1. Where the initial decision has been altered the period within which an application must be lodged may be calculated as from the date of that alteration.
2. A claim made solely to cover the eventuality of the contested measure's being annulled need not have been mentioned in the complaint.
3. Article 47 of the Staff Regulations of Officials of the ECSC refers to servants who before taking up their duties resided continuously for more than six months in a place more than 25 kilometres from the seat of the Community. Accordingly, the expression "place where they resided before their entry into the service" contained in Article 9 of the General Regulations adopted pursuant to the Staff Regulations must be understood to refer to the place where the person concerned was living permanently and where he was previously employed.
4. The concept of the "place of origin" is different from that of the "place where [officials] resided before their entry into the service". The "place of origin" is a term of art the function of which is to indicate the place which is relevant for determining the annual or bi-annual travel expenses.
5. The retroactive withdrawal of a wrongful or erroneous decision is generally subject to very strict conditions; on the other hand, the revocation of such a decision as regards the future is always possible.
6. Under the law relating to the public service the irregular grant or continued payment of elements of remuneration cannot create vested rights such as to prevent revocation.
7. No form is prescribed for complaints through official channels within the meaning of Article 90 (2) of the Staff Regulations; they must be interpreted and understood by the administration with all the care that a large and well-equipped organization owes to those having dealings with it, including members of its staff. Although it is not possible to prohibit the seeking of legal advice by those concerned even at that stage, it is their own decision and the institution concerned cannot be held liable for the consequences.
8. The claim for reparation of the damage which the person concerned is said to have suffered by having to consult a lawyer to clarify his legal position in order to lodge a complaint may be regarded as vexatious.

In Case 54/77

ANTOON HERPELS, an official of the Commission of the European Communities, resident in Vossem, assisted and represented by Jacques Putzeys and Xavier Leurquin, Advocates of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Georges Nickts, Huissier, 17 Boulevard Royal,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Joseph Griesmar, acting as Agent, assisted by Madame Denise

Sorasio-Allo, a Member of its Legal Department, with an address for service in Luxembourg at the office of Mario Cervino, Legal Adviser to the Commission, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the annulment of the decision of the Commission of 18 January 1977 rejecting the complaints made by the applicant on 12 April and 30 June 1976, for an order that the Commission should acknowledge the applicant's entitlement to the expatriation allowance as from 1 January 1976 and pay the same, and for the payment of compensation to the applicant for the material damage suffered,

THE COURT (First Chamber),

composed of: G. Bosco, President of Chamber, A. M. Donner and A. O'Keeffe, Judges,

Advocate General: H. Mayras
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Facts and written procedure

The applicant, a Belgian national, is at present an official of the Commission of the European Communities. He took up employment with the High Authority of the European Coal and Steel Community in Luxembourg on 18 September 1961. Since he established his residence in Luxembourg he enjoyed from that time a separation allowance, subsequently replaced by an expatriation allowance from 1 January 1968 under the new Staff Regulations.

In June 1968 the applicant was transferred from Luxembourg to Brussels where he was granted entitlement to the expatriation allowance.

By a memorandum dated 19 January 1976 from the Head of the Individual Rights and Privileges Division the applicant was informed that "the Directorate General for Financial Control has refused to endorse the continuance of the expatriation allowance", on the ground that during the period prior to his entry into the service of the High Authority he was living in Brussels. It was stated that the applicant would be kept informed of the progress of the case. The applicant lodged a complaint against that memorandum under Article 90 (2) of the Staff Regulations of Officials of the European Communities which was registered on 12 April 1976.

A memorandum dated 8 April 1976 from the Directorate General for Personnel and Administration to the applicant confirmed that his expatriation allowance had been discontinued with effect from 1 January 1976. The applicant lodged a further complaint, registered on 30 June 1976, against that memorandum.

On 27 January 1977 the applicant was notified of the Commission's answer dated 18 January 1977 expressly rejecting the two complaints.

