In Case 23/80

GIUSEPPE GRASSELLI, a former official of the Commission of the European Communities, residing at 25 Via Bembo, Cremona, represented by Cesare Ribolzi, of the Milan Bar, with an address for service in Luxembourg at the Chambers of Victor Biel, 18 a Rue des Glacis,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Oreste Montalto, acting as Agent, with an address for service in Luxembourg at the office of its Legal Adviser, Mario Cervino, Jean Monnet Building, Kirchberg,

defendant,

OBJECTION, at the present stage of the proceedings, that the application for the annulment of the implied decision rejecting the applicant's complaint of 6 June 1979 concerning the failure to pay family and education allowances for dependent children and the reduction of the pension acquired on termination of service under the provisions of Regulation No 259/68 of the Council is inadmissible,

THE COURT (First Chamber)

composed of: T. Koopmans, President of Chamber, A. O'Keeffe and G. Bosco, Judges,

Advocate General: J.-P. Warner
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

I — Facts and written procedure

Mr Grasselli, who entered the service of the High Authority of the European Coal and Steel Community on 5 October 1961 and was assigned as from February 1963 to the Directorate-General for Steel (ECSC), which after the merger of the executives became the Directorate for Steel in Directorate-General III of the single Commission, submitted a request on 8 April 1968 that his service be terminated in application of Regulation No 259/68 of the Council of 29 February 1968 (Official Journal, English Special Edition 1968 (I), p. 30). At its meeting on 20 June 1968 the Commission granted the request and authorized him to cease work as from 1 October 1968. By a letter of 21 June 1968 the Directorate-General for Personnel and Administration notified Mr Grasselli of that decision and asked him to choose between receiving a pension and immediate payment of a severance grant and, if he chose the former, to decide whether his pecuniary rights should be determined in accordance with the provisions of Article 5 of Regulation No 259/68 or those of Article 34 of the former Staff Regulations of the ECSC, as he was permitted to do under Article 7 of the above-mentioned Regulation No 259/68. In order to assist Mr Grasselli in making that choice the Directorate-General for Personnel and Administration sent him, on 16 September 1968, a table explaining the benefits to which he would be entitled under each of the two schemes. Among other things the table showed that if he chose the ECSC scheme a reducing factor would be applied to his pension and he would not be paid the dependent child allowance. Mr Grasselli then submitted a complaint against the manner in which the Commission intended applying the ECSC pension scheme in his case and declared that he reserved his choice between the two schemes pending a decision on his complaint.

The Commission's decision was negative, and he therefore brought an action before the Court of Justice on 13 December 1968.

In a judgment of 10 December 1969 the Court held the action to be inadmissible on the ground that the explanatory table in question did not amount to a decision.

On 30 January 1970 the Commission administration asked Mr Grasselli to make a decision as to which scheme was to be applied in respect of his retirement. In a letter of 27 February 1970 Mr Grasselli indicated that he opted for the ECSC scheme. When he left the service (1 October 1972) Mr Grasselli did however point out, in a form which he was required to fill in for the purpose, that as he had left the service in accordance with the provisions of Regulation No 259/68 his pension rights fell to be determined exclusively by that provision, and not by the provisions of the former ECSC regulations.

In a letter dated 11 April 1973 the administration sent him a statement setting out a computation of his pension rights and confirmed that he was not entitled to a full pension, or to family allowances. From then on the Commission proceeded to pay him a reduced pension, without the addition of family allowances, as from 1 October 1972.

On 9 April 1979 Mr Grasselli submitted a complaint under Article 90 (2) of the Staff Regulations of Officials of the European Communities seeking to obtain, as from 1 October 1972, the family allowances provided for in Article 67 of the ECSC (1962) Regulations, together with a full retirement pension. The Commission failed to reply to the complaint, which it received and registered on 6 June 1979, and Mr Grasselli therefore lodged an application on 14 January 1980, which was received at the Court Registry on the following day.

On 14 February 1980 the Commission raised a preliminary objection of inadmissibility, claiming that the appeal had been brought out of time, and requested in accordance with Article 91 (1) of the Rules of Procedure and without prejudice to examination of the substance of the case that the Court give a decision on the preliminary objection.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure as to the objection of inadmissibility, in accordance with Article 91 (3) of the Rules of Procedure.

