law does not accept that an administration is liable for supplying wrong information;

— in any event the claim is premature since no injury can occur until the applicants attain the age of 55;

— finally, the alleged injuries are entirely due to the negligence of the applicants

who failed to take into account the circumstances and the written provisions, in particular those of Article 41 of Annex VIII to the Staff Regulations.

Grounds of judgment

1 The applicants submitted applications, lodged at the Registry on 21 April 1969, 23 April 1969, 10 June 1969 and 24 June 1969, seeking in the first place the annulment of the 'Notices concerning settlement of claims for the allowance provided for in Article 5 of Regulation No 259/63 and, alternatively, an order that the Communities make good the damage caused by their wrongful act or omission.

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 'Notices concerning the settlement of claims for the allowance provided for in Article 5 of Regulation No 259/68 of the Council', addressed to the applicants.

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 of the Staff Regulations of Officials, in the present case the application is primarily directed against the abovementioned notices.

4 These notices are intended to state definitively the pecuniary rights derived by the respective applicants under the provisions of Regulation No 259/68.

5 From their wording it is evident that the appointing authority intended by these notices to fix the amounts which it undertakes to pay to the applicants on specified dates.

6 Accordingly, since these are acts capable of adversely affecting the applicants, their applications are admissible.

The substance of the case

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

8 They argue 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 years and the period during which he is entitled to the allowance has ceased.

9 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.

10 Those who, like the applicants, 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.

11 There are, moreover, good social grounds for the disputed restriction of the right to a pension.

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

13 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.

14 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.

15 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.

16 The interpretation adopted by the contested decisions is therefore correct.

17 The applicants further claim that the contested measures were adopted without regard for their vested rights.

18 In this context they make reference to the statements of their possible pecuniary rights, supplied by the competent departments of the Commission of the EEC during the month of March 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.

19 These statements were supplied solely by way of information and were not capable of determining rights which the applicants were to derive from a given legal situation.

20 It is not therefore, possible to concede that the statements have the character of measures creating rights for the addressees.

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

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

23 The application for annulment must therefore be dismissed.

Application for damages

Admissibility

24 In an alternative claim, submitted in the event of the rejection of their applications

founded on the infringement of Article 5, the applicants in Cases 19/69 and 20/69 have asked that the decisions terminating their services be annulled, because they only requested such measures on the basis of the error into which they were led by the wrong information supplied by the Commission's own departments.

25 The applicants in Cases 25/69 and 30/69 do not seek to be reinstated but ask that the Commission be ordered to pay them a sum equivalent to three years of their last salary.

26 In their reply the applicants in Cases 19/69 and 20/69 withdrew their request for annulment and joined the other applicants in requesting that the Commission be ordered to pay them a like sum by way of damages.

27 The defendant has submitted that these requests are inadmissible on the ground that they are out of time and insufficiently supported by express arguments.

28 A perusal of the pleadings reveals, though with a minimum of clarity, that what the applications in fact are seeking is an order against the Communities, by virtue of their liability for a wrongful act or omission, to make good the damage caused to the applicants by the said act or omission.

29 An application to that effect is not subject to the limitation periods prescribed by Article 91.

30 The defendant's objection must therefore be rejected.

The substance of the case

31 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 applicants a still subsisting injury.

32 It is not contested that the appropriate departments supplied the applicants with incorrect information concerning the rights which they would be able to assert in the event of termination of their service.

33 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.

34 The observations submitted by the defendant 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 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.

35 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.

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

37 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.

38 However, whilst 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 departments' delay in rectifying the information.

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

40 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.

41 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 have certainly enabled the defendant to avoid all liability for the consequences of the wrong information.

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

43 The applicants have failed, however, to adduce sufficient evidence to establish that their requests for termination of service were based on the wrong information supplied to them and not corrected in good time.

44 Moreover, the fact that they have all waived a request for reinstatement in the departments of the Commission reinforces the conviction that the prospect of a right to an unreduced pension from the age of 55 was not a deciding factor in their decision to request the application of Article 4 of Regulation No 259/68.

45 On the other hand it would be reasonable to assume that, under the impression that they would receive a full pension from the age of 55, the applicants did not take into consideration the possibility of renouncing their pension rights under Article 6 of Regulation No 259/68 in order to benefit from the grant provided for by that article.

46 Since the period for requesting the application of Article 6 has expired the applicants are no longer in a position to take advantage of it should they prefer it to the scheme laid down in Article 5 as interpreted by this judgment.

47 The damage they may have suffered by virtue of this fact will be most effectively made good by restoring them to the situation in which they would otherwise have been.

48 As compensation for the injury which they have suffered, it is therefore appropriate to allow them a fresh limitation period and to rule that for them the period laid down in Article 6 shall be deemed to run from the date of this judgment.

Costs

49 The applicants have failed in a part of their application.

50 However, it follows from the foregoing that the applications were a result of a wrongful act or omission attributable to the defendant.

51 In these 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 as unfounded the applications directed against the 'Notice concerning settlement of claims for the allowance provided for in Article 5 of Regulation No 259/68 of the Council' addressed to the applicants;**
2. **Orders that with regard to the applicants the period laid down in Article 6 of Regulation No 259/68 shall be deemed to run from the date of the present judgment;**
3. **Orders the defendant to pay the costs.**

Monaco Donner Mertens de Wilmars

Delivered in open court in Luxembourg on 28 May 1970.

A. Van Houtte
Registrar

R. Monaco
President of the First Chamber