The applicant brought the present action, registered at the Court on 26 April 1977, against that express decision of rejection.

Upon 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.

II — Conclusions of the parties

The applicant claims that the Court should:

— Annul the express decision of rejection in dispute;

— Rule that the applicant is entitled to the expatriation allowance claimed and order the defendant to pay it to him with retroactive effect to 1 January 1976 together with legal interest at 8 % for the period from 1 January 1976 until the date of payment of the arrears;

— Rule that in consequence of the act of the defendant the applicant has also suffered material damage the amount of which should be fixed by the Court at 15 000 francs;

— Order the defendant to pay the costs.

The defendant contends that the Court should:

— Dismiss the present action as altogether inadmissible and in any case unfounded;

— Order the applicant to bear the costs.

III — Submissions and arguments of the parties

Admissibility

The *Commission* considers that the claim for 15 000 Belgian francs as compensation for alleged material damage suffered by the applicant as a result "of his having to meet legal costs" is inadmissible. This claim was not made in any prior request or complaint under Article 90 of the Staff Regulations and is contained only in the application to the Court.

The Commission moreover alleges that all the claims in the application are inadmissible on the ground that the latter is out of time under the provisions of Article 90 of the Staff Regulations.

The decision of the Head of the Individual Rights and Privileges Division, the competent authority according to the Commission (cf. Annex VIII to the statement of defence), is dated 19 January 1976. Since the sub-

sequent complaint through official channels was registered on 12 April 1976, that complaint was deemed to have been rejected on 12 August 1976. Accordingly, the applicant had until 12 November 1976 to bring an application, whereas in fact he did not bring it before the Court until 26 April 1977, that is to say he was out of time by five months.

The memorandum from the Director General for Personnel and Administration of 8 April 1976 and the subsequent lodging of a second complaint registered on 30 June 1976 have no effect, it is alleged, on the assessment of the admissibility of the application. Since the complaint was deemed to have been rejected on 30 October 1976 the applicant had until 30 January 1977 to bring an action. Since the reply by the Commission expressly rejecting that second complaint, and moreover the first, was notified to him on 27 January 1977, before the time-limit for bringing an action had expired, its effect was to reopen that time-limit in accordance with Article 91 (3) of the Staff Regulations. It is therefore possible to regard the application brought before the Court on 26 April 1977 as admissible in so far as its objective is identical with that of the second complaint, it being understood that at that date claims relating to the first complaint were out of time.

However, the objectives of the two complaints were identical since the second complaint contained nothing that was not in the first. Accordingly the applicant could not rely on the second complaint as entitling him to bring an action before the Court when the time-limit based on the first complaint had already expired several months previously.

Furthermore, the second complaint was directed against a purely confirmatory measure which as such was not capable of adversely affecting those concerned or being the basis of an application (Judgments of the Court of 14 April 1970 in Case 24/69, *NEBE* v *Commission* [1970] ECR at p. 151, paragraph 8; of 8 February 1973 in Case 56/72, *Goeth* v *Commission* [1973] ECR at p. 187, paragraph 15; of 8 May 1973 in Case 33/72, *Gunnella* v *Commission* [1973] ECR at p. 481, paragraphs 10 and 11; of 15 June 1976 in Case 1/76, *Wack* v *Commission* [1976] ECR at p. 1024, paragraph 7).

As to the action for damages, the *applicant* claims in reliance on the judgment of the Court of 1 July 1976 in Case 58/75, *Sergy* v *Commission* ([1976] ECR at p. 1139) that it was the unlawful reversal of the decision to grant the allowance which caused him to incur the costs and suffer additional damage the direct cause of which was the subject-matter of the complaint through official channels.

On the admissibility of the application as a whole the applicant claims that the only decision adversely affecting him is that contained in the memorandum of 8 April 1976, since the first memorandum of 19 January contained nothing more than information as to a precautionary measure in connexion with a financial technicality. In any case, by reason of the subject-matter, the head of division is not competent to take such a decision.