II — Conclusions of the parties on the admissibility of the application

1. The *Commission of the European Communities* claims that the Court should:

— Order that the written procedure be terminated;

— Decide, if appropriate, that it is not necessary to commence the oral procedure;

— Declare the application inadmissible;

— Order the applicant to pay the costs.

2. The *applicant* contends that the Court should reserve its decision as to the objection of inadmissibility raised by the Commission for the final judgment, rejecting any request to the contrary.

III — Submissions and arguments of the parties

The *Commission* notes, first, that the application describes as an act adversely affecting the applicant the measure whereby the Commission computed the applicant's rights to retirement pension for the first time (the letter of 11 April 1973). The applicant did not, however, lodge a complaint against that decision within the period of three months prescribed by Article 90 (2) of the Regulations. Under Article 91 (2) his application is therefore inadmissible. In any case the applicant was in a position from April 1973 to obtain confirmation of the decision concerning his pension by means of the explanatory note which accompanies the monthly pension payments and which, according to the consistent case-law of the Court, amounts to notification of any administrative measure whereby pension rights are determined.

In reply to the applicant's argument that payment of a reduced pension amounts to a continuous breach which is repeated each month and which may therefore be challenged at any moment within a period of three months from the latest explanatory note on the pension of which the person concerned has been notified, it may be argued that,

according to the case-law of the Court, measures which are purely "confirmatory" cannot be the subject-matter of an independent action. There can be no doubt that the explanatory notes on the pension are merely repetitive of the administrative measure which determined the amount for the first time.

Be that as it may, in seeking to show that his application is admissible the applicant appears to attribute the greatest importance to the argument based on the first paragraph of Article 41 of Annex VIII to the Staff Regulations. In the applicant's view, that article enables a pensioner to make an application to the Court each time he thinks his pension is vitiated by an error of fact or of law, without being subject to any time-limit whatsoever.

The Commission maintains, on the contrary, that the wording of Article 41 of Annex VIII implies that the intention was to reserve for the administration alone the option of taking corrective measures if it discovers an error of fact or of law in the computation of a pension. That interpretation of the provision in question was adopted by Mr Advocate General Reischl in Case 95/76, *Bruns* v *Commission*, and by Mr Advocate General Capotorti in Case 219/78, *Michaelis* v *Commission*.

Lastly the Commission asserts that it did not hesitate to raise a preliminary objection of inadmissibility because it is firmly convinced that, even if it is admissible, the application has no possibility whatsoever of succeeding as regards the substance. The fact is that the applicant was already aware, at least to some extent, of the new fact which is supposed to give grounds for the reconsideration provided for in the above-mentioned Article 41 (in this instance the adoption of Regulations No 2530/72 and No 1543/73 of the Council providing conditions for voluntary retirement which were more favourable than those under the 1968 scheme) when he was notified in April 1973 of the decision in question, for Regulation No 2530/72 had already been published by that date. In addition, that supposedly new fact does not affect the applicant's situation in any way as the Commission was in no way bound to apply the different conditions provided for in respect of a fresh voluntary retirement scheme to those who had taken advantage of the former schemes. In the third place, even if his rights had been computed on the basis of Regulation No 2530/72 of the Council the applicant would still not have been entitled to a full pension and family allowances because under that regulation a full pension cannot be granted to an official who has worked for less than ten years in the service of the Commission, which is precisely the case with Mr Grasselli.

Mr Grasselli considers, for his part, that an examination of the substance of the issue is indispensable especially as the Commission stated in its objection that if the applicant's claims were justified it would not hesitate to accept them at any stage in the procedure, even if the application was clearly inadmissible. Whether a claim is justified, however, can manifestly only emerge from an examination of its substance.

In particular, as to the arguments put forward by the Commission in support of the objection of inadmissibility, it should be noted that all the case-law which has been referred to by the other party in seeking to have the application dismissed on grounds of inadmissibility before final judgment relates to cases in

which the Court agreed to undertake an examination of the substance. It would therefore be unjustifiable and, to say the least, excessive to deduce from that line of cases an argument preventing the applicant from putting forward his own submissions in his defence, when on the contrary that opportunity was given to the officials in the cases cited.

In contrast to those officials, moreover, who were officials in service, the applicant, who is a pensioner, can rely not only on the normal remedies provided for in Articles 90 and 91 of the Regulations, but also on the special provisions in Article 41 of Annex VIII concerning the modification of pensions.

