JUDGMENT OF THE COURT (SECOND CHAMBER)
OF 19 MARCH 1975 [1]

Fabrizio Gillet
v Commission of the European Communities

Case 28/74

Summary

1. *Officials — Vested rights — Acquisition — Conditions — Based on the Staff Regulations*

2. *Officials — Termination of service — Holders of Grades A 1 and A 2 under the scheme of the Staff Regulations of the ECSC of 1956 — Financial benefits — Legality*
   (Regulation No 2530/72, Article 5)

3. *Officials — Remuneration — Payment — Currency other than the Belgian franc — Devaluation — Article 63 of the Staff Regulations of Officials — Legality*

1. As the legal link between an official and the administration is based upon the Staff Regulations and not upon a contract, an official cannot in any case claim a vested right unless the facts giving rise to that right arose under a particular set of Staff Regulations prior to the amendment decided upon by the Community authority.

2. The benefits reserved by Article 5 of Regulation No 2530/72 for officials who held Grade A1 or A2 under the scheme of the Staff Regulations of the ECSC of 1956 are a mere transposition from the Staff Regulations of 1962 and cannot consequently be regarded as discriminatory.

3. Although it is for the Council to adapt the Staff Regulations to economic realities and thus to seek the means of alleviating any loss suffered by officials residing in a country whose currency has been substantially devalued, that cannot mean that the existing wording of Article 63 is illegal or that in consequence it is inapplicable within the meaning of Article 184 of the EEC Treaty.

In Case 28/74

FABRIZIO GILLET, former Director-General at the Commission of the European Communities, represented by Giacomo Antonelli and Filippo Satta of the

1 — Language of the Case: Italian.

Rome Bar, with an address for service in Luxembourg at the Chambers of Lambert Dupong, 14/A rue des Bains,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Giorgio Pincherle, with an address for service in Luxembourg at the Chambers of its Legal Adviser, P. Lamoureux, 4 boulevard Royal,

defendant,

Application for a declaration of the applicant's right to payment of the allowances on resignation in the interests of the service on the basis of Article 42 of the Staff Regulations of the ECSC of 1956 and to the conversion of the amounts paid to him by way of such allowances on the basis of the real parities between the Belgian franc and the Italian lira at the date of payment,

THE COURT (Second Chamber)

composed of: A. J. Mackenzie Stuart, President (Rapporteur), H. Kutscher and M. Sørensen, Judges,

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

gives the following

JUDGMENT

Facts

The facts and the arguments of the parties set out during the written procedure may be summarized as follows:

I — Facts and procedure

Mr Fabrizio Gillet took up his duties with the High Authority of the ECSC on

15 January 1962 in Grade 4, Step 2, of Category A after the retroactive entry into force of the Staff Regulations of 1962.

Following the entry into force on 6 December 1972 of Regulation No 2530/72 of the Council introducing special and temporary measures applicable to the recruitment of officials of the European Communities in consequence of the accession of new Member States and for the termination of service of officials of those Communities, the applicant requested the application of a measure effecting the termination of his service. The Commission accepted that request; the termination of his service was fixed for 1 April 1973.

The Directorate-General of Personnel subsequently determined the amount of the allowances to which the applicant was entitled in accordance with the detailed rules laid down in Articles 1, 2 and 3 of Regulation No 2530/72.

In addition to that method of determining the monthly allowance, Regulation No 2530/72 makes provision for two other much more favourable methods of calculating the allowance.

Article 5 (1) of the said regulation provides that former officials of the ECSC, with the exception of those who before 1 January 1962 held Grade A1 or A2 posts under the Staff Regulations of the ECSC, may request that their remuneration be determined in accordance with the provisions of Article 34 of the Staff Regulations of the ECSC and Article 50 of the Rule and Regulation of the ECSC. The most favourable system is that provided for in Article 5 (2) which applies to officials who before 1 January 1962 held Grade A1 or A2 posts under the Staff Regulations of the ECSC, who may request that their remuneration be determined in accordance with the provisions of Article 42 of the Staff Regulations of the ECSC.