The decision contained in the memorandum of 8 April 1976 is not of a confirmatory nature. The defendant had re-examined the administrative file and this involved a completely new decision giving rise to a new time-limit for bringing an action.

The reply of the Commission of 18 January 1977 shows, moreover, that it was the second complaint which related to the only definitive decision adversely affecting the applicant.

In its rejoinder the *defendant* maintains that the applicant allowed the time-limit for bringing the matter before the Court

after the implied rejection of his first complaint to expire.

It then considers the nature of the memorandum from the Director General for Personnel and Administration of 8 April 1976. It is obvious that the subject-matter of the two complaints is identical as to the substance and this, in the Commission's view, has not been disputed in the applicant's reply. The result is that the second complaint could be the basis of an action before the Court only if the first was directed against a purely preparatory and not decisive measure. The defendant has already drawn attention to the factors which show, on the contrary, that the first complaint is directed against a true decision and that the memorandum of 8 April 1976 is of a purely confirmatory nature.

That it is confirmatory appears from the simple observation that the memorandum of 8 April 1976 makes no alteration either in law or in fact to the applicant's position and that it contains no new element. There is no principle to the effect that reconsideration of an administrative position always leads to a new decison which reopens the time-limit for bringing an action.

Substance

The applicant makes the following submissions:

A — Application for annulment

— Infringement of the fourth paragraph of Article 97 of the Staff Regulations of Officials of the European Coal and Steel Community, as continued in force by the final paragraph of Article 2 of Regulation No 259/68 of the Council of 29 February 1968 (Official Journal, English Special Edition 1968 (I), p. 30) laying down the Staff Regulations of Officials of the European Communities;

— Violation of a vested right to the expatriation allowance;

— Frustration of legitimate expectation.

B — Application for damages

The applicant alleges that he has suffered material damage which would not be adequately compensated by the retroactive grant of the expatriation allowance. He had to consult a lawyer to clarify his legal position and was therefore obliged to pay legal costs which should be refunded to him.

A (1) First submission

The *applicant* claims that under the former Staff Regulations of Officials of the European Coal and Steel Community he was entitled to the separation allowance.

The *defendant* first of all refers to the relevant provisions of the Staff Regulations. The fourth paragraph of Article 97 of the Staff Regulations of Officials of the European Coal and Steel Community of 1962 provides:

"Where as a result an alteration in his place of employment an official established under Article 93 no longer fulfils the conditions laid down in Article 4 of Annex VII for receiving the expatriation allowance, he shall nevertheless continue to receive that allowance if the former Staff Regulations of Officials of the European Coal and Steel Community entitled him to the separation allowance".

From that provision it appears that the applicant could claim continuance of the expatriation allowance on his posting to Brussels only if the former Staff Regulations of Officials of the European Coal and Steel Community would have entitled him in the same circumstances to the continuance of the separation allowance. This point is covered by Article 9 of the General Regulations of the Community (1956) annexed to the Staff Regulations of Officials of the European Coal and Steel Community:

"(a) Officials who fulfil the conditions laid down in Article 47 (3) of the Staff Regulations are entitled to a separation allowance . . .

(b) Officials who as a result of a new posting take up residence less than 25 kilometres from the place where they resided before their entry into the service lose the right to the allowance provided for in paragraph (a);

. . ."

Article 47 of the Staff Regulations of the Community to which the above-mentioned provision refers provides:

"The General Regulations of the Community shall govern, in the circumstances laid down in the present Staff Regulations:

. . .

3. The amount of the local allowance granted to all servants and the separation allowance granted to servants who before taking up their duties resided continuously for more than six months in a place more than 25 kilometres from the seat.

. . ."

It is clearly apparent from these provisions taken as a whole that the applicant was entitled to the maintenance of this allowance only if he adduced evidence that the place where he resided prior to taking up his duties in Luxembourg was more than 25 kilometres from his new residence, namely Brussels.