That provision is doubly relevant to the present case, as regards admissibility and the fact that the application is well founded. In the applicant's opinion it cannot be construed exclusively in favour of one party, that is to say, as permitting the institution to recalculate or modify the pension at any moment without giving the recipient of the pension, on the other hand, the corresponding right to ask for a recalculation at least where new considerations or facts are present. If that were so Article 41, which applies exclusively in respect of pensions, would lose any supplementary scope in that particular sphere. In the circumstances, since Regulations No 2530/72 and No 1543/73 have placed former officials of the ECSC who opted for the scheme laid down in Article 34 of the ECSC Regulations on an equal footing with other officials as regards payment of a full pension and the benefit of family allowances, the applicant considers that he has reasonable grounds for challenging the unfair withholding of his rights of which he remains a victim.

The Commission's references to the opinions of Advocates General Reischl and Capotorti in Cases 95/76 and 219/78 respectively no doubt carry some weight, but it should nevertheless be observed that the judgments delivered by the Court in those cases do not define *ex professo* the scope of Article 41 concerning actions which may be brought by officials in receipt of a pension and thus no decison has yet been made on the point.

On the contrary, it may easily be noted that, for example, the judgment of 8 November 1979 in Case 219/78 rejected by implication the objection of inadmissibility which had been raised by the Commission and gave its decision on the substance of the case.

Finally, since the other party has asserted that the application is in any case unfounded, Mr Grasselli considers it necessary to refute the arguments put forward by the Commission in this respect.

In the first place, contrary to what the Commission appears to believe, the applicant did not criticize the discrepancies between the conditions laid down for the voluntary retirement scheme of 1968 and those relating to the 1973 scheme, but rather complained of the discrimination which was applied in respect of Regulation No 259/68 between employees who opted for Article 34 of the former ECSC Regulations and all other officials, whereas in subsequent regulations the two categories were treated with absolute equality.

Secondly, as regards the family allowances it should be pointed out that the termination of service occurred in the present case in application, and by virtue, of Regulation No 259/68, with the exclusive option for which the latter provides in respect of the allowance defined in Article 34 of the ECSC Staff

Regulations. Yet that regulation includes the right to dependent child allowances.

In any case, even if the applicant's submission is thought to be a liberal interpretation of the provisions in question it need only be observed that the Court has itself provided an example of adopting liberal interpretations on each occasion on which it has been necessary to find an equitable solution.

Finally, even if the construction to be placed on the provisions in question were to be that which has been advanced by the Commission, there would still be unfair discrimination sufficient to invalidate the provision in question. The case-law of the Court of Justice reveals that measures adopted under the Staff Regulations which are found to be contrary to the principle of non-discrimination by which the acts of the administration should be motivated must be considered unlawful.

In his supplementary observations *Mr Grasselli* draws the Court's attention to the decisions of the highest courts in Italy, namely the Corte Costituzionale [Constitutional Court] and the Consiglio di Stato [Council of State]. Those two courts are now refusing to accept as mandatory the sixty-day time-limit prescribed for bringing actions which challenge administrative measures affecting financial rights adopted in relation to public servants, either in office or retired. In particular the Corte Costituzionale emphasized in its Decision No 8 of 15 January 1976 (which the applicant has annexed to his observations) that decisions concerning the pecuniary rights of public servants are measures which do not arise from the exercise of the authorities' powers but rather are of a contractual nature and, as a result, the grounds justifying the short time-limits laid down in respect of measures adopted by a public authority are not relevant to disputes of that nature.

The applicant concludes that in view of the very close similarity with the fundamental principles underlying the pension rights provided for under the Staff Regulations, and taking into account the option inherent in Article 41 of Annex VIII, the conclusions reached by the highest courts in Italy may perfectly well be applied in Community law as well.

In its reply to the applicant's supplementary observations the *Commission* maintains that any reference to the state of the law in Member States, in this case Italian law, is wholly irrelevant in the present instance, which is merely a matter of applying the principles of Community law which is autonomous, independent and sovereign. It adds that in any case all the rules on such matters in force in the Member States other than Italy provide in some way for time-limits for bringing actions. To prove that statement it proceeds to give a brief review of the rules applicable in that respect in those States.

IV — Oral procedure

Mr Grasselli, represented by C. Ribolzi of the Milan bar, and the Commission of the European Communities, represented by O. Montalto, acting as Agent, assisted by R. Tanzilli, an expert, presented oral observations at the sitting on 13 October 1980.