For these three methods of calculation, however, the conditions laid down in paragraphs (3), (5) and (6), in the fifth subparagraph of paragraph (7) and in paragraph (8) of Article 3 continue to apply. Article 3 (3) makes provision for the currency in which the allowance is payable and the weighting to be applied to it by reference to Article 63 of the Staff Regulations which, in its turn, refers to the parities accepted by the International Monetary Fund in force on 1 January 1965. Mr Gillet made a complaint against the fixing of the amount of his allowance asserting that the system applicable in the present case was that of Article 42 or, alternatively, of Article 34 of the Rules and Regulations of the ECSC. He asked in addition that his salary be paid to him in Italian lire on the basis of the real rate of exchange and not the basic of the old monetary parity of 1965.

By a memorandum of 7 February 1974, the Commission decided for the payment of the allowance to apply Article 34 of the former Staff Regulations of the ECSC. The Commission thus accepted the applicant's argument that he took up his employment under the former Staff Regulations of the ECSC.

On 3 May 1974 the applicant made the present application.

The written procedure followed the normal course.

After hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General, the Court (Second Chamber) decided to open the oral procedure without a preparatory inquiry.

II — Conclusions of the parties

The applicant claims that the Court should:

1. Annul the memorandum of 7 February 1974:

(a) which refused the applicant the right to payment of the allowance on resignation in the interests of the service, in application of Article 42 of the Staff Regulations of the ECSC of 1956; and

(b) which enforced the conversion of the amounts paid to him by way of allowances on the basis of the official parities accepted by the International Monetary Fund on 1 January 1965.

2. Annul Article 5 (1) or declare it to be inapplicable, and also, if necessary, Article 5 (2), of Regulation No 2530/72, to the extent to which it discriminates unjustly between officials in service before and after 1 January 1962, as well as Article 99 of the Staff Regulations of the ECSC of 1962.

3. Declare, in the exercise of its unlimited jurisdiction, that the Commission be required to pay the pension and, in the meantime, the applicant's allowances in accordance with Article 42 of the Staff Regulations of the ECSC of 1956 and to credit to him in Italy the sums which in any event are payable to him at the rate officially in force at the time of payment.

The *Defendant* contends that the Court should:

1. Dismiss the application as unfounded.

2. Order the applicant to pay the costs.

III — Submissions and arguments of the parties

Recapitulation of the provisions in dispute

Article 34 of the Staff Regulations of the ECSC of 1956 provides that servants assigned non-active status

'shall be entitled for two years to a monthly allowance corresponding to the remuneration provided for in Article 47 (1) and, for a further two years, to an allowance equal to half such remuneration.

At the end of four years of non-active status, such servants shall receive a proportional pension, in accordance with the conditions laid down in the pension scheme.'

Article 42 of the same Staff Regulations provides, in respect of compulsory retirement in the interests of the service, that:

'An official holding a post in Grades 1 to 3 inclusive may be retired in the interests of the service.

Such retirement shall not constitute a disciplinary measure.

An official thus retired who is not assigned to another post in his category or service corresponding to his grade shall receive for three years a monthly allowance corresponding to the remuneration provided for in Article 47 (1).

At the end of that period, he shall be entitled to a pension equal to that which he would have received at the age of 60 years, if at that age he would have completed a total number of years' service double the number of his years of service at the time of his retirement.

Nevertheless, this total may not exceed the number of years' service which that servant would have been able to complete if he had remained in the service until the age of 60 years.'

Article 99 of the transitional and final provisions of the Staff Regulations of the ECSC of 1962 provides, *inter alia,* that:

'An official integrated under Article 93 and to whom the provisions of Article 41 are applied may request that his remuneration be determined in accordance with the provisions of Article 34 of the former Staff Regulations of the ECSC and Article 50 of the Rules and Regulations of the ECSC.