The Court must therefore decide whether the place of residence of the applicant before he entered the service of the European Coal and Steel Community was, as he claims, Wevelgem, which is more than 25 kilometres from Brussels, or Brussels, as the Commission considered when adopting the decision at issue.

It appears from the file that the applicant lived continuously in Brussels for more than two years prior to his departure for Luxembourg. To try to show that his previous place of residence was Wevelgem the applicant can produce only a certificate of registration in the population register of that locality. That certificate, dated 19 September 1961, certifies that the applicant was registered in the Wevelgem population register and had been residing there since 15 September 1961, that is to say three days before he took up employment in Luxembourg.

The concept of the previous place of residence, used in Article 9 (b) of the General Regulations, must be the same as that defined in Article 47 of the Staff Regulations which refers to residence "continuously for more than six months".

As a result the defendant considers that the applicant's previous place of residence was Brussels and that for this reason he does not fulfil the necessary condition for the continued payment of the expatriation allowance, which was therefore properly stopped.

The *applicant* in his reply maintains that only Article 9 (b) of the General Regulations of the Community of 1956 relating to withdrawal of the allowance is relevant. Within the meaning of that provision his place of residence was Wevelgem and not Brussels. The High Authority determined his residence of origin at the time of his recruitment as Wevelgem and this was confirmed by the Commission in 1968.

Although the grant of the separation allowance depended on six months at a place of employment, such condition no longer applies for the withdrawal of the allowance when the recipient's posting is changed by the institution to which he was attached.

The place of residence of an official when he is recruited is that where his natural *milieu* is to be found. When he

has made an express choice to make his legal residence coincide with his natural *milieu* no further doubt is possible.

The documents in the adminstrative file show that the applicant's place of residence was Wevelgem.

In its rejoinder, the *defendant* observes that the applicant does not dispute that the solution to the problem of his place of residence prior to his entry into the service of the High Authority determines the regularity of the grant of the expatriation allowance which he received from 1968 to the end of 1975.

Nor does the reply attempt to challenge the facts which the defendant took as its basis to show that the applicant's previous place of residence was Brussels.

It is not possible to read "previous place of residence" as meaning "place of origin". The latter expression takes account of the servant's "centre of interests" and may subsequently change, whereas the first is based on objective and substantive factors already existing before the person takes up his employment.

The Belgian rules on the maintenance of population registers, in particular the Royal Decree of 1 April 1960 (Moniteur Belge of 30 April 1960), lay down the obligation to register. Persons living alternately in two or more districts are required to register in each. The applicant did not comply with this obligation, which is further evidence that he resided solely in Brussels.

(2) Second and third submissions (Infringement of a vested right and frustration of legitimate expectation)

The *applicant* claims that no administrative authority which has taken a final decision creating a subjective right is entitled subsequently to withdraw it even though the original decision may have been vitiated by illegality.

Legitimate expectation has been frustrated in that the Commission, after seven and a half years, is not entitled to rescind a measure which had become final and thereby wrongfully disturb to its own advantage a predetermined balance of interests; moreover, the fact that there had been a formal decision and no procedure for amending it gave rise to a legitimate expectation that the expatriation allowance would continue to be paid to the applicant.

In answer the *defendant* states that since the expatriation allowance had wrongly been paid to the applicant since 1968 and there had been no change in circumstances such as to justify its continued payment since then, the Commission was fully entitled, and even obliged, to stop it as soon as it became aware of the irregularity.

On the basis of the case-law of the Court of Justice (Joined Cases 7/56 and 3 to 7/57, *Algera and Others* v *Common Assembly of the ECSC* [1957] ECR 39; Case 15/60, *Simon* v *Court of Justice of the European Communities* [1961] ECR 115; and Case 56/75, *Elz* v *Commission of the European Communities* [1976] ECR 1097) the defendant takes the view that an irregular measure cannot give rise to a "vested right". The necessity to regularize matters is limited only by the requirements of legal certainty and not by any obstacle created by the intangibility of certain rights. Such requirements in no way prevent the revocation of irregular decisions as regards the future nor is there any time-limit in such a case.

