10. Procedure — Application — Details required

The applicant is not bound to cite the provisions on which he relies; it is enough if the application contains 'the facts and submissions on which the application is based' and 'the conclusions'

(Protocol on the Statute of the Court of Justice, Article 22; Rules of Procedure of the Court, Article 29 (3)).

In Joined Cases 7/56 and 3 to 7/57

(1) DINEKE ALGERA

(2) GIACOMO CICCONARDI

(3) SIMONE COUTURAUD

(4) IGNAZIO GENUARDI

(5) FÉLICIE STEICHEN,

assisted by Pierre Chareyre, Advocate at the Conseil d'État and the Cour de Cassation, Paris, with an address for service in Luxembourg at the Chambers of Me Margue, 6 rue Alphonse München,

applicants,

v

COMMON ASSEMBLY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by Jean Coutard, Advocate at the Conseil d'Etat and the Cour de Cassation, Paris, acting as Agent, with an address for service in Luxembourg at its offices, 19a rue Beaumont,

defendant,

Application for the annulment of administrative decisions, and applications for damages,

THE COURT

composed of: CH. L. Hammes, President of Chamber, acting as President, P. J. S. Serrarens, President of Chamber, O. Riese, J. Rueff and A. Van Kleffens, Judges,

Advocate-General: M. Lagrange
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

1. Conclusions of the parties

A — *Application for annulment*

In their joint application of 19 November 1956 (7/56), the applicants claim that the Court should:

Declare the application of the applicants to be admissible;

Declare it to be well founded, and find that the decisions adopted were not lawfully adopted;

Annul the decisions adopted, with all the consequences that follow therefrom in law.'

According to the applicants,

'the decisions of 12 July and 15 October 1956' constitute the contested decisions.

The defendant contends that the Court should:

'Take note that the defendant relies upon the wisdom of the Court.'

In its rejoinder, the defendant persists in its conclusions, 'with all the consequences that follow therefrom in law, in particular as regards the settlement of the fees, costs and any other expenses which may arise.'

B — *Applications for damages*

In their applications of 5 March 1957, which are presented independently but are identical in their wording (3/57 to 7/57), the applicants claim that the Court should:

'Award the applicant damages for dismissal comprising a portion calculated either in accordance with the provisions of the seventh paragraph of Article 34 of the Staff Regulations, or by analogy with those provisions, and a portion to make good the material and non-material damage arising from the tergiversations of the administration;

Order the Assembly to pay all the costs.'

In the alternative, they state that:

'They rely upon the assessment of the Court of Justice for the purposes of fixing the amount of the damages claimed.'

The defendant contends that the Court should:

'Dismiss the application as inadmissible and, in the alternative, as unfounded... with all the consequences that follow therefrom in law, in particular as regards the settlement of the fees, costs and any other expenses which may arise.'

2. Recital of the facts

The following facts, which are not disputed by the parties and which underlie these applications, emerge from the statements of the parties and from the documents which they have produced.

1. In autumn 1955, the Common Assembly endeavoured to reshape its Secretariat in order to remedy certain organizational shortcomings. As the work of the Committee of Presidents engaged on completing the Staff Regulations of the Community was nearing its conclusion, and since on the other hand the contracts of the servants of the Common Assembly were all due to expire on 31 December 1955, the defendant decided to 'link the measures of reorganization of the services to the application to its servants of the Staff Regulations.'

2. At its meeting on 25 November 1955, the Bureau of the Common Assembly adopted the following resolutions:

(a) '... the Bureau decides to accept the Rules of Internal Administration in the version annexed to these minutes' (minute, No 6).

Article 12 of the Rules of Internal Administration contained precise details of:

The division of the staff of the Common Assembly into three categories;

The duties within each category (for example, category II: 'executive and specialized clerical duties');

The determination of the duties laid down within each category and each type of duties, as well as the remuneration attaching thereto (for example, category II: specialized clerical duties — qualified assistant II [grade 8]; assistant I [grade 9a]).
Article 13 fixes the number of posts in each grade within each category (for example: second category = 44 posts in grades 6B to 9A).

(b) '... the Bureau adopts for the Secretariat of the Common Assembly the definition of the duties pertaining to each of the thirteen grades, as shown in the table in annex 4' (minute, No 8)

This concerns the 'job-description list' in which there appears for example: '2nd category — specialized clerical duties — grade 9A, assistant I — multilingual shorthand-typist'.

(c) '... the Bureau decides to give effect as from 1 January 1956 to the salary scale fixed by the Committee of Presidents on 9 May 1955' (minute, No 9).

(d) '... the Bureau decides that: in the context of the reorganization of the Secretariat of the Common Assembly..., the appointments and promotions set out below shall take effect on the date stated in the individual decisions or orders which shall be communicated in good time by the President to each person concerned' (minute, No 12).

Immediately afterwards, this decision sets out the list of all the servants of the Common Assembly showing the grade and step of each of them. In particular, the applicant Miss Algera was classified as follows:

Grade 9A, step 3 (category II).

3. At its meeting of 12 December 1955, the Committee of Presidents noted that the Staff Regulations which it had drawn up were 'definitively adopted' for all the institutions, with the exception of the Council of Ministers, which exception was due to the fact that the President of the said Council had stated that he had to consult his colleagues before giving his definitive agreement.
As to the annexes to the Staff Regulations — which according to the third paragraph of Article 25 must also include 'a definition of the duties and powers attaching to each post in each category and each service' — the minutes note that:

'As regards the procedure to be followed in drawing up the annexes, the Committee decides that the administrations of the institutions shall consult each other. At the same time, the Committee specifies that such consultation shall be directed towards harmonizing the provisions, but that it shall not prejudice the discretionary nature of the annexes'.

4. After that meeting, late in the evening of 12 December 1955, the President of the Common Assembly, Mr Pella, sent orders to the servants of the Assembly, which, apart from differences due in each case to the post which the person concerned was to fill, were identifical to the order sent to the first applicant, which was worded as follows:

'Having regard to Article 43 of the Rules of Procedure of the Common Assembly, adopted by the Assembly at its session on 10 January 1953, amended at its sessions on 16 January 1953 and 12 May 1954;

Having regard to the provisions of the Rules of Internal Administration of the Assembly, adopted by the Bureau at its meeting on 25 November 1955;

Having regard to the proceedings of the Bureau on 25 November 1955;

Having regard to the written declaration of Miss Algera dated 12 December 1955 to the effect that she wishes to benefit from the application of the Staff Regulations,

ORDERS:

1. The contact of employment concluded between the Common Assembly of the European Coal and Steel Community, on the one hand, and Miss Algera, on the other hand, which expires on 31 December 1955, shall lapse on 31 December 1955.

2. The Provisional Rules and the annexes thereto which entered into force on 1 July 1953 pursuant to a decision of the Bureau of the Common Assembly of 15 June 1953, shall lapse on 31 December 1955.

3. From 1 January 1956, Miss Dini Algera

SHALL BENEFIT FROM THE APPLICATION OF THE STAFF REGULATIONS

shall be appointed to the grade of assistant I,

shall take seniority equivalent to the third step.

4. Pending the total or partial implementation of the provisions of the Staff Regulations and the annexes thereto, and within the framework of the alterations consequent upon the entry into force of the Rules of Internal Administration, the articles of the contract and the Provisional Rules, which both lapse on 31 December 1955 and which are set out in an annex hereto, shall apply on a transitional basis.

The annex attached hereto forms an integral part of this order.

Luxembourg, 12 December 1955.

Signed: G. Pella
President of the Common Assembly

Signed: de Nerée
Secretary-General of the Common Assembly'

Only Mrs Couturaud, who was ill on that day, did not receive an order. However, a letter from the President of the Common Assembly dated 13 February 1957 informed her that her case was settled in exactly the same way as that of the other applicants. Each applicant, with the exception of Mrs Couturaud, had previously signed a declaration in the following terms:

'The undersigned...

declares

that he is willing to accept the application of the Staff Regulations on the terms which are offered to him,

and acknowledges that this declaration constitutes a waiver on his part of any right to benefit from the provisions of his contract, from the Provisional Staff Rules of the Common Assembly of 1 July 1953 or from the application of the table of rank and remuneration adopted by the Bureau at its meeting on 27 October 1954.'