An official to whom the provisions of Article 50 are applied and who on the entry into force of these Staff Regulations held a post in Grade 1 or 2 under the former Staff Regulations of the ECSC may request that his remuneration be settled in accordance with the provisions of Article 42 of the former Staff Regulations of the ECSC.'

Article 50 of the Staff Regulations of the European Communities provides that:

'An official holding a post in Grades A 1 or A 2 may be retired in the interests of the service by decision of the appointing authority.'

Article 1 of Annex IV to those Regulations provides that:

'An official to whom Article 41 or Article 50 of the Staff Regulations is applied shall be entitled:

(a) for three months, to a monthly allowance equal to his basic salary;

(b) for a period varying with his age and length of service in accordance with the table shown in paragraph 3, to a monthly allowance equal to:
   — 85% of his basic salary form the fourth to the sixth month;
   — 70% of his basic salary for the next five years;
   — 60% of his basic salary thereafter.

The allowance shall cease from the day on which the official reaches the age of sixty years.

However, above that age and up to the age of 65 years the official shall continue to receive the allowance until he reaches the maximum retirement pension.

The basic salary for the purposes of this Article shall be that shown in the table in Article 66 of the Staff Regulations which is in force on the first day of the month for which the allowance is to be paid.'

Regulation No 2530/72 of the Council, which entered into force on 6 December 1972, provides in Article 1 that:

'Notwithstanding the second and third paragraphs of Article 4, and Articles 27 (3), 28 (d) and 29 of the Staff Regulations of Officials of the European Communities, provision may be made until 31 December 1973 for vacant posts to be filled by nationals of the new Member States up to the number of budgeted posts reserved for this purpose in the list of posts or made available by the application of measures for the termination of service provided for in this Regulation.

However, provision may be made during the same period and under the same conditions laid down in the preceding paragraph for vacant posts in Grades A1 and A2 to be filled by nationals of the original Member States.'

Article 2 (1) provides that:

'Until 30 June 1973, the Institutions of the Communities are authorized, in the interests of the service and in order to meet requirements resulting from the accession to the European Communities of new Member States, to adopt for their officials in Grades A1 to A5 inclusive measures terminating the service of officials, as provided for in Article 47 of the Staff Regulations, under the conditions provided hereinafter.'

Article 3 (1) provides that:

'An official affected by the measures provided for in Article 2 (1) shall be entitled:

(a) for a period of a year, to a monthly allowance equal to his last remuneration, and

(b) for a period fixed in accordance with the table in paragraph 2, to a monthly allowance equal to:
   — 80% of his basic salary for the 30 following months;
   — 70% of his basic salary thereafter.

Entitlement to that allowance shall cease not later than the day on which the official reaches the age of 65. Where the

official is entitled to the maximum pension before the age of 65, he may continue to receive the allowance until the end of the month in which he attained the age of 65. The basic salary to be taken into account when fixing the allowances provided for under this paragraph is that applicable on the first day of the month for which the allowance is payable.'

Article 3 (3) provides that:

'The allowance provided for in paragraph 1 shall be weighted, in accordance with the second subparagraph of Article 82 (1) of the Staff Regulations, for the Community country where the recipient provides proof of residence.

If the recipient of that allowance resides outside the Community countries the weighting to be applied to the allowance shall be that valid for Belgium.

The allowance shall be expressed in Belgian francs. It shall be paid on the basis of the values referred to in Article 63, third subparagraph, of the Staff Regulations.'

Article 5 (1) provides that:

'The officials referred to in the last subparagraph of Article 2 of Regulation (EEC, Euratom, ECSC) No 259/68 of the Council and in Article 102 (5) of the Staff Regulations, with the exception of those who before 1 January 1962 held Grade A1 or A2 posts under the Staff Regulations of the European Coal and Steel Community, to whom the measures provided for in Article 4 (1) [sic] are applied, may request that their remuneration be determined in accordance with the provisions of Article 34 of the Staff Regulations of the European Coal and Steel Community and Article 50 of the Rules and Regulations of the European Coal and Steel Community.'