According to this interpretation the applicant's arguments based *inter alia* on an infringement of an alleged vested right are without any foundation, just as are those relying on the length of time for which the benefit has been enjoyed and alleging frustration of "legitimate expectation".

It might be imagined that the Court in its judgment in Case 56/75, *Elz (loc.*

cit). suggested that there was a distinction between the revocation of irregular individual measures which create rights and the revocation of measures which merely recognize the existence of rights. If, for the sake of argument, it were assumed that the Court allowed unconditional revocation of irregular individual measures only if they do not create rights, consideration of the facts and the solutions given by national laws shows that the grant of the expatriation allowance obviously falls into this category.

As for disturbing a "balance of interests", the defendant observes that the Court has never referred to this in deciding cases between officials and Community institutions. The legal connexion between the two and the facts and circumstances of the particular case would appear to prevent such a factor from being taken into account.

In his reply, the *applicant* states that in the absence of any provision governing the revocation of a unilateral administrative measure, as for example Article 41 of Annex VIII to the Staff Regulations, it must be considered that the grant of the expatriation allowance cannot be reviewed and, *a fortiori*, withdrawn even in the case of mistake.

The following is the position according to the case-law of the Court of Justice and the laws of France, Belgium and the Federal Republic of Germany.

Under Community law the revocation of irregular administrative measures concerning individuals must take place within a reasonable period, namely a maximum of three years. This accords with the legal systems of other Member States.

On the other hand, Community case-law is more progressive than that of the Member States in that it has abandoned the traditional distinction, involving innumerable difficulties, between measures creating rights and those recognizing rights; it considers that once a reasonable period has expired an irregular measure, whatever its nature, can no longer be revoked.

This desire to give further protection to individual and social rights of national of Member States is particularly worthy of attention where the measure creating the right has been expressly set out by the administrative authority in a written document containing the considered decision of the competent institution.

In the present case this leads to the conclusion that the memorandum of 5 July 1968 containing the grant of the expatriation allowance to the applicant is an individual decision on a financial matter taken by the relevant authority and arising from the applicant's posting to Brussels.

The applicant maintains that he has a vested right to the continued payment of the expatriation allowance.

In relation to his third submission, the applicant cannot see how the relationship under the Staff Regulations between an official and his administration can alter or even override the general principle protecting legitimate expectations.

There is no reason based on a higher general interest justifying the withdrawal of the expatriation allowance when there is no express provision on the subject.

The applicant persists in these submissions.

In its rejoinder the *defendant* states that the previous case-law of the Court destroys the applicant's case that a retroactive withdrawal of the expatriation allowance or the suppression thereof as regards the future is always impossible where there is no express provision for such withdrawal or suppression.

It is persuaded that the decisions which the Court has already had occasion to give in cases of the revocation of irregular administrative measures concerning individuals clearly allows it

to maintain the validity of the contested decision withdrawing the applicant's expatriation allowance.

There is nothing in the judgments of the Court to indicate that it contemplates employing, in cases of revocation, the concept of a reasonable period which applies to a retroactive withdrawal.

Nor can the defendant follow the applicant when he says that it appears from the case-law of the Court that revocation as regards the future is possible only where there is no express decision but a mere omission or indulgence on the part of the authority. That contention if valid would make impossible any revocation, even such as is limited to the future, of all irregular "measures".

The defendant adheres to the observation set out in its defence as regards the distinction between measures creating rights and measures which simply recognize rights. The applicant's reply contains nothing to invalidate the defendant's previous observations.

B — Claim for damages

The defendant observes that the applicant has made no submission capable of supporting his claim for damages of 15 000 francs representing lawyer's fees. It therefore confines itself to recalling that according to the general principles of liability for a wrongful act or omission there is no right to compensation unless the defendant has caused the applicant damage and the defendant's action constituted a wrongful act or omission.