5. At its meeting on 28 January 1956, the Committee of Presidents definitively adopted the Staff Regulations and decided as follows in regard to the annexes to the Staff Regulations:

'As regards the annexes, the institutions shall retain complete freedom of action.'

And elsewhere:

'Since the annexes to the Staff Regulations

were submitted to the Committee of Presidents only for its opinion, the amendments upon which the Committee has agreed do not constitute decisions but only proposals made to the institutions.'

Furthermore, the Committee instructed the Heads of the administrations of the four institutions of the Community to submit to it before its next meeting a study enabling the differences between the correspondence tables referred to in annex I to be established, and to submit proposals to it with a view to reducing any remaining divergences.

6. That report was drawn up by the heads of those administrations. The Committee of Presidents discussed it at its meeting on 5 March 1956, and took note of 'the unanimous intention of the heads of the four institutions to achieve harmonization of the grades and remunerations of the staff in all the institutions of the Community.'
It further decided 'to continue the examination of this problem at its next meeting, after the governing bodies of the four institutions have discussed it in the meantime'.
At its meeting on 29 March 1956, the Committee decided to set up a working party, which was subsequently named the Delvaux Committee, after its chairman, Judge Delvaux, and to instruct it 'to seek and achieve harmonization between the tables of duties and grades of the different institutions, so as to permit common Staff Regulations for Community staff, the annexes thereto and the General Rules to enter into force'.

7. At its meeting in private on 15 March 1956, the Bureau of the Common Assembly decided

'to agree to the request of the President of the High Authority with a view to drawing up, with the other institutions, as harmonious a table of posts as possible. This affirmative answer to the President's request shall in no way constitute an interpretation of Article 78 of the Treaty and must not entail any prejudice to the autonomy of the decisions of the Bureau of the Assembly, if the effort necessary to reach harmonization proves impossible.'

8. The Delvaux Committee, on which the Common Assembly was represented by its Vice-President, Mr Vanrullen, finished a first report at the beginning of May 1956. That report contained a certain number of concrete proposals for the uniform classification of a large number of posts within the Community 'in relation to which agreement had not been possible before the creation of this Committee'. The report further noted, with regard to the defendant, that

'... it became clear during the discussions that the current state of affairs (as at 18 April 1956) within the Assembly did not correspond adequately to the common harmonization table; there remain certain disparities and discrepancies which should be eliminated as soon as possible.'

At its meeting on 12 May 1956, the Committee of Presidents adopted the following decision:

'The Committee of Presidents

Takes note of the decision of the President of the Common Assembly to seek, in a transitional system lasting for a limited period, the harmonization of the remuneration of officials of the Common Assembly with that of officials of other institutions;

Extends the mandate of the Remuneration Harmonization Committee...;

Asks the Common Assembly to inform the said Committee to inform the said Committee, before 1 June 1956, of the nature and period of validity of the transitional measures by means of which it will have succeeded in eliminating the divergences between the remuneration of officials of the Common Assembly and that of officials of the other institutions;

Asks the Remuneration Harmonization Committee to report to it, before 13 June 1956, on the consequences of its solutions.'

Before accepting this resolution, the President of the Common Assembly stated he considered it important for note to be taken that 'this resolution must not take for grant-

ed a position which the Common Assembly cannot yet definitively accept. In fact, such definitive acceptance is conditional upon its being possible to overcome the difficulties raised by the transitional measures, which is a condition which must be fulfilled if the adoption by the Assembly of its own Staff Regulations is to be avoided'.

9. On 13 June 1956, the Delvaux Committee submitted a 'supplementary report', item IIA of which gives its assessment of the situation created within the Common Assembly by the orders of 12 December 1955. The report states, *inter alia*, that:

'While the harmonization plan was being prepared, numerous discordances emerged, with the aggravating factor... that they derogated from the new terms of employment instituted by the contract of 12 December 1955 which, apparently at least, and until it is proved otherwise, definitively establishes the official concerned under the Staff Regulations, and determines his grade, duties and salary. For this reason, those discordances may be said to constitute an insurmountable problem.

The Committee takes the view that it is not competent to pronounce or express an opinion upon the legal validity of the contracts of 12 December 1955... It allows itself at most to express the hope that the said cases of 'insurmountable' difficulty will be resolved without recourse to any judicial body.'

Item II B of the report takes note of the solutions proposed by the Assembly:

'1. On 1 July 1956, all officials who have expressed the wish to do so and who satisfy the conditions stipulated shall come within the ambit of the Staff Regulations; they shall be definitively classified in accordance with the harmonization plan with the normal consequences as regards grade, duties and salary.

2. Officials employed under the contract of 12 December 1955 who will suffer a decrease in salary as a result of their definitive classification shall benefit from a special arrangement rectifying certain features of that contract.

That arrangement shall last at most for two years, from 1 July 1956 to 30 June 1958, and shall under no circumstances have any relation to the situation newly and definitively fixed on 1 July 1956.
The extension of this special treatment, which is outside the ambit of the normal law, over a period of two years, is due to the fact that the present discordance can in most cases be eliminated after two years by virtue of the two-yearly increase in salary...'

And item II C states that:

'The Committee has examined these various solutions.

In order to assess them, it makes certain clearly defined assumptions, namely:

1. That it is expedient and desirable to try to remedy the situation descibed by means of a compromise agreement...;

2. That, consequently, the legal validity of the contract of 12 December 1955 shall not be called into question and that that contract must be performed in so far as it definitively brings the person concerned within the ambit of the Staff Regulations. But the performance of that contract shall be so arranged as to be subject to two reservations: first, the definitive application of the Staff Regulations shall be effected on 1 July 1956, in accordance with the table of harmonization of grades, duties and salaries, without restrictions; secondly, the financial discordances shall be eliminated by means of a transitional system lasting at most for two years...

This is the only point of view which the Committee can adopt.'

10. The Committee of Presidents placed the examination of this report on the agenda of its meeting on 15 June 1956; the minutes of that meeting contain the following remark:

'As regards the Common Assembly, it (the Committee) takes note of the statement of the President of that institution to the effect

that he will put before the Bureau of the Assembly the proposals or suggestions submitted by the Harmonization Committee and will communicate by letter either his agreement or his proposals for amendments, after having contacted the officials of the Assembly for the purpose of seeking a possible settlement by mutual agreement as suggested by the Committee.'

11. On 19 June 1956, the Bureau of the Common Assembly held a meeting the minutes of which contain *inter alia* the following statement:

'2. The Bureau has instructed Mr Vanrullen, the Vice-President, to continue his task with a view to resolving the problem of reclassification and the measures relating thereto, on the basis of the proposals made by the Delvaux Committee and adopted by the Committee of the Four Presidents at its meeting on 15 June 1956.

3. The Bureau has delegated all its administrative powers to Mr Vanrullen for the purpose of carrying out the task which is mentioned under (2).'

12. On 22 June 1956 there was a further meeting of the Bureau of the Common Assembly; the minutes contain *inter alia* the following statements:

'Mr Pella pointed out that the Bureau is not obliged to accept harmonization, but that he informed the Committee of the Four Presidents that the Bureau of the Common Assembly was in favour of the implementation of staff regulations common to the four institutions. He also stated that harmonization would be applied only with the agreement of the Bureau and the staff. If such agreement could not be reached, the Bureau would have to examine the question of implementing its own Staff Regulations.'

During the days that followed, Mr Vanrullen and the Secretary-General of the Assembly had talks to that end with a large proportion of the employees of the Secretariat.

13. On 27 June 1956, Mr Vanrullen sent letters to all the servants of the Assembly in identical terms; the text of the letter which was sent to the first applicant was as follows:

'Dear Madam,
By an order of 12 December 1955, you were brought within the ambit of the Staff Regulations and appointed to the grade of assistant I.
The Bureau of the Common Assembly proposes to implement, in the near future, the Staff Regulations common to the four institutions, which were adopted by the Committe of the Four Presidents on 28 January 1956.
According to the provisions of those Staff Regulations and the annexes thereto, and in particular the salary scale a..d the table of correspondence between grades and posts, the duties which you perform correspond to grade 11 and to category C (assistant II).
Consequently, taking your seniority into account, your establishment, in accordance with Article 2 (2) and the transitional provisions of the Staff Regulations, will be effected on the following terms:

1. You will be appointed as an established official in category C, grade 11, step 8, with seniority in your step from 1 January 1956.