Article 5 (2) provides that:

'Officials who before 1 January 1962 held Grade A1 or A2 posts under the Staff Regulations of the European Coal and Steel Community, to whom the measures provided for in Article 4 (1) [sic] are applied, may request that their remuneration be determined in accordance with the provisions of Article 42 of the Staff Regulations of the European Coal and Steel Community.'

Article 63 of the Staff Regulations of Officials of the European Communities provides that:

'An official's remuneration shall be expressed in Belgian francs.

It shall be paid in the currency of the country in which the official performs his duties.

Remuneration paid in a currency other than Belgian francs shall be calculated on the basis of the parities accepted by the International Monetary Fund, which were in force on 1 January 1965.'

Summary of submissions and arguments

A — *First head of complaint* (Request that the allowances be calculated in accordance with Article 42 of the Staff Regulations of the ECSC of 1956)

The *applicant* puts forward two submissions against the refusal of the Commission to comply with his request:

— *ultra vires* acts by reason of inequality of treatment,

— *ultra vires* acts by reason of infringement of contractual agreements.

On the first submission

According to the applicant, Regulation No 2530/72 laid down different provisions for officials having the same grade; that must entail the annulment of

the contested decision by reason of the non-application of Article 5 (1) and (2) to the extent to which it accepts that inequality of treatment.

The applicant emphasizes the exceptional nature, within the framework of the rules concerning compulsory retirement in the interests of the service, of the scheme in Regulation No 2530/72. Although substantial equality between the situations of officials in Grades A1 to A5 is expressly confirmed in Regulation No 2530/72, in that in Article 2 it makes provision for uniform treatment for all A1 to A5 officials, Article 5 provides two different schemes for officials coming from the ECSC: one scheme is provided for those who were engaged under the former scheme of the Staff Regulations of the ECSC, whilst there is another, much more favourable, scheme for those who entered Grades A1 or A2 before 1 January 1962.

It is precisely this differentation of which the applicant complains, asserting that he should have the same benefit as those officials who entered Grades A1 or A2 under the former Staff Regulations, although he did not himself enter Grade A2 until 1 August 1965.

On the second submission

The applicant maintains that, since he held a Grade A1 post on termination of his service, he should have had the right to request the application of Article 42 of the former Staff Regulations of the ECSC.

The provisions of the former Staff Regulations of the ECSC taken as a whole cannot be unilaterally amended once they are included in a contract of employment.

Once it is accepted that he was subject to the rules of the Staff Regulations of 1956, it is no longer possible to exclude him from the benefit of the application of Article 42, on the basis of the arbitrary consideration that on 31 December 1961 he held neither a Grade A1 nor a Grade A2 post.

The applicant does not dispute that, in substantive law, Article 99 of the transitional provisions limits the scope of Article 42 to officials who held Grade A1 or Grade A2 posts on 1 December 1962, but, according to him, Article 99 must not be read independently of Article 92.

By making express reference to officials in Grades A1 or A2 on 31 December 1961, Article 99 cannot affect the contractual rights of those who later became A1 or A2 officials, otherwise Article 99 would be illegal.

The judgment of the Court in the *Pasetti-Bombardella* case (Rec. 1969, p. 235) denied the existence of a right for officials who held Grade A3 posts under the scheme of the former Staff Regulations to benefit from payment in accordance with the provisions of Article 42 which also included officials in Grade A3 among those who could be subject to compulsory retirement, but that judgment refers only to a case in which the general scheme governing those in Grade A3 had been altered *in their favour,* by granting them permanence and in consequence abolishing the more favourable payment linked to the insecurity of their positions.