The *applicant* replies that if the application for annulment is successful the costs — which the defendant will have to bear — will be only those of the procedure before the Court. Because of the defendant's wrongful act the applicant was obliged to consult a lawyer on his own initiative at the stage of the "complaint through official channels". There is therefore a direct causal relationship between those expenses and the wrongful act of the Commission. Such damage should likewise be made good by the defendant.

In its rejoinder the *defendant* refers to the contentions in its statement of defence.

IV — Oral procedure

The parties made oral observations at the hearing on 12 January 1978.

The Advocate General delivered his opinion at the hearing on 16 February 1978.

Decision

1 By application lodged at the Court on 26 April 1977 the applicant brought an action before the Court under Article 91 (3) of the Staff Regulations for (1) the annulment of the refusal to continue payment of the expatriation allowance and (2) an order that the Community should provide compensation for the material damage which the applicant suffered as a result of having to seek advice to clarify his legal position.

2 The applicant, who is of Belgian nationality, entered the service of the High Authority of the European Coal and Steel Community in Luxembourg on 18 September 1961 and from that date received a separation allowance which was subsequently termed an expatriation allowance under the consolidated Staff Regulations.

3 After being transferred in June 1968 from Luxembourg to Brussels he continued to receive the expatriation allowance.

4 After a general investigation the Directorate General concerned considered that the said allowance was being paid irregularly since the transfer of the applicant to Brussels and as from 1 January 1976 it refused to continue payment thereof.

5 The applicant submitted a first complaint within the meaning of Article 90 (2) of the Staff Regulations which was registered on 12 April 1976.

6 Meanwhile, by letter dated 8 April 1976, the Director General concerned had informed the applicant that after consideration of the matter he was confirming the original decision to withdraw the allowance but had decided to grant him a differential allowance *ad personam* intended to offset the loss of the expatriation allowance until it was absorbed by future increases in salary.

7 Thereupon the applicant on 28 June 1976 submitted a fresh complaint requesting the annulment of that decision of the Director General.

8 In reply to those complaints the Commission itself by letter dated 27 January 1977 confirmed the decisions taken and stated that the differential allowance would be extinguished only as a result of salary increases and not by increases in remuneration caused by an increase in the applicant's family responsibilities.

Admissibility

9 The Commission claims that the application for annulment is out of time since the applicant's first complaint was registered on 12 April 1976, with the result that in the absence of a specific reply within three months the

applicant could bring an application under Article 90 (2) of the Staff Regulations against the implied rejection of his complaint up to 12 November 1976.

10 It is accordingly alleged that the application lodged on 27 April 1977 is inadmissible.

11 In taking this view the Commission overlooks the fact that the original decision of January 1976 was substantially amended, first by the letter of 8 April 1976 from the Director General granting the applicant a differential allowance and then by the reply from the Commission setting out the conditions on which that allowance would abate.

12 It is true that the Commission claims that the decision to withdraw the expatriation allowance must clearly be distinguished from that granting a differential allowance and that it is only the former of those two decisions which is the subject-matter of the action.

13 However, the two decisions are closely connected and show that the decision to withdraw the expatriation allowance was repeatedly reconsidered, if not as regards its justification in law at least as regards its consequences with regard to natural justice.

14 Accordingly, the letter from the Commission received by the applicant on 27 January 1977 cannot be regarded as a mere confirmation of the previous decisions but rather as the definitive outcome of a reconsideration of his position.

15 The application directed against the decision contained in that letter is therefore admissible.

16 The Commission also claims that the application is inadmissible as regards the claim for damages because it was not the subject of a complaint through official channels.

17 It appears from the application that this claim was made solely to cover the eventuality of the contested refusal's being annulled, so that there was no

need already to mention it expressly in the complaints which the applicant submitted to the defendant.