The Advocate General delivered his opinion at the sitting on 30 October 1980.

Decision

1 By application lodged at the Court Registry on 15 January 1980 Giuseppe Grasselli, a former official of the Commission of the European Communities, brought an action seeking the annulment of the implied decision rejecting his complaint of 6 June 1979 in which he requested that he be paid family and educational allowances for dependent children together with payment of a full early retirement pension under the measures for final termination of service which were applied to him by virtue of Regulation No 259/68 of the Council.

2 Mr Grasselli entered the service of the High Authority of the European Coal and Steel Community on 5 October 1961 and was placed as from February 1963 in the Directorate for Steel which became, following the establishment of a single Commission for the three Communities, the Directorate for Steel in Directorate-General III of the Commission. On 8 April 1968 he submitted an application for termination of his service in application of Regulation No 259/68 of the Council of 29 February 1968 (Official Journal, English Special Edition 1968 (I), p. 30), adapting the provisions in the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities to the new position brought about by the merger of the executives and laying down for that purpose "special measures temporarily applicable to officials of the Commission".

3 Article 4 (1) of that regulation authorized the Commission until 30 June 1968 to adopt measures terminating the service of officials within the meaning of Article 47 of the Staff Regulations. Paragraph (3) of the same article stated that, if the interests of the service permitted, the Commission was to take into account requests for termination of service submitted by officials.

4 An official in respect of whom such a measure was adopted was entitled initially to monthly allowances and subsequently to a full early retirement pension. Any official who had not completed eleven years of service could,

however, by virtue of Article 6 of the regulation, renounce his pension rights and request the award of a severance grant payable under the conditions set out in Article 12 of Annex VIII to the Staff Regulations.

5 Special provisions were also laid down in respect of former officials of the European Coal and Steel Community who opted for application of the early retirement scheme. By virtue of Article 7 of the regulation, such officials were thus able to ask for the pecuniary rights attaching to their pension to be determined not under Article 5 of Regulation No 259/68 but in accordance with the provisions of the ECSC Staff Regulations which, in the case of officials who were established prior to 1 January 1962 and who were in grades other than A 1 and A 2, were essentially those of Article 34.

6 The pension scheme laid down by those provisions differed from that established by Article 5 of Regulation No 259/68 both as regards the initial allowance, the calculation of the length of service to be taken into account for pension purposes and the conditions of payment of the latter, and as regards the pecuniary rights attaching to the pension. As to the latter rights, the provisions of the ECSC Regulations, in contrast to Article 5 of Regulation No 259/68, included payment of a reduced early retirement pension and did not make provision for payment of family and educational allowances for dependent children.

7 The applicant asked, on 8 April 1968, to have his service terminated under Regulation No 259/68 and the Commission informed him by a letter of 21 June 1968 that it accepted his request and, in view of the fact that he had not completed by that date the above-mentioned eleven years of service, asked him to choose between the award of the pension and payment of a severance grant. Should he opt for the award of pension, it asked him to inform the administration whether he preferred his rights to be calculated under Article 5 of Regulation No 259/68 or under the provisions of Article 34 of the former ECSC Regulations. To that end, the Director-General for Personnel and Administration sent him on 16 September 1968 an explanatory table showing the benefits to which he would be entitled under each of those two retirement schemes and drew his attention, in particular, to the fact that the

scheme of Article 34 of the ECSC Regulations involved payment of a reduced early retirement pension and did not make provision for family and educational allowances for dependent children.

8 After seeing the explanatory table the applicant submitted a complaint under Article 90 of the Staff Regulations claiming that application of Article 34 of the ECSC Staff Regulations could not prevent the award of a full early retirement pension and payment of the above-mentioned allowances, and stating that he reserved his position concerning the choice between the two schemes in question pending a decision from the administration on the matter. In view of the explanations supplied by the Commission the applicant brought an action before the Court on 13 December 1968. In its judgment of 10 December 1969 in Case 32/68 the Court dismissed the application as inadmissible on the ground that the above-mentioned explanations of the Commission did not amount to an act adversely affecting him ([1969] ECR at p. 511).

9 On being asked subsequently by the Commission to make his choice as to the scheme to be applied in respect of his retirement the applicant declared by a letter of 27 February 1970 that he opted for the scheme under Article 34 of the former ECSC Regulations, pressing at the same time for the provisions in Article 5 of Regulation No 259/68 to be applied in his case with regard to the grant of a whole pension and family and educational allowances for dependent children.