2. The starting point for your general seniority in the service will be fixed at 1 February 1955.

3. If under the above classification you would receive remuneration lower than that which you are currently receiving, until 30 June 1958 you will receive a compensatory allowance calculated in accordance with the provisions of Article 60 of the Staff Regulations.

4. You will be granted the maximum additional seniority provided for in Article 108 of the General Rules of the Community (pensions scheme).

In order to enable the Bureau of the Assembly to take a decision as soon as possible, I shall take it that you accept the above proposals, if I have not received a negative reply from you before 10 July 1956.

Yours, etc.

p.p. the President of the Common Assembly

signed: Emile Vanrullen
Vice-President.'

14. The following new classifications were laid down for the applicants:

Miss Algera		
before: Category II	Grade 9A	Step 3
after: Category C	Grade 11	Step 8
Mr Cicconardi		
before: Category I	Grade 3	Step 5
after: Category L	Grade LA	Step 8
Mrs Couturaud		
before: Category II	Grade 9A	Step 5
after: Category C	Grade 11	Step 8
Mr Genuardi		
before: Category I	Grade 2	Step 1
after: Category A	Grade 3	Step 3
Mrs Steichen		
before: Category II	Grade 8	Step 5
after: Category C	Grade 9	Step 8

The great majority of staff affected by the harmonization measures accepted the new arrangements; others stated that they wished to leave the service definitively on 31 December 1956; a further number had various reservations regarding Mr Vanrullen's proposals. The five applicants were alone in rejecting those proposals purely and simply; in identical letters they asked that the arrangements contained in the order of 12 December 1955 should be kept in force.

15. Then, on 12 July 1956, Mr Vanrullen sent further identical letters to those concerned; the text of the letter which was sent to the first applicant was as follows:

'Dear Madam,
By a letter of 7 July 1956 you informed me of your disagreement with the terms on which your establishment could be effected under the provisions of Article 2 (2) and the transitional provisions of the Staff Regulations.
Under these circumstances, and in so far as you persist in the point of view expressed in your aforementioned letter, when the Staff Regulations are implemented by the Bureau of the Common Assembly, it will be possible to apply them to you only as a temporary member of staff, subject to a one-year contract, renewable twice within the limits laid down by Article 2 (3) of the Staff Regulations.
I ask you to inform me before 21 July whether these proposals meet with your agreement. You will find enclosed a specimen contract.
If I have not received your reply by 20 July, I shall have to take it that you renounce the benefit of the provisions of the order notified to you on 12 December 1955 and shall accordingly presume the nullity of your renunciation of the benefit of the provisions of your contract, of the Provisional Staff Rules of the Common Assembly of 1 July 1953 and of the application of the table of rank and salary drawn up by the Bureau at its meeting on 27 October 1954, which will once more apply to you.
Your contract, which in the normal course of events would have expired on 31 December 1955, will be prolonged a final time from 1 January 1956 to 31 December 1956 at the Salary of 2 754 EPU (European Payments Union) units of account, fixed by the Bureau at its meeting on 25 November 1955.

Yours, etc.

pp. the President of the Common Assembly

signed: Emile Vanrullen
Vice-President.'

All the applicants sent Mr Vanrullen a written reply to this letter in which they unreservedly persisted in their previous point of view.

16. At its meeting on 30 September and 1 October 1956, the Bureau of the Common Assembly adopted the decisions:

'1. To implement the common Staff Regulations of the Community and the General

Rules, with retroactive effect from 1 July 1956, with regard to those servants of the Common Assembly who have accepted Mr Vanrullen's proposals.

...

2. To inplement the annexes to the common Staff Regulations, with effect from 1 July 1956, ... also with regard to the servants referred to in (1) above.

...

The Bureau decided as follows:

'(a) A decision concerning the officials who have not accepted Mr Vanrullen's proposals will be taken by the new Bureau after the constitutive session of the Common Assembly which will be held in November 1956.
The provisions of the contracts and of the Provisional Staff Rules, which have been applicable with regard to all the servants referred to in item (a) above since 31 December 1955, shall remain applicable to them.
...

The staff were informed of this decision by a communication (No 56/12) from the Secretary-General dated 10 October 1956.
On 15 October 1956, the Deputy Secretary-General of the Common Assembly addressed a communication (No 56/13) to the staff, stating *inter alia* that:

'The remuneration for the month of October 1956 for those servants who accepted the proposals made in the context of the harmonization scheme have been calculated on the basis of the new classification.
Any corrective payments in respect of salary for the months of July, August and September 1956 will be made by 15 November 1956.'

The applicants thereupon sent a letter to the Secretary-General of the Common Assembly questioning the fact that their salary had not been calculated in a manner corresponding to the classification laid down in the order of 12 December 1955.

On 19 November 1956, they submitted this application for annulment.

17. On 30 November 1956, the new Bureau of the Common Assembly decided, 'whilst persisting in the contested decision', to suspend application of them with regard to the applicants until the Court had given judgment; consequently, the applicants are at present still receiving the remuneration to which they were entitled under the orders of 12 December 1955.

3. Submissions made by the parties in the application for annulment

(I) *Admissibility of the application*

The *defendant* does not raise an objection of inadmissibility. It merely points out that the contested 'decision', No 56/13 of 15 October 1956, constitutes a measure implementing the decision of the Bureau of 1 October 1956, but for the decision on admissibility it leaves the matter 'to the wisdom of the Court'.

The *applicants* do not express any opinion on this matter.

(II) *The substance of the case*

The *applicants* maintain substantially that in adopting the orders of 12 December 1955, the defendant conferred rights upon them under the Staff Regulations which the contested measures illegally withdrew from them. They refer to the legal position which they set out in their various letters to Mr Vanrullen and in particular they put forward the following points:

The provisions of the orders of 12 December were 'extremely precise'; the Staff Regulations, within the ambit of which the applicants were brought, constitute an indissoluble whole, no part of which could validly be withdrawn from them without their consent. That would be possible only if, according to the provisions of the Staff Regulations, the conditions for dismissal for incompetence, for compulsory resignation or for disciplinary removal from post were fulfilled: such is not the case in this instance. The contested measures which deprived the applicants of their status as officials or

quasi-officials fail to respect vested rights and have the same effect as a disciplinary measure.

As, on 12 December 1955, agreement had been reached within the Committee of Presidents on the provisions of the Staff Regulations, with the exception of those provisions concerning retirement pensions, the applicants ought to have been able to consider as definitive the legal status conferred on them by the orders, with the agreement of the Committee of Presidents. If, subsequently, the Committee did not feel bound by that agreement, that does not constitute sufficient justification for a reconsideration of the applicants' legal status. The adminstration does have the right to amend the Staff Regulations on grounds of the requirements of the service, but it must respect vested rights; even a measure granting illegal advantages to a servant could be withdrawn only within the period laid down for lodging an administrative appeal: this is the applicants' contention and they cite French case-law and theoretical writing in support of it. The application of these principles to Community law, which does not stipulate any period within which measures pertaining to the Staff Regulations must be contested, can lead to only one conclusion in the present case, which is that the notification of the orders of 12 December 1955 immediately created an inviolable legal situation.

The compensation which the Common Assembly offered to the applicants, in its letter of 27 June 1956, does not constitute adequate compensation; it does not eliminate the disadvantages with regard to career and retirement rights, but merely prevents the deterioration of their financial situation, and then only over a limited period.

The applicants describe the contested measures as demotion. For example, the second applicant has moved from grade 3 to grade 4 and thus from 'Administrative' duties to 'Advisory' duties; he thus becomes 'the colleague of officials, who, hitherto, were his subordinates from the point of view of rank'. The same remark applies in the case of the other applicants.

The *defendant* defends itself against the expression 'demotion'. If the applicants had accepted Mr Vanrullen's proposals, they would have suffered only a pecuniary loss. They have the same status as before, 'with the same superiors and the same subordinates'. Furthermore, the Common Assembly vigorously denies the existence of any disciplinary measure. It gives a detailed chronological account of the facts and considerations which led its departments to adopt the measures the contradictory aspects of which the applicants are attacking.