18 Moreover, it is important that the Court should be able to give a ruling on such claims.

19 It is right therefore to admit the claim for damages.

Substance

Application for annulment

20 According to the provisions of the Staff Regulations in force the expatriation allowance shall be paid to officials "who are not and have never been nationals of the State in whose European territory the place where they are employed is situated" or who are in a similar position.

21 However, Article 106 of the Staff Regulations provides: "Any official in receipt of a separation allowance before these Staff Regulations were applied who does not qualify for an expatriation allowance under Article 4 of Annex VII shall be allowed the same amount as that which he would have received by way of separation allowance under the scale of remuneration existing before these Staff Regulations entered into force."

22 The conditions for the grant of the above-mentioned separation allowance, which was provided for by the Staff Regulations of Officials of the European Coal and Steel Community, differ from those of the expatriation allowance mainly in the fact that persons were entitled thereto "who before taking up their duties resided continuously for more than six months in a place more than 25 kilometres from the seat" (Article 47 (3) of the Staff Regulations).

23 Article 9 (b) of the General Regulations adopted pursuant to the Staff Regulations, which took effect on the same day, provided: "Officials who as a result of a new posting take up residence less than 25 kilometres from the place where they resided before their entry into the service lose the right to the allowance".

24 The applicant considers that the withdrawal of the expatriation allowance contravenes those provisions, in particular by reason of the fact that it is based on the supposition that his place of residence before he entered the service of the European Coal and Steel Community was Brussels, whereas it is said to appear clearly from his personal file that as from the time when he entered that service he gave as his "place of origin" the municipality of Wevelgem, which is more than 25 kilometres from his place of employment and the place where he now resides.

25 Some days before his recruitment by the High Authority he had again established his Belgian residence at Wevelgem, the place of residence of his parents, and informed the appropriate department of the High Authority that that municipality should be regarded as his place of origin.

26 Accordingly he alleges that his place of residence when he entered the service was Wevelgem and not Brussels, so that the said Article 9 (b) does not apply to him.

27 Article 9 (b), however, must be interpreted in its context.

28 As has been pointed out, Article 47 of the Staff Regulations of Officials of the European Coal and Steel Community refers to officials who before they took up their duties resided continuously for more than six months in a place more than 25 kilometres from the seat of the Community.

29 Accordingly, the words "place where they resided before their entry into the service" contained in Article 9 of the General Regulations must be understood to refer to the place where the person concerned was living permanently and where he was previously employed.

30 The fact that the applicant, just before his entry into the service, removed his Belgian residence to the place where his parents were living and gave that locality as his "place of origin" did not have the effect of altering the place where he was residing within the meaning of the said Article 9.

31 In the rules in force at the time, as in the present regulations, "place of origin" is a term of art having a function different to that of the concept employed in Article 47 of the Staff Regulations of Officials of the European

Coal and Steel Community and Article 9 of the General Regulations; it indicates the place which is relevant for determining the annual or biannual expenses of travel from the place where the official is employed to his place of origin, a matter which is at present governed by Articles 7 and 8 of Annex VII to the Staff Regulations.

32 Article 7 (3) provides: "An official's place of origin shall be determined when he takes up his appointment, account being taken of where he was recruited or the centre of his interests", words which clearly show that that concept is different from that of the "place where they resided before their entry into the service".

33 It follows that the applicant must be regarded as having satisfied the condition contained in Article 9 (b) of the General Regulations and that the submission of illegality must therefore be dismissed.

34 The applicant's second submission is that the contested decision infringed a vested right since the separation allowance had continued to be paid since 1968.

35 His third submission alleges frustration of legitimate expectation.

36 He claims that after a lapse of seven and a half years the Commission cannot "wrongfully disturb to its own advantage a predetermined balance of interests to rectify an alleged error by its departments".

37 These two submissions coincide and can therefore be considered together.

38 Although the retroactive withdrawal of a wrongful or erroneous decision is generally subject to very strict conditions, on the other hand the revocation of such a decision as regards the future is always possible.