The applicant does not deny that, interpreted according to the letter, Article 99 may militate against him, but in that case the provision is open to the complaint of being *ultra vires* for inequality of treatment, on the one hand because without any reason it discriminates between officials in Grades A3/A5 and those in Grades A1/A2 by acknowledging without reservation in respect of the former the vested right to the benefits laid down by Article 34 and by refusing the corresponding benefit of Article 42 to officials in Grades A1 and A2 who did not hold those grades on 31 December 1961 and, on the other hand, because without any reason it discriminates between officials of the same grade appointed subsequently by causing different pension systems to

follow from the same measure — compulsory retirement in the interests of the service.

The illegality of Article 99 may be avoided by interpreting that article as maintaining the more favourable treatment provided for them by the Staff Regulations of 1956.

The *Commission,* on its side, puts forward the following arguments.

The first submission

The *Commission* replies that, if there is inequality between the former officials of the ECSC and other officials, this consists of more favourable treatment reserved for the former officials of the ECSC. The inequality of treatment practised between the officials in Grades A1 and A2 subject to the Staff Regulations of the ECSC of 1956 and the other officials of the ECSC is based upon Article 99 of the transitional provisions.

The *ratio juris* of that provision of the Staff Regulations is to provide more or less preferential treatment according to the greater or lesser risk of loss of employment. This is a perfectly legal reason.

As it is an exception it must be interpreted strictly.

The second submission

The Commission emphasizes that relationships between an official and the administration are governed by the Staff Regulations and are not contractual.

The freedom of the administration to alter the conditions of work of its servants is admitted. In the present case, however, no use has been made of that freedom since the transitional provisions already provided for different and more favourable treatment than that arising from the new provisions of the Staff Regulations.

The applicant's complaints are therefore unfounded, as the Community provisions have in any event been properly applied to him.

Officials may not rely upon vested rights except when the event giving rise to the right occurred within the framework of a particular set of staff regulations, prior to the amendment decided upon by the Community authority: opinions of Mr Advocate-General Mayras in *Reinarz* v *Commission* (Joined Cases 177/73 and 5/74 [1974] ECR 831) and *Becker* v *Commission* (Case 10/74 [1974] ECR 876) and opinion of Mr Advocate-General Gand in *Pasetti-Bombardella* v *Commission* (Rec. 1969, p. 251).

B — *Second head* (The question of parities)

The *applicant* maintains that to apply to him the 1965 parities now would lead to unjustified enrichment of the Commission.

According to the applicant, the weighting may not be regarded as compensating for the difference in parities. Its purpose is, on the contrary, to make compensation for differences in the cost of living. The condition for the proper application of the weighting is that there should be parity between the salaries paid in the various centres. There must be a fixed parameter for the conversion of currencies which, assuming all salaries to be equal and leaving out of account the currency in which they are expressed, also allows it to be said that in country A the cost of living is higher or lower than in country B.

Although the national purchasing power of the currency is a different thing from the rate of its international parity, it is nonetheless true that in fact the two phenomena are closely linked and that a higher rate of inflation is accompanied by a greater loss in value of the currency abroad.

In a situation of monetary fluctuation, to apply the rates of exchange of 1965 now would mean affording a premium to officials who are nationals of Member

States whose currencies have been revalued — without taking into account the merits of each. To follow the Commission would lead to making it more advantageous for certain officials to have their salaries or allowances paid in Germany in order to obtain marks at the 1965 rate and to change them later at the 1974 rate which is almost double, into, for example, lire or pounds sterling.

It is clear that unintentional salary disparities would thus be created between officials.

In order to emphasize the absurdity of the system of the Staff Regulations, the applicant mentions that in all the other sectors there are compensatory amounts and that the European Investment Bank uses real parities in its balance sheets.

The *Commission* maintains that the weightings were introduced in order to counteract fluctuations in exchange rates and to give equal purchasing power to an equal salary. The differences in exchange rates on an international level are not relevant. It is necessary to ensure that officials who are paid in marks, in French francs or in Italian lire have a purchasing power equal to that of the officials paid in Belgian francs. The weightings take into account inflationary tendencies.