The provisions of the Treaty with regard to the Staff Regulations are obscure and contradictory: whereas it may be inferred from Article 6 and the first subparagraph of Article 78 (3) of the Treaty that the institutions are autonomous, the second subparagraph of Article 78 (3) and Article 7 of the Convention on the Transitional Provisions confer powers upon the Committe of Presidents with regard to staff matters. The chronological account of the dispute shows the difficulties which these obscure provisions of the Treaty have caused within the institutions of the Community.

The Common Assembly has submitted to the Court an opinion on this question drafted by Professor de Soto of Strasbourg.

The Assembly also puts forward the following points:

It is incorrect to say that the staff classification decisions of December 1955 were adopted 'with the agreement of the Committee of the Four Presidents'. The Bureau of the Common Assembly never sought the agreement of the Committee of Presidents or of the other institutions; what is more, it did not mention such agreements.

In the autumn of 1955, the Common Assembly found it necessary to link the re-organization of its services to the application of the Staff Regulations. As the staff contracts expired on 31 December 1955, the Assembly considered it important that 'everything should be ready' by that time, while at the same time being aware 'that the definitive text of the Staff Regulations might not be drawn up by 31 December 1955', such that both parties were running risks. Nevertheless, the Common Assembly wished its servants to be able to take their decision with full knowledge of the

facts; it also wanted to be able to know clearly which of its servants wanted to be established. The Bureau and the Secretariat therefore decided 'to determine at least some of the factors in the situation of the servants of the Secretariat'; they believed that they were in a position to do so because agreement had already been reached within the Committee of Presidents on a number of the provisions of the projected Staff Regulations: for example, on the scale of salary steps and of the rules which were subsequently embodied in the last paragraph of the present Article 25 and the last paragraph of the present Article 26 of the Staff Regulations, which at the same time were worded as follows: 'The description of duties and powers shall be a matter for each institution as regards its own staff' and 'each institution shall be responsible for drawing up the particular annex concerning its staff'. The Bureau therefore took the view that it was for it 'to lay down a "job-description" for the purpose of applying the salary scales'. 'From the first discussions undertaken with the other institutions there emerged the impression, which was subsequently to prove over-optimistic, that there were no substantial differences of opinion between the four institutions over the establishment of the 'job-description', except for a few cases in the lower grades, and moreover it was hoped that these could be easily resolved by mutual agreement.'

The harmonization which the Committee of Presidents subsequently decided to effect is in accordance with the spirit of the Treaty; not to have carried it out would have been 'flagrant hypocrisy'. The Common Assembly did what it could to to defend the interests of its staff.

In the case of the contested measures, it is not a question of an amendment to the Staff Regulations, but of a case for which the latter make no provision at all, that of initial classification. The case under discussion is a unique case and it required a unique solution; therefore reliance cannot be placed upon national case-law for the purpose of solving it.

Moreover, the Common Assembly makes reference to the judgments of the Court in Cases 1/55 *Kergall* v *Common Assembly* and 1/56 *Bourgaux* v *Common Assembly*. In those judgments it was held *inter alia* that it is for the competent departments of the Common Assembly alone to determine the organization of its services.

4. Submission made by the parties in the applications for damages

(I) *Arguments put forward by the applicants in their application*

A. The applications are lodged only in the alternative, since they concern damage which would result from the dismissal of the application for annulment.

B. Quite apart from the problem of the distribution of powers between the Committee of Presidents and the Common Assembly, it is none the less true that the change of attitude on the part of the Assembly in relation to the applicants caused them particularly serious damage. They find themselves deprived of their status under the Staff Regulations, of their grade and their step, as well as of their career prospects.

The applicants rely upon the seventh paragraph of Article 34 of the Staff Regulations which provides for the award of compensation in the event of termination of employment 'owing to the requirements of the service'; since the measures adopted by the Common Assembly are equivalent to a 'breech of the link between the Assembly and its servants', that provision is applicable.

C. The applicants have also suffered non-material damage. At first, the Common Assembly had seemed prepared to agree upon an amicable solution; however, in July 1956, it altered its attitude and 'abruptly' confronted the applicants with a choice between alternatives, none of which offered them satisfaction as regards their legitimate career interests. That attitude caused the applicants 'discomfort and inconvenience' and a state of extreme instability; this serious disturbance, 'which will have repercussions on their future', has caused the applicants suffering in both their private and working lives.

The applicants would not have remained in the employment of the Common Assembly

if they had not considered the legal status conferred on them in December 1955 as definitive. On account of their uncertain situation with the Community, they have in the meantime declined other offers of employment.

(II) *Arguments put forward by the Common Assembly in its statement of defence*

A. The applications are inadmissible.

It is not permissible 'to join two sets of proceedings of different and contradictory kinds', to lodge an application only in the alternative and to present the Court of Justice with the alternative of upholding one application or the other.
The applicants cannot rely upon the seventh paragraph of Article 34 of the Staff Regulations, because in the event of the application for annulment being dismissed, they would have lost their rights under the Staff Regulations. Furthermore, that provision deals with assigning non-active status owing to requirements of the service, a case which is not applicable to the applicants, since they are still at present in the service of the Common Assembly.

B. The applications are also unfounded, since there is no material damage, or if there is any, the applicants caused it themselves. The applicants were expressly submitted to meet the eventualities of the Court's finding that the measures adopted by the Common Assembly were legitimate, and therefore that returning the applicants to the situation of officials on contract was also legitimate, and of the Court's dismissing the application for annulment. In that case, the applicants were in error as to the legal situation when they rejected the proposals, and they should bear the consequences of their mistake.
Following the decision of the Bureau of the Common Assembly to suspend implementation of the contested measures until the Court had given its decision, the applicants have been receiving a higher salary than their colleagues who accepted Mr Vanrullen's proposals.
There can be no question of 'demotion', since the applicants are no longer servants under the Staff Regulations; it is merely a question of classification at a lower level. The applicants are entitled only to compensation for termination of employment, to be calculated within the framework of the contract of employment.

C. The claim for compensation in respect of non-material damage is also unfounded. No such damage exists, or if it does exist, it is the applicants' fault. If the applicants had accepted Mr Vanrullen's proposals, they would have maintained the same 'moral' status. Furthermore, they have to perform the same duties as before.
Moreover, this is clearly a question of typical indirect damage, which is difficult, not to say impossible, to assess.
As to their assertion that they have refused offers of employment outside the Community, the applicants have not produced any evidence. Furthermore, it was open to the applicants to remain in the service of the Common Assembly.

(III) *Arguments put forward by the applicants in their reply*

A. The plea of inadmissibility is not relevant. It is quite possible for the fate of an application presented independently to depend on the result of other proceedings. Such a course of action on the part of the applicants is not contrary to any provision.
The applications are not contradictory. The consequence of the success of the application for annulment would be that the Court would not have to decide the second application.

B. Even if the Common Assembly had been entitled to accede to the request for harmonization made by the Committee of Presidents, which right is contested, it in no way follows therefrom that the applicants cannot seek compensation for the damage resulting for them from the fact that the Administration failed to honour the irrevocable undertakings entered into towards them. The invalidity, if proved, of a decision, which moreover was formulated in secret, cannot be relied upon against the applicants, who were entitled to consider that decision as being regular.

C. The statements of the Common Assembly on the question of the damage caused to the applicants are based upon a failure to recognize the irrevocable nature of the rights conferred on the applicants by the orders of 12 December 1955 and to recognize the fact that the applicants have never waived those rights.
The allowances proposed to the applicants at the time as compensation were of a temporary and incomplete kind; the offer has not even been kept open during the proceedings.

(IV) *Arguments put forward by the Common Assembly in its rejoinder*

The explanations put forward by the applicants concerning the foundation of their purported right to compensation are mistaken: if the application for annulment is dismissed, that means precisely that there is no vested right. In this connexion, the subtle distinction between the different levels of legal relationships, on the one hand between the institutions, and on the other between the Common Assembly and its servants, is of no value.
It seems that the applicants continue to base their criticismes on the Common Assembly's measures of June and July 1956. However, in so far as it may be their intention to rely upon a wrongful act or omission on the part of the Common Assembly in December 1955 in taking premature decisions, it should be pointed out that the applicants have not so far pleaded Article 40 of the Treaty and that that submission is inadmissible at the present stage of proceedings. Moreover, Article 40 concerns 'a fault of such a nature as to render the Community liable'. But a mistaken interpretation of the obscure provisions of Article 78 (3) of the Treaty cannot constitute a wrongful act or omission.