10 On 11 April 1973 the Director-General for Personnel and Administration adopted a formal decision granting the applicant an early retirement pension under the above-mentioned Article 34, as from 1 Ocotber 1972. In a letter of the same date the head of the relevant division of that Directorate-General confirmed to the applicant that the provisions of Article 5 of Regulation No 259/68 would not be applied to him, and sent him a statement of his pension rights showing that he was to be paid a reduced pension without family and education allowances for dependent children.

11 On 6 June 1979 the applicant submitted a complaint under Article 90 of the Staff Regulations seeking to obtain those allowances together with a full

early retirement pension. As the Commission did not reply to the complaint within the period laid down by the regulations the applicant brought the present proceedings on 15 January 1980.

12 By a document dated 14 February 1980, lodged on the same day, the Commission made an application under Article 91 of the Rules of Procedure for the application to be dismissed as inadmissible because it was commenced out of time and was equally inadmissible having regard to Article 41 of Annex VIII to the Staff Regulations. In his written observations, lodged on 13 March 1980, the applicant opposes the objection.

Admissibility of the application

(a) Observation of the time-limit for lodging the application

13 In support of its objection of inadmissibility the Commission first claims that the measure adversely affecting the official, on the lawfulness of which the Court is asked to pronounce in accordance with Article 91 (1) of the Staff Regulations, is in this case the decision of the Director-General for Personnel and Administration of 11 April 1973 placing the applicant on early retirement under the conditions expressly defined by the appropriate department of the Commission, contained in the statement which was sent to Mr Grasselli on the same day.

14 The applicant, however, maintains that neither the decision of 11 April 1973 nor the statement attached to the letter of the same date nor, lastly, the monthly notices of payment sent to him subsequently, can be considered as the act which adversely affected him. He explains on this point that the above-mentioned decision was restricted exclusively to providing that he be placed on early retirement without actually defining his pecuniary rights, and that the statement of those rights attached to the letter of 11 April 1973 amounts, in the same way as each of the notices of payment sent to him monthly, to a mere accounting record devoid of the character of a decision.

15 It has been established that in fact on the very day on which the decision of the Director-General of Personnel and Administration granting him a pension payable on early retirement was adopted, the applicant received from the head of the relevant division in that Directorate-General a statement of

his pecuniary rights showing that they were those provided for under the pension scheme laid down in Article 34 of the ECSC Regulations for which the applicant had opted and which had been allowed him on the basis of the above-mentioned decision.

16 In the circumstances there can be no question but that the above-mentioned statement was an integral part of the decision of 11 April 1973, the legal effects of which on the applicant's financial position it defined, so that as regards in particular payment of the reduced pension without family and education allowances for dependent children, it must be considered to be the act adversely affecting the applicant.

17 As that statement was sent to the applicant on 11 April 1973 it was from that date that the periods laid down in Articles 90 and 91 of the Staff Regulations for the lodging of a complaint and an application under those articles against the financial position resulting from the decision of 11 April 1973 and in particular as regards the application of a reduced rate of pension and the non-payment of the allowances in question commenced to run.

18 The notices of payment which were subsequently sent to the applicant each month and which contained a statement of his pecuniary rights which corresponded to the first statement cannot cause those periods to start to run afresh. As the Court has consistently held (judgment of 14 April 1970 in Case 24/69, *Nebe* v *Commission*, [1970] ECR 145; judgment of 8 May 1973 in Case 33/72, *Gunnella* v *Commission*, [1973] ECR 475), a measure which contains no new factor as compared with a previous measure constitutes a purely confirmatory measure and cannot therefore have the effect of setting a fresh time-limit in favour of the person to whom the earlier measure was addressed.

19 It is, however, established that the applicant did not submit his complaint under Article 90 of the Staff Regulations against the application of a reduced rate of pension and the failure to pay the allowances referred to above until 6 June 1979. Whilst it is to be regretted that the Commission did not consider it necessary to reply to that complaint, in accordance with one of the principles of good administration, nevertheless the fact is that the complaint does not contain any new factor as compared with those put forward by the applicant earlier when his service was terminated in 1973 and

in relation to which the administration had stated its position in its letter of 11 April 1973.

20 In those circumstances it must therefore be concluded that the applicant's complaint of 6 June 1979 and this application, lodged on 15 January 1980, are to be held as being brought out of time as regards Articles 90 and 91 of the Staff Regulations.