The question of unjustified enrichment cannot, having regard to the fact that it is a concept of a private nature, apply in the present case, the supposed enrichment being based upon an express provision, namely Article 63 of the Staff Regulations.

In the practical application of Article 63 of the Staff Regulations the Commission is obliged to refer to a system of official parities. It is clear that it is necessary to base the calculation of the variations made to salaries in terms of the living conditions in the various places of employment (article 64) upon something quite fixed.

In the system in force, the weightings of the basic salary do not only take into account increases in the cost of living owing to national factors, but also other factors such as devaluation or revaluation of the various currencies which influence the level of salaries.

In order to give an example of the weighting machinery, the Commission explains that the increase in the price of macaroni, spaghetti and similar products in Italy was due, *inter alia,* to the increase in the price of the imported raw material, in particular because of the depreciation in value of the Italian lira, which means that the devaluation of the lira had an effect upon the price in question which the weighting took into account.

The exchange value of lire paid to the applicant takes into account the real purchasing power of the Italian lira in relation to the Belgian franc, which serves as the basis of comparison, whilst the francs which the applicant purchases on the free market only take into account the value of the lira on the international currency market, a market subject to pressures which may considerably affect the real value of the currency.

International organizations which must pay salaries in the currency of the place of employment of their officials at the free market rate are then obliged to re-adjust the salaries thus obtained with the help of other weightings, since the free market rate does not sufficiently reflect the true position in the countries concerned. The system adopted by the Community is easier to apply and is more equitable.

The compensatory monetary amounts adopted in the Community agricultural organization are not relevant: it is well known that the amounts in question serve to support intra-Community trade and to stimulate Community agricultural production.

The fact that the European Investment Bank took into account parities different from those recognized by the International Monetary Fund is not relevant either.

Oral procedure

The applicant, represented by Filippo Satta, and the Commission, represented by Giorgio Pincherle, presented oral argument at the hearing on 5 December 1974.

The Advocate-General delivered his opinion at the hearing on 25 February 1975.

Law

1 By an application made on 3 May 1974, the applicant brought an action before the Court for annulment of the memorandum of the Commission of 7 February 1974 rejecting his request that the allowance to which he is entitled under Regulation No 2530/72 (OJ L 272, p. 1) should be paid on the basis of Article 42 of the Staff Regulations of the ECSC of 1956 and converted into Italian lire at the official rate in force at the time of the payment of the allowance.

The first head of the application

2 The applicant maintains that Article 5 (1) and (2) of Regulation No 2530/72 is vitiated by illegality because it is discriminatory in that it establishes two different systems of payment for officials in Grade A1 or A2 engaged under the Staff Regulations of the ECSC of 1956 and who terminated their service under the same conditions, according to whether or not they held one of these two grades on the date of the entry into force of the Staff Regulations of Officials of the ECSC on 1 January 1962.

3 He maintains further that to refuse him the benefit of Article 42 of the Staff Regulations of the ECSC, under which he was engaged, would be to infringe his vested contractual right to have the whole of that article applied to him if, having been subsequently promoted to Grade A1 or A2, he were to be the subject of a measure analogous to retirement in the interests of the service.

4 Nevertheless the legal link between an official and the administration is based upon the Staff Regulations and not upon a contract.

5 An official cannot in any case claim a vested right unless the facts giving rise to that right arose under a particular set of Staff Regulations prior to the amendment decided upon by the Community authority.

6 The validity of a transitional provision concerning the financial rights of an official who terminates his service after being brought under a new scheme of regulations intended to prevent the official from finding himself financially in a less favourable position than he would have been in if he had left the service before the new system had entered into force cannot be put in question.

