

ORDER OF THE COURT
OF 7 MAY 1980 ¹

**Suzanne Fournier, née Mazière, and Others
v Commission of the European Communities**

Joined Cases 114, 115, 116 and 117/79

Action for damages — Action by members of an official's family for compensation for the damage suffered arising out of unlawful conditions of employment of the official — Inadmissibility

(EEC Treaty, Art. 178; Rules of Procedure, Art. 92 (1))

In Joined Cases 114, 115, 116 and 117/79

SUZANNE FOURNIER, NÉE MAZIÈRE, AUDE FOURNIER, FRANÇOIS FOURNIER AND CLOTILDE FOURNIER, represented by Edmond Lebrun, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, avocat-avoué, 34b Rue Philippe II,

applicants,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Denise Sorasio, a member of its Legal Department, acting as Agent, assisted by Robert Andersen, of the Brussels Bar, with an address for service in Luxembourg at the office of its Legal Adviser, Mario Cervino, Jean Monnet Building, Kirchberg,

defendant,

¹ — Language of the Case: French.

THE COURT

Upon hearing the Advocate General

makes the following:

ORDER

Facts and Issues

The applicants are the wife and three children of Bernard Fournier, an official in Grade A 6 of the Directorate-General for Development and Cooperation of the Commission. Fournier joined the Commission in 1964 as a member of the auxiliary staff; he was appointed a probationary official in 1973 and established at the expiry of the probationary period with effect from 1 April 1974.

On 29 March 1979 Mr Fournier submitted to the Commission, pursuant to Article 90 of the Staff Regulations, a request for compensation for the damage he alleged he had suffered as a result of the Commission's negligent conduct arising out of the unlawful conditions of employment in which it is alleged to have kept him for nine years. On the same date the applicants submitted a request to the Commission under Articles 175 and 215 of the EEC Treaty and under Article 1382 of the Belgian Civil Code, alleging that they had suffered personal injury as a result of the Commission's negligent behaviour towards Mr Fournier. The Commission rejected these requests on 1 August 1979.

By applications lodged at the Court Registry on 25 July 1979 the applicants commenced proceedings in which they claim that the Court should, on the one hand, annul the Commission's implied decision rejecting their requests resulting from its failure to reply over a period of more than two months, and, on the other hand, order the Commission to pay them compensation for the damage which they allege they have suffered.

It appears from the file that the applicants have brought their actions before the Court under Articles 175 and 215 of the EEC Treaty and that their claims for damages are based on the unlawful conditions of employment in which the defendant is said to have kept Mr Fournier for nine years. They have in particular stressed that during this period Mr Fournier remained in a state of complete uncertainty and was obliged to sign 21 consecutive contracts before being appointed an established official; furthermore he was humiliated by having to submit to downgrading and was in addition subjected to annoyances of all kinds. These objectionable actions on the part of the Commission had very injurious effects on Mr Fournier's family; in particular they had serious repercussions on the applicants' health.

Decision

Under Article 175 of the EEC Treaty a natural person may complain to the Court of Justice that an institution of the Community has failed to address to him any act other than a recommendation or an opinion. In these cases the applicants have not stated what act, within the meaning of that article, the Commission has failed to address to them.

According to Article 178 of the Treaty the Court of Justice has jurisdiction in disputes relating to compensation for damage provided for in the second paragraph of Article 215 concerning the non-contractual liability of the Community. These actions, however, are for compensation for damage alleged to have been caused by the conduct of an institution affecting the progress of the career of one of its officials or servants, even though the latter has been in a position to avail himself of the opportunities afforded by the Treaty to challenge any decision of the institution concerned which was intended to, or in fact did, place or keep him in unlawful conditions of employment and, if need be, for this purpose to bring an action before the Court. It would be contrary to the system of legal remedies adopted by Community law for rectifying irregularities in conditions of employment to concede that by a misuse of procedure an action for damages based on the same facts may be brought by the members of the family of an official or other servant acting on their own behalf, even if they allege that they have personally suffered damage in this connexion. These actions do not therefore fall within the second paragraph of Article 215 of the Treaty.

In these circumstances the Court plainly has no jurisdiction to take cognizance of the applications. Consequently it is necessary for the Court to apply Article 92 (1) of the Rules of Procedure and to declare of its own motion without opening the oral procedure that the actions are inadmissible.

Costs

Under Articles 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs. Since the applicants have been unsuccessful they must be ordered to pay the costs.

On those grounds,

THE COURT

hereby orders as follows:

1. **The actions are dismissed as inadmissible.**
2. **The applicants shall pay the costs.**

Luxembourg, 7 May 1980.

A. Van Houtte
Registrar

H. Kutscher
President