5. Procedure

The application for annulment (7/56) and the applications for damages (3/57 to 7/57) are regular as to form, and were lodged at the Court on 19 November 1956 and on 5 March 1957 respectively.
The powers of counsel for the applicants and of the agent of the defendant are in order.
The written procedure followed the normal course. The applications were served in accordance with the procedure laid own; the statements of defence, the replies and the rejoinders were lodged before the expiry of the time-limits prescribed, and were also regularly served. A certain number of annexes were attached to the pleadings of the parties.
By decisions either of the President of the Court or of the Judge taking his place the cases were assigned to the Second Chamber for the purpose of any measures of inquiry. Judge O. Riese was designated to act as Rapporteur.
After the closure of the written procedure, upon hearing the views of the Advocate-General and in full agreement with the preliminary reports drawn up by the Judge-Rapporteur in accordance with Article 34 of the Rules of Procedure of the Court, the Court decided on 23 May 1957:

To join the cases;

To open the oral procedure without any preparatory inquiry;

But to request the parties to answer certain questions and to produce certain documents; the parties complied with this request on 6 and 7 June 1957.

The hearing, which followed the normal course, took place on 13 June 1957. At the request of the Judge-Rapporteur, the parties jointly drew up a table of the salaries and career and retirement prospects of the applicants before and after the harmonization measures, as well as of the salaries etc. which they would have had if they had accepted Mr Vanrullen's proposals.
On 14 June 1957, the Advocate-General delivered his opinion, which recommended that the application for annulment should be dismissed and the applicants ordered to bear the costs, and that the Common Assembly should be ordered to pay damages of one franc to each of the applicants and to bear the costs of the applications for damages.

Law

A — Application for annulment 7/56

I — Admissibility

In their conclusions, the applicants claim that the Court should:

'... find that the decisions adopted were not lawfuly adopted; annul the decisions adopted with all the consequences that follow therefrom in law',

but they do not specify which decisions are concerned.

However, the following statement is to be found in the application: 'The decisions of 12 July 1956 and 15 October 1956 constitute the contested decisions'. Thus, according to that clarification, the dispute concerns the letter of 12 July 1956 from Mr Vanrullen, the Vice-President of the Common Assembly, to the applicants, and Communication No 56/13 of 15 October 1956 from the Deputy Secretary-General to the staff of the Common Assembly.

In this connexion, the Court finds that Mr Vanrullen's letter of 12 July 1956 does constitute a decision. That letter makes sufficiently clear the action which the Common Assembly intended to take in relation to the applicants' situation if they persisted in refusing to accept the proposals which had previously been made to them in Mr Vanrullen's letter of 27 June 1956. The applicants expressly persisted in that refusal.

Mr Vanrullen was empowered to take that decision, since by its decision of 19 June 1956 the Bureau had 'delegated all its (...) powers' to him for the purpose of 'resolving the problem of reclassification and the measures relating thereto, on the basis of the proposals made by the Delvaux Committee and adopted by the Committee of the Four Presidents at its meeting on 15 June 1956'. Furthermore, the decision contained in the letter was confirmed by the decision of the Bureau of the Assembly of 1 October 1956.

It may be asked whether Communication No 56/13 of 15 October 1956 constitutes a decision in relation to the applicants or only a source of information from which they could infer that they would no longer receive the salary to which they were entitled under the orders of 12 December 1955. The decision of the Bureau of the Assembly not to apply the Staff Regulations to the applicants and not to grant them the salary provided for by the orders of 12 December 1955 was not expressly communicated to them. However, this behaviour on the part of the defendant cannot deprive the applicants of their right of appeal.

For that reason, the Court also admits the Application directed against Communication No 56/13 of 15 October 1956, since it is only by that communication that the applicants were informed that Mr Vanrullen's proposals had been confirmed by the Bureau, which Communication No 56/12 expressed only indirectly. Thus,

in claiming the annulment of the 'decision of 15 October 1956', the applicants have in view the implied decision of the defendant not to allow them either the salary or the classification which had been conferred on them by the orders of 12 December 1955.
Therefore both heads of the application are admissible.

II — The jurisdiction of the Court

The jurisdiction of the Court has not been challenged by either party, and there are no grounds for the Court to raise any objection of its own motion.

III — The revocability of administrative measures giving rise to individual rights

The applications contest the withdrawal by the Assembly of the orders of 12 December 1955. The applicants argue that the said orders conferred upon them vested rights which could have been withdrawn only with their consent. Therefore it must be considered whether it is legally possible to withdraw such measures.
First of all, an error of reasoning which is liable to lead in this connexion to a vicious circle must be eliminated: it consists in asserting the existence of a vested right, and then inferring therefrom that that right cannot be revoked. In fact, if the right conferred by an administrative measure can be unilaterally revoked by the administration, then the simple fact is that it does not constitute a vested right.
The orders of 12 December 1955 declare that the applicants are brought within the ambit of the Staff Regulations, appoint them to certain 'grades' and fix their rank at certain specified steps of seniority.
If those orders are legal and valid in law, they constitute individual administrative measures giving rise to an individual right.
The possibility of withdrawing such measures is a problem of administrative law, which is familiar in the case-law and learned writing of all the countries of the Community, but for the solution of which the Treaty does not contain any rules. Unless the Court is to deny justice it is therefore obliged to solve the problem by reference to the rules acknowledged by the legislation, the learned writing and the case-law of the member countries.
It emerges from a comparative study of this problem of law that in the six Member States an administrative measure conferring individual rights on the person concerned cannot in principle be withdrawn, if it is a lawful measure; in that case, since the individual right is vested, the need to safeguard confidence in the stability of the situation thus created prevails over the interests of an administration desirous of reversing its decision. This is true in particular of the appointment of an official.
If, on the other hand, the administrative measure is illegal, revocation is possible under the law of all the Member States. The absence of an objective legal basis for the measure affects the individual right of the person concerned and justifies

the revocation of the said measure. It should be stressed that whereas this principle is generally acknowledged, only the conditions for its application vary.
French law requires that the withdrawal of the illegal measure should be pronounced before the expiry of the time-limit for instituting legal proceedings and, if proceedings have been instituted, before judgment is delivered; with certain small differences, Belgian, Luxembourg and Netherlands law seems to follow similar rules.
German law, on the other hand, does not set any time-limit for the exercise of the right of evocation, except where such a time-limit is laid down by a special provision. Thus Article 13 of the Bundesbeamtengesetz (Federal law governing Civil Servants) allows the withdrawal of an appointment only within a period of six months. However, it is generally acknowledged that unduly late withdrawal, occurring considerably later than the date on which withdrawal could have been pronounced, is contrary to the principle of good faith (Treu und Glauben). In this connexion, case-law and learned writing found themselves also upon the concepts of waiver (Verzicht) and of forfeiture (Verwirkung) of the right of revocation.
Italian law is particularly clear on the question. Any administrative measure which is vitiated by lack of competence, infringement of the law or abuse of powers (eccesso di potere) may be annulled *ex tunc* by the administrative authority which issued it, irrespective of the individual rights to which it might have given rise. Such withdrawal may be declared at any time (in qualsiasi momento); thus there is no time-limit prescribed for withdrawal. However, according to learned writing and case-law, unduly late withdrawal can constitute abuse of powers; measures which have been in force for a long time (fatti avvenuti da lunga data) should be kept in force, even if they were contrary to the law, unless overriding reasons require their withdrawal in the public interest.
Thus the revocability of an administrative measure vitiated by illegality is allowed in all Member States.
In agreement with the Advocate-General's opinion, the Court accepts the principle of the revocability of illegal measures at least within a reasonable period of time, such as that within which the decisions in question in the present dispute occurred.

IV — The legality of the orders of 12 December 1955

1. In relation to the rules laying down the powers within the Common Assembly, the orders of 12 December 1955 were adopted validly: they were signed by the President of the Common Assembly and by his Secretary General. The President acted in accordance with the decisions of the Bureau of the Common Assembly of 25 November 1955. Therefore the orders were adopted validly pursuant to the provisions laid down in the Rules of Procedure of the Common Assembly (JO No 13 of 9.6.1954, p. 402)—in particular in Article 43 (3) thereof—and in the Rules of Internal Administration of the Common Assembly of 25 November 1955—in particular in Articles 1, 2 and 14 thereof.