(b) Application of Article 41 of Annex VIII to the Staff Regulations

21 It is also argued by the Commission that the first paragraph of Article 41 of Annex VIII to the Staff Regulations has the sole purpose of enabling the institutions to recalculate pensions at any time and does not give officials any right of action for the purpose of obtaining such a recalculation irrespective of the periods prescribed for applications, which are laid down generally in Articles 90 and 91 of the Staff Regulations.

22 Against that the applicant claims that the first paragraph of Article 41 of Annex VIII to the Staff Regulations, being a specific provision in the rules of the Staff Regulations relating to the pension scheme, must be considered, both on its wording and its purpose, as a special rule which derogates from the general system applicable to actions brought by officials and gives them a right of action for the recalculation of their pensions the exercise of which is not subject to observance of the time-limits laid down in Articles 90 and 91 of the Staff Regulations.

23 The first paragraph of Article 41 of Annex VIII to the Staff Regulations provides as follows:

"The amount of pension may at any time be calculated afresh if there has been error or omission of any kind."

24 For a correct interpretation of that provision in order to determine the conditions in which officials may seek the recalculation of their pension regard must be had to the system laid down by the regulations governing disputes and the underlying requirements of that system.

25 The Staff Regulations make general provision in Articles 90 and 91 for the rights of action of members of the staff against administrative acts adversely affecting them. Those provisions make it clear that the system for the settlement of disputes thereby established is based in its entirety on the requirement that exercise of the right of action is permitted only subject to strict observance of the time-limits which have been laid down.

26 Any official who seeks to have his pension recalculated where there has been error or omission of any kind may, it is true, avail himself of the provisions of the first paragraph of Article 41 of Annex VIII to the Staff Regulations by requesting such a recalculation by means of a complaint and, if necessary, by way of legal proceedings, but for his complaint and his action to be admitted under Articles 90 and 91 of the Staff Regulations he must exercise his right of action within the periods laid down by those articles, starting from the time of the occurrence of a new fact such as to justify a recalculation of his pension or from the time when he actually became aware of the existence of such a fact.

27 In the present instance the new fact capable of possibly justifying a request for the applicant's pension to be recalculated under the first paragraph of Article 41 of Annex VIII to the Staff Regulations might have been the rules published by the Council subsequent to Regulation No 259/68, which introduced measures concerning the termination of service providing, for officials who are subject to such measures, for the application, *inter alia*, of a scheme for unreduced pensions payable on early retirement, together with payment of the allowances in question.

28 Those rules, which are to be found mainly in Regulation No 1543/73 of 4 June 1973 (Official Journal L 155, p. 6) were published in the Official Journal of the European Communities on 11 June 1973, but it was not until his complaint of 6 June 1979 that the applicant made use of the remedy available under Articles 90 and 91 of the Staff Regulations in order to claim payment of an unreduced pension and of the allowances in question.

29 From the written observations which were submitted in respect of the Commission's preliminary objection of inadmissibility, and in particular paragraph (2) of those observations, it appears that the applicant was in a position "subsequently" to ascertain that "the injustice of which he had complained" in his first action of 13 December 1968 "had been remedied by means of Regulations Nos 2530/72 and 1543/73". Annex 2 to the application shows, in addition, that contact between one of the specialized departments of the Directorate-General for Personnel and Administration and the applicant had been established in 1975, at the latest, and that that contact had resulted in the reconsideration of certain of the applicant's pecuniary rights.

30 Those factors reveal that when he submitted his complaint on 6 June 1979 the existence of the above-mentioned rules did not constitute as far as the applicant was concerned a new fact giving him the right to claim under Articles 90 and 91 of the Staff Regulations a recalculation of his pension in accordance with the first paragraph of Article 41 of Annex VIII to the Staff Regulations.

Conclusion

31 In those circumstances the delay in the submission of that complaint must be considered such as to make this action inadmissible.

Costs

32 In accordance with Articles 69 and 70 of the Rules of Procedure the parties must bear their own costs.

On those grounds,

THE COURT (First Chamber)

hereby:

1. **Dismisses the action as inadmissible;**

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

Koopmans O'Keeffe Bosco

Delivered in open court in Luxembourg on 10 December 1980.

A. Van Houtte
Registrar

T. Koopmans
President of the First Chamber