7 Although Regulation No 2530/72 made provision for different financial schemes for officials terminating their service in such circumstances, that was because its authors took into account the fact that certain of such officials benefited from the application of particular provisions of the regulations, established first of all by Article 99 of the Transitional Provisions of the Staff Regulations of Officials of the ECSC of 1962 and subsequently by the second paragraph of Article 2 of Regulation (EEC, Euratom, ECSC) No 259/68 (OJ L 56 of 4 March 1968).

8 The benefits reserved by Article 5 of Regulation No 2530/72 for officials who held Grade A1 or A2 under the scheme of the Staff Regulations of the ECSC of 1956 are a mere transposition from the Staff Regulations of 1962 and cannot consequently be regarded as discriminatory.

9 Consequently the first head of the application must be rejected.

The second head of the application

10 The applicant maintains that the provision of Article 63 of the Staff Regulations, according to which remuneration paid in a currency other than Belgian francs is to be calculated on the basis of the parities accepted by the International Monetary Fund which were in force on 1 January 1965 is inapplicable to the payment of his allowance.

11 To apply these provisions now for the payment of an allowance due in Italian lire whilst that currency has been substantially devalued since the date mentioned above would, according to the applicant, infringe the principle of equality of treatment of officials and, consequently, would be illegal.

12 Under the terms of Article 64 of the Staff Regulations the remuneration of an official is to be weighted at a rate calculated according to living conditions in the various places of employment.

13 Under the terms of Article 65, in the event of a substantial change in the cost of living, the Council is to decide within two months what adjustments should be made to the weightings and if appropriate to apply them retrospectively.

14 The scheme thus established, which is based upon the fixed parities provided for in Article 63, is intended effectively to guarantee that the salary of all officials has the same purchasing power whatever their place of work or residence.

15 Nevertheless, in a period of monetary instalibity it is possible that the objective sought by these provisions may not be entirely achieved.

16 Although it is for the Council to adapt the Regulations to economic realities and thus to seek the means of alleviating any loss suffered by officials residing in a country whose currency has been substantially devalued, that cannot mean that the existing wording of Article 63 is illegal or that in consequence it is inapplicable within the meaning of Article 184 of the EEC Treaty.

17 The second head of the application must consequently be rejected.

Costs

18 The applicant has failed in his application.

19 Under the terms of Article 69 (2) of the Rules for Procedure, the unsuccessful party shall be ordered to pay the costs.

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

On those grounds,

THE COURT (Second Chamber)

hereby:

1. **Dismisses the application;**

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

Mackenzie Stuart Kutscher Sørensen

Delivered in open court in Luxembourg on 19 March 1975.

A. Van Houtte
Registrar

A. J. Mackenzie Stuart
President of the Second Chamber

OPINION OF MR ADVOCATE-GENERAL MAYRAS DELIVERED ON 25 FEBRUARY 1975 [1]

Mr President,
Members of the Court,

Mr Fabrizio Gillet, who was engaged by the High Authority of the Coal and Steel Community in 1962, had a brilliant although relatively short career. He commenced his duties on 15 January 1962 as a probationer at a senior level, as he belonged to Category A and held Grade 4, Step 2. He was established on the following 15 July, and finally reached Grade A1 with the duties of a director in the Commission.

On the eve of the accession of the three new Member States of the Communities on 1 January 1973, the Council decided by Regulation No 2530 of 4 December 1972 that 'special measures . . . should be adopted on a temporary basis' to encourage the recruitment of nationals of those States to Community institutions. Correspondingly it took the necessary measures for reducing numbers in the higher grades in order to free certain posts.

Thus Article 2 of the regulation provides that:

'Until 30 June 1973, the Institutions . . . are authorized, in the interests of the service and in order to meet requirements resulting from the accession to the . . . Communities of new Member States, to adopt for their officials in Grades A1 to A5 inclusive measures terminating the service of officials, as provided for in Article 47 of the Staff Regulations . . .'.

1 — Translated from the French.