If the Secretariat and the President of the Common Assembly had not chosen the appropriate moment to notify the orders to the persons concerned (the Bureau had provided that they should be notified 'in good time') and if the obligations laid down in Article 43 (3) of the Rules of Procedure of the Common Assembly and in Article 2 (4) of the Rules of Internal Administration had not been fulfilled, that would not have prejudiced the validity of the orders of 12 December 1955, from the point of view of the internal organization of the Assembly.

2. As regards the orders of 12 December 1955, this dispute raises the question, in relation to the provisions of the Treaty establishing the European Coal and Steel Community, whether the defendant could validly bring the applicants within the ambit of the Staff Regulations and determine their classification without the consent or the opinion of the Committee of Presidents provided for in Article 78 of the Treaty, or whether it could do so only with the said consent or the said opinion. In these circumstances, it is not necessary to rule on the extent of the other powers which the said Committee holds under the Treaty, nor on its authority to draw up the Staff Regulations pursuant to the last paragraph of Article 7 of the Convention on the Transitional Provisions.

(a) The application of the Staff Regulations is a matter for the institutions, and the Treaty makes no provisions for any participation by the Committee of Presidents. If the orders of 12 December 1955 do indeed bring the applicants within the ambit of the Staff Regulations—a question which will be examined below under heading VI—that part of the said orders is legal and valid.
(b) As regards the classification provided for in the orders of 12 December 1955 the situation is less clear.
It appears from the orders of 12 December 1955 that the applicants were appointed to certain grades and were assigned rank at specific steps of seniority. That assignment entails, among other effects, that of fixing the salary of the applicants, as emerges from the wording of the decisions adopted by the Bureau of the Assembly on 25 November 1955.
Examination of the problem as to whether the Common Assembly had authority to determine the salary of its officials on its own, or whether it could do so only with the participation of the Committee of Presidents provided for in Article 78 of the Treaty, leads to the following considerations:

(1) The institutions are autonomous within the limits of their powers (fourth paragraph of Article 6 of the Treaty). Thus, in its judgment in Case 1/55 *Kergall* v *Common Assembly*, the Court acknowledged that the Common Assembly had authority 'to organize its Secretariat as it wished and in the interests of the service'. Moreover, the second subparagraph of Article 78 (3) merely creates an exception to the rule of autonomy laid down in the previous subparagraph and is therefore to be strictly construed.
However, that does not prevent Article 78 (3) from giving the Committee of Pres-

idents authority of its own as regards the number of servants and their salary scales: those factors must be 'determined in advance' by the said Committee. That provision can be explained by the fact that only the Community has legal personality, and its institutions do not. From that springs the need to harmonize the life of the four institutions and to provide for financial and budgetary supervision, a task entrusted by Article 78 of the Treaty to the Committee of Presidents. It should be stressed that no other body has a power of preliminary supervision in financial matters.

(2) The second subparagraph of Article 78 (3) of the Treaty confers the power to determine the number of servants and their salary scales on the Committee of Presidents only to the extent to which they have not been fixed under another provision of the Treaty or of an implementing regulation. Such is not the case in this instance.
The supervision provided for by the Treaty would be ineffective if each of the institutions had power to issue internal regulations fixing the number or the salary scales of its servants. Such an interpretation would lead to an absurd result. The interpolated clause of the second subparagraph of Article 78 (3) refers only to those cases for which the Treaty lays down a special method for the fixing of a salary and to the eventuality of an implementing regulation based on such a provision of the Treaty. Any other interpretation would deprive Article 78 of its content and hence must be rejected.
Nor can the autonomy of the Common Assembly, as a Parliamentary Assembly, be said to conflict with the power conferred on the Committee of Presidents by Article 78 of the Treaty. In fact, that article applies to all the institutions of the Community without distinction; the fact that the Common Assembly has special powers changes nothing in that respect; its functional autonomy exists only within the limits of its powers, as laid down by the Treaty (last paragraph of Article 6).

(3) Therefore, the power attributed to the Committee of Presidents by Article 78 of the Treaty applies in this instance.

However, two arguments have been submitted to the Court in relation to the extent of that power:

(a) According to the first argument, in order to carry out effective supervision, the Committee of Presidents must have a right of decision in financial matters.

Both the wording and purpose of Article 78 have been pleaded in support of this argument.

As regards the wording, Article 78 (3) entrusts to the Committee of Presidents the task of determining the number of servants and their salary scales, prior to the drawing up of the estimates. The use of the word 'determine' in that provision clearly indicates the existence of a power of decision.
As regards the purpose of Article 78, which is obviously intended to establish fi-

nancial supervision, it implies that the powers of the Committee are not restricted to establishing a table or scale of salaries in the abstract. Indeed, in order for that power to be effective, the Committee must have authority to determine the salary laid down *in abstracto* for servants carrying out a particular function, the description of which ('job-description') is drawn up by each institution. If no such authority existed, there would be nothing to prevent an institution from classifying all its servants in the highest step of the scale, and the supervision would be circumvented.

Furthermore, the provision speaks of the determination of the number of employees and of the scales of 'their' salaries, not of the scales of 'the' salaries.

According to that interpretation, the second subparagraph of Article 78 (3) must be considered as giving rise to an implied power enabling financial supervision to be exercised over staff expenditure, in the same way as the third and fourth subparagraphs, which provide for budgetary supervision, and the sixth subparagraph, which provides for accounting supervision.

The prior determination of the number of servants is intended to prevent an unjustified inflation of the numbers of officials of the institutions, while the determination of the scales of their salaries is to prevent the award of excessive salaries.

(b) According to another opinion, the theory of an implied power does not necessarily lead to the conclusion that the Committee of Presidents should have a right of decision in the sense described above, since it also has other means of exercising effective supervision.

No provision confers on the Committee of Presidents with a sufficient degree of precision any rights of decision exceeding the competence of a coordinating body. In particular, the duty of 'determining' the number of servants and their salary scales does not deprive the institutions of their administrative autonomy and cannot confer on the presidents of the institutions, when meeting in the Committee of Presidents, powers which they do not possess in their capacity as presidents of those institutions.

According to this argument, the Committee of Presidents must be informed and consulted, but the power of decision is reserved to the institutions, whose good faith has to be presumed.

(4) It seems that, although it did not take up any definite position, the Committee of Presidents itself concurs rather in the second of these interpretations. Thus, after deciding at its meeting of 12 December 1955 that as regards the procedure to be followed in drawing up the annexes 'the administrations of the institutions shall consult each other', the Committee states at the same time 'that such consultation shall be directed towards harmonizing the provisions, but that it shall not prejudice the discretionary nature of the annexes'.

Similarly, at its meeting of 28 January 1956, the Committee of Presidents stated: 'Since the annexes to the Staff Regulations were submitted to the Committee of Presidents only for its opinion, the amendments upon which the Committee has agreed do not constitute decisions but only proposals made to the institutions'.

The Staff Regulations are based on the same ideas: they provide only that the Committee should be informed of the number of posts in each grade, fixed by the institution on the basis of the complement decided by the Committee of Presidents (second paragraph of Article 25); Article 62 of the Staff Regulations states that the Annexes to the Staff Regulations 'shall be drawn up by each institution... and submitted to the Committee of Presidents for its opinion before their entry into force'. Moreover, the first paragraph of Article 25 refers in a quite general way to Article 78 of the Treaty as regards the table of correspondence between grades and posts.
According to this argument, therefore, the Committee of Presidents has only to be consulted and give its opinion on the classification of servants, but does not have any right of decision of its own, except as regards the number of servants in each institution.

(5) According to Article 31 of the Treaty, it is for the Court to ensure that in the interpretation and application of the Treaty, and of rules laid down for the implementation thereof, the law is observed. Therefore it is not bound either by the point of view adopted by the Committee of Presidents or by the wording of the Staff Regulations, if it appears that a choice between the two abovementioned arguments is necessary to reach a decision in the present action.
However, this action does not require the point to be decided.
In the event, the classification applied to the applicants by the orders of 12 December 1955 proves to be unlawful according both to the first argument and to the second: according to the first argument, because the Common Assembly had not previously obtained the consent of the Committee of Presidents; according to the second argument, because the Common Assembly had not previously submitted the classification to the Committee of Presidents for its opinion, which it should also have done pursuant to the fourth paragraph of Article 2 of its Rules of Internal Administration as well as according to Article 43 (3) of its Rules of Procedure. The defendant has not sought to deny that it had never received or even requested before 12 December 1955 the agreement or the opinion of the Committee of Presidents.
In those circumstances, it was not empowered to fix the classification of the applicants within the framework of the Staff Regulations, so that that part of the orders of 12 December 1955 is unlawful.