39 In any event, under the law relating to the public service the irregular grant or continued payment of elements of remuneration cannot create vested rights such as to prevent revocation.

40 Article 85 of the Staff Regulations on the recovery of undue payment confirms this distinction by making recovery subject to well-defined conditions while recognizing by implication that undue payments may be stopped.

41 Officials, who are deemed to have knowledge of that provision, cannot rely on legitimate expectation in this respect.

42 The applicant's submissions cannot therefore be upheld and his application for annulment must be dismissed.

Claim for damages

43 The applicant claims that "by reason of the withdrawal ... of the allowance" he had to consult a lawyer to clarify his legal position and thus incurred legal expenses.

44 The applicant claims that those sums should be reimbursed to him and that the Commission should therefore be ordered to pay damages which he assesses at 15 000 francs.

45 The costs of consulting a lawyer at the stage of a complaint through official channels must be distinguished from lawyer's fees incurred as a result of contentious proceedings.

46 The stage of the procedure prior to litigation which is governed by Article 90 of the Staff Regulations is an exchange between the official unassisted by a lawyer and the administration.

47 No form is prescribed for complaints which must, as the Court has often stated, be interpreted and understood by the administration with all the care that a large and well-equipped organization owes to those having dealings with it, including members of its staff.

48 Although it is not possible to prohibit the seeking of legal advice by those concerned even at that stage, it is their own decision and the institution concerned cannot be held liable for the consequences.

49 Accordingly, there is no causal link between the alleged damage and the action of the Commission.

50 The application must therefore not only be dismissed but perhaps regarded as without any legal justification and therefore vexatious and this must be borne in mind in connexion with the order as to costs.

Costs

51 Article 70 of the Rules of Procedure provides that without prejudice to the second subparagraph of Article 69 (3) of those rules, in proceedings commenced by an official of an institution against the institution the latter shall bear its own costs.

52 The second subparagraph of Article 69 (3) provides: "The Court may order even a successful party to pay costs which the Court considers that party to have unreasonably or vexatiously caused the opposite party to incur".

53 As has been found, the claim for reparation of the damage which the applicant is said to have suffered by having to consult a lawyer to clarify his legal position in order to lodge a complaint may be regarded as vexatious.

54 It would therefore be right to order the applicant to bear the costs resulting from that claim because it must be stressed that such claims, while lacking any justification, nevertheless place a burden both on the defendant and on the Court in refuting them and should be discouraged.

55 However, it must be borne in mind also that the defendant has failed in its submissions of inadmissibility.

56 In the circumstances of the case it is nevertheless proper to order each party to bear its own costs.

On those grounds,

THE COURT (First Chamber)

hereby:

1. **Dismisses the application;**

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

Bosco Donner O'Keeffe

Delivered in open court in Luxembourg on 9 March 1978.

A. Van Houtte
Registrar

G. Bosco
President of the First Chamber

OPINION OF MR ADVOCATE GENERAL MAYRAS DELIVERED ON 16 FEBRUARY 1978 [1]

Mr. President,
Members of the Court,

Mr Antoon Herpels, of Belgian nationality, born in Wevelgem on 24 January 1933, entered the service of the High Authority of the ECSC in Luxembourg in September 1961 as probationer official in Grade A 8. Before that he had lived for two years in the conurbation of Brussels at Ixelles. He had in fact worked first as a journalist with the Belgian Dutch-language radio and television and then as press attaché to the Prime Minister's office in Brussels.

He was married on 14 November 1959 and registered in the commune of Ixelles where he also registered the birth of his first child on 4 January 1961.

Thus his family residence prior to his employment by the High Authority was without any doubt Ixelles. Nevertheless, the applicant procured a certificate of residence and nationality from the Mayor of Wevelgem, the town where his parents still lived. That certificate, dated 19 September 1961, states that the applicant has resided at Wevelgem since 15 September 1961. He took up his employment in Luxembourg on 18 September 1961.

1 — Translated from the French.