V — The consequences of the unlawful nature of the part of the orders of 12 December 1955 containing the classification of the applicants

1. *Complete nullity or revocability?*

In the opinion of the Court, the unlawful nature of an individual administrative measure entails its complete nullity only in certain circumstances which do not

occur in the present action. Apart from those exceptional cases, the theoretical writing and the case-law of the Member States allow only of voidability and revocability. The adoption of an administrative measure creates a presumption as to its validity. That validity can be set aside only by means of annulment or withdrawal, in so far as those measures are permissible.

2. *Does the revocability of the orders of 12 December 1955 extend to the whole of their contents or only to the unlawful part?*

In his opinion, the Advocate General declared that he was in favour of the view that the elements of the orders are indissociable, and relied upon Article 59 of the Staff Regulations which provides that 'servants may be established in any grade of a category or service referred to in Article 24 of the Staff Regulations'. According to him, 'since establishment entails the servants' renouncing the benefit of their contract, they are entitled, in order to be able to exercise their option with full knowledge of the facts, to be acquainted with the grade and the step in seniority to which the administration is proposing to appoint them, and not only the decision of principle considering them eligible to become officials under the Staff Regulations...'.

It is true that each of the applicants declared that he agreed to be brought within the ambit of the Staff Regulations on the terms offered to him. However, the essential and preponderant factor in that declaration consists in the application of the Staff Regulations, ensuring them of a stable position with a right to a retirement pension. As to salary, it is known that it can subsequently be altered by way of regulations, but establishment under the Staff Regulations cannot be affected thereby. Adopting the interpretation followed in most modern legislative systems, according to which partial unlawfulness does not entail the revocability of the measure in its entirety, unless that measure is deprived of its *raison d'être* if the unlawful part is removed, the Court rejects the argument that the various elements of the orders are indissociable.

This decision is also justified by the fact that it has been found above (under heading III) that only unlawful administrative measures are revocable, lawful measures remaining irrevocable. In the present case, the Assembly was competent as regards the application of the Staff Regulations, so that that application is valid and irrevocable, whereas the conferring of the grade and the classification in certain steps was unlawful and revocable. In those circumstances, the application of the Staff Regulations, which was validly undertaken, could not be revoked.

That decision is not contrary to the provisions of the Staff Regulations. Moreover, the Court is not here concerned to apply the Staff Regulations, which were not yet in force at the time of the notification of the orders, but to apply the Treaty. According to the Treaty, admission as such to the ambit of the Staff Regulations came within the exclusive jurisdiction of the Assembly, whereas the latter was not empowered to undertake classification without the prior consent or opinion of the

Committee of Presidents. It must be inferred from the very fact that the Treaty arranged the powers in these two areas in different ways that the corresponding elements of the orders can, and indeed must, be dissociated for the purposes of the law.

Be that as it may, although it is true that to bring an official within the ambit of the Staff Regulations involves establishing him in a grade of a given category or service (Transitional Provisions, Article 59), it should also be pointed out that the Staff Regulations distinguish between the application of the Staff Regulations and classification (see for example Article 27, which speaks only of bringing officials within the ambit of the Staff Regulations, and Article 36, which provides for a report recommending 'establishment').

Moreover, still further arguments are in favour of the dissociable nature of various elements of the orders.

Thus, it would be inequitable to allow the Assembly to fail to respect the right to the benefit of the Staff Regulations which it had intended to confer on the applicants, in the form of their appointment as established officials, simply because it had also made unlawful promises to them which it was not empowered to make.

In the course of the oral procedure, the agent for the defendant gave an affirmative answer to the question whether the parties concerned would also have been in agreement with appointment accompanied by a lawful classification. It must be acknowledged that the will of the applicants is more difficult to interpret; but the Court takes the view that it is not possible, on the pretext of not ascribing to them an intention which they might not have made evident, to deprive them of the benefit of the application of the Staff Regulations, which had been validly granted.

Moreover, the continued application to them of the Staff Regulations leaves them the opportunity of answering the abovementioned question in a practical manner: they may resign if they consider that the situation in which they are placed is not satisfactory.

VI

For the purposes of the preceding paragraphs, it has been accepted that the bringing of the applicants within the ambit of the Staff Regulations was valid and irrevocable if the orders of 12 December 1955 actually contained such a decision (see heading IV, 2 (a) above). Although that is very probable, it is not certain.

The circumstances in which the orders of 12 December 1955 were notified to the applicants make it quite clear that the defendant intended to admit the applicants to a stable situation under the Staff Regulations, and that the applicants agreed to this. This is borne out by the wording of the orders, which unreservedly extend the benefit of the application of the Staff Regulations, by the preliminary declarations of acceptance of that application, signed by the applicants, as well as by their acknowledgements of receipt of the orders. The orders were notified only after the Committee of Presidents had, on 12 December 1955, decided that the Staff Regulations were 'definitively adopted', at all events as far as the Common As-

sembly was concerned, so that its President, Mr Pella, was able to take the view that the Staff Regulations were definitively approved and would enter into force in the very near future, and that consequently he could bring officials who so wished within the ambit of the said Staff Regulations.

However, doubts may arise from the fact that the true definitive text of the Staff Regulations was in fact drawn up only subsequently, on 28 January 1956, and that it was implemented by the Common Assembly only in October 1956, with retroactive effect from 1 July 1956. In view of the fact that paragraph (4) of the orders of 12 December 1955 expressly refers to the subsequent entry into force of the Staff Regulations and the annexes thereto and that the applicants accepted any uncertainty as to their contents, the Court interprets the applicants' declarations and the wording of the orders of 12 December 1955 as referring to the application of the future Staff Regulations, whatever their contents might be.

Moreover, even if it were accepted that that application was of non-existent Staff Regulations and was therefore void and devoid of object, Mr Vanrullen's letter and the Common Assembly's refusal to bring the applicants within the ambit of the Staff Regulations should be annulled, because that decision disregards the servants' vested entitlement to be brought within the ambit of the Staff Regulations (judgment in Case 1/55, *Kergall* v *Common Assembly*). For, if the Court found that Mr Kergall was eligible to be brought within the ambit of the Staff Regulations, although no solemn, formal promise to that effect had ever been made to him and although the entry into force of the Staff Regulations was at that time less imminent, *a fortiori* the applicants must be found to have a similar, and even a stronger, right to be brought within the ambit of the Staff Regulations.

VII

In so far as the decision contained in Mr Vanrullen's letter of 12 July 1956 withdraws from the applicants the application to them of the Staff Regulations, it must be annulled for the reasons set out above.

Furthermore, the decision, contained in the same letter, to replace the applicants under their former contracts must also be annulled, since, without fresh express consent on their part, the contact which had come to an end following their renunciation, which was accepted by the notification of the orders of 12 December 1955, could not be revived, nor could a fresh contract be imposed on them. The Common Assembly was entitled validly to withdraw the classification laid down in the said orders, and could on its own initiative have reclassified the applicants at the level resulting from the harmonization measures, once it had been determined, but it had no right to re-impose their former contractual terms.

Therefore, the Court finds that the first head of the application, claiming the annulment of the decisions contained in Mr Vanrullen's letter of 12 July 1956, is well founded.

Communication No 56/13 of 15 October 1956 must also be annulled in so far as it implies withdrawal of the application of the Staff Regulations and the re-estab-

lishment of a temporary contractual status, the latter being incompatible with the application of the Staff Regulations and the creation of a stable situation which was declared to have been acquired validly. On the other hand, the said communication is valid in so far as it implies the revocation of the classification and the salary pertaining thereto.

Consequently, the Court allows the application in so far as the said decision refuses to allow the applicants to remain within the ambit of the Staff Regulations and reimposes their former contract; on the other hand, the application against the refusal to grant them the salary referred to in the said orders is dismissed, for the reasons mentioned above under heading IV (2) (b) and (5) and under heading V. The defendant will have to fix the applicants' salaries afresh.

In that connexion, formal note should be taken of the defendant's declaration, made at the hearing by its agent, that it undertakes to take the applicants back into its service on the general conditions currently applicable to its officials, an undertaking which the Court interprets as meaning that those conditions imply that the same compensatory allowance will be paid in future as is granted to officials who accepted Mr Vanrullen's proposals.

VIII — Costs

In application of Article 60 (2) of its Rules of Procedure, the Court orders the defendant to bear its own costs entirely and four-fifths of the applicants' costs in respect of the application for annulment, and orders the applicants to bear one fifth of their own costs, since they were unsuccessful on one head of their application.

B — Applications for damages 3 to 7/57

I — Admissibility

There is nothing to prevent an applicant, in one and the same action, from submitting conclusions in the alternative in case his principal conclusions are rejected.

Therefore the applications are admissible.

II — Substance

1. *The legal bases of liability*

The applicants have not made clear the legal provisions on which they base their applications for damages. It appears that they are seeking the application by analogy of the provisions of the seventh paragraph of Article 34 of the Staff Regulations which provides for the award of compensation in the event of the termination of employment 'owing to the requirements of the service', because the meas-

ures adopted by the Common Assembly allegedly amount to a breach of the legal ties between the Assembly and its servants.
In the rejoinder, the defendant argues that the applicants have not pleaded Article 40 of the Treaty (liability for a wrongful act or omission), that therefore that submission is inadmissible and that moreover a mistaken interpretation of the rather obscure text of Article 78 of the Treaty cannot constitute a wrongful act or omission.
The Court finds that there is in the present case no liability in contract, since on 12 December 1955 the notification of the orders had replaced the contracts by the application of the Staff Regulations. The seventh paragraph of Article 34 of the Staff Regulations is not applicable in this case by analogy, because the ties between the Assembly and the applicants were not broken.
Article 40 of the Treaty, on the other hand, constitutes the legal basis of the applications. It is true that it was not expressly pleaded by the applicants, but the nature of the facts stated by them in their applications and their conclusions justifies its application. The Staff Regulations (Article 22) and the Rules of Procedure of the Court (Article 29 (3)) do not require the applicant to cite the articles on which he relies; it is sufficient that 'the facts, submissions and conclusions of the applicant' should be included in the application, a requirement which is fulfilled in the present case.

2. *Is the Common Assembly guilty of a wrongful act or omission within the meaning of Article 40 of the Treaty?*

In agreement with the Advocate General, the Court takes the view that the answer can only be in the affirmative. The defendant knew that the Committee of Presidents was proposing to harmonize the salaries of servants of the different institutions performing comparable duties, and it had declared itself ready to participate in that harmonization. In those circumstances the notification of the orders of 12 December 1955, on the very day on which the Committee of Presidents, at a meeting in which the President of the Common Assembly was taking part, had unanimously acknowledged the need for that harmonization should not—even if it sprang from the desire to give the applicants a clearly defined status— have been undertaken before the outcome of the attempted harmonization had become known. That premature and hasty notification constitutes a wrongful act or omission, in that it created a false situation under an appearance of legality. Furthermore, since the withdrawal of the application of the Staff Regulations was illegal, it also constitutes a wrongful act or omission, which according to Article 40 of the Treaty confers a right to reparation to make good the injury resulting from that measure.
In the present action it is not necessary to decide the question whether a wrongful act or omission within the meaning of Article 40 of the Treaty presupposes fraud or at least culpable negligence, or whether any illegal behaviour—albeit unconscious—on the part of an institution falls within the said concept. For even if re-

liance on a mistaken interpretation of Article 78 of the Treaty does not necessarily constitute a wrongful act or omission giving rise to liability, in this instance such wrongful act or omission results from the fact that the Assembly did not seek either the consent or the opinion of the Committee of Presidents, although that duty was imposed on it both by Article 43 of its Rules of Procedure and by Article 2 (4) of its Rules of Internal Administration. Furthermore, that duty was stipulated in Article 62 of the Staff Regulations, in the version thereof adopted on 12 December 1955. Finally, the Court takes the view that the tergiversations of the defendant with respect to the applicants also constitute a wrongful act or omission.

3. *The damage resulting from the wrongful acts or omissions*

A. Material damage

(a) The unlawful revocation of the application to them of the Staff Regulations and the unlawful reimposition of their temporary contracts,which are annulled by this judgment, did not cause the applicants any pecuniary damage.

(b) The revocation of their classification deprives them of the right to the higher salaries which are provided for in the revoked orders. However, that fact is not the consequence of wrongful acts or omissions, since the revocation of the classification is lawful; consequently, the said deprivation does not confer any entitlement to compensation.
This conclusion also follows from the finding that the applicants are not entitled to the preservation of an unlawful situation which has been validly withdrawn.

(c) In the written procedure, the applicants claimed that they had refused external offers of employment, because they placed reliance upon the promises of the Common Assembly. However, no evidence was produced or even offered in that connexion. Therefore no finding can be made that there was any damage from that point of view.
Therefore it is not proved that there is any pecuniary damage caused by wrongful acts or omissions attributable to the defendant.

B. Non-material damage

However, the wrongful behaviour of the defendant, namely the unlawful withdrawal of the application to the applicants of the Staff Regulations and the fact of having notified the orders of 12 December 1955 prematurely, which was to lead to their subsequent partial withdrawal, did cause the applicants non-material damage.

(a) Placed in a situation to which they were suited by their professional merits and which offered them every appearance of stability and permanence, the applicants found themselves without any fault on their part confronted with the prospect of

a dismissal which meant the end of a career which they could legitimately rely on. The shock caused by this action, the disturbance and uneasiness which resulted from it for those concerned, therefore caused the applicants non-material damage, for which they can claim compensation.

(b) On the other hand, the Court finds that a reduction in grade does not constitute appreciable non-material damage and cannot prejudice the applicants' social standing.

(c) As to the amount which should be granted in compensation for the non-material damage, it must not be forgotten that the Common Assembly's gesture in granting them the material benefit of the orders of 12 December 1955 until the Court has given its decision was only the result of the court action and could not eliminate apprehension as to the future.
In the light of these considerations, the Court sets the damages payable to the applicants at 100 EPU units of account each.

III — Costs

With regard to the costs, account should be taken of the fact that following the decision on the application for annulment, these applications became devoid of object in so far as damages were claimed for withdrawal of the application to the applicants of the Staff Regulations. However, that result is the consequence of the fact that in the application for annulment the defendant was unsuccessful on that head.
Therefore it is no obstacle to the defendant's being ordered to pay the costs in their entirety, in accordance with Article 60 (1) of the Rules of Procedure of the Court.

Upon reading the pleadings;
Upon hearing the parties;
Upon hearing the opinion of the Advocate General;
Having regard to Articles 6, 31, 40 and 78 of the Treaty, and to Article 7 of the Convention on the Transitional Provisions;
Having regard to the Rules of Procedure of the Common Assembly and to its Rules of Internal Administration of 25 November 1955;
Having regard to the Staff Regulations of the Community;
Having regard to the Protocol on the Statute of the Court;
Having regard to the Rules of Procedure of the Court and to the Rules of the Court on costs;

THE COURT

hereby:

Declares the present applications admissible and,

I – On application for annulment 7/56

(1) Annuls the decisions contained in the letter sent to the applicants on 12 July 1956 by Mr Vanrullen, the Vice-President of the Common Assembly.

(2) Annuls the decision of the Bureau of the Common Assembly, in so far as it withdraws from the applicants the application of the Staff Regulations.

(3) Dismisses the application for the annulment of the decision of the Bureau of the Common Assembly in so far as that decision withdraws from the applicants the grades and ranks which had been granted to them by the orders of 12 December 1955.

(4) Remits the matter to the Common Assembly, in so far as the decisions of the Vice-President, Mr Vanrullen, and of the Bureau of the Common Assembly have been annulled.

(5) Orders that the applicants are entitled to the reimbursement of four-fifths of their costs by the defendant, and orders the defendant to bear its own costs.

II – On applications for damages 3 to 7/57

Orders the defendant to pay the sum of 100 EPU units of account to each of the applicants.

Orders the defendant to bear the costs.

Delivered in open court in Luxembourg on 12 July 1957.

Hammes Serrarens Riese

Rueff Van Kleffens

Ch. L. Hammes
President

O. Riese
Judge-Rapporteur

A. Van Houtte
Registrar