

OPINION OF MR ADVOCATE GENERAL LENZ
delivered on 21 March 1985 *

*Mr President,
Members of the Court,*

‘Under the terms laid down in rules drawn up by common agreement by the institutions of the Communities, after consultation of the Staff Regulations Committee, an official may:

A. The applicant in this case, a senior official in the Legal Department of the Council of the European Communities (Career Bracket A) who is a Netherlands national, bought a plot of land in Belgium and had built on it a house in which he has lived since October 1979. He raised part of the money to do so in German marks from a German bank which has its registered office in Düsseldorf and a branch without independent legal personality in Brussels. Those funds were raised partly under an agreement concluded in April 1978 (the monthly instalments payable under that agreement were originally DM 426 and were then increased in April 1981 after an interest-rate rise, the loan being at a variable rate of interest, to DM 596), and partly under an agreement dated April 1979 (a fixed-rate loan under which the monthly instalments payable were DM 1410). Both loans were secured by a 15 year mortgage on the land, which, however, has evidently been redeemed in part by early repayment.

Soon afterwards, in October 1979, the applicant applied to have the sum of DM 1 836 (the original sum of both sets of instalments) transferred monthly to the aforementioned bank branch in Brussels, on the ground that his obligations under the above-mentioned agreements were covered by Article 17 of Annex VII to the Staff Regulations, paragraph (2) of which provides:

(a) through the institution which he serves, regularly have part of his emoluments transferred up to a maximum amount equal to his expatriation or foreign residence allowance:

— either in the currency of the Member State of which he is a national;

— or in the currency of the Member State in which either his own domicile or the place of residence of a dependent relative is located;

— or in the currency of his previous country of employment or of the country in which his institution has its seat, provided that the official in question has been assigned to a post outside the territory of the European Communities;

(b) have regular transfers made in excess of the maximum stated at the beginning of paragraph (a) provided that they are intended to cover expenditure arising in particular out of commitments proved to have been regularly undertaken by the official outside the country where the institution has its seat or outside the country where he carries out his duties;

(c) be authorized, in very exceptional circumstances and for good reasons

* Translated from the German.

supported by evidence, to have transferred, apart from the aforementioned regular transfers, sums which he may wish to have available in the currencies referred to in paragraph (a).'

As is shown in the decision communicated in reply on 25 October 1979, that request was refused on the ground that the applicant possessed Netherlands nationality and therefore Article 17 (2) (a) could not be applied to his case. The applicant, who submitted in these proceedings that his request was based on Article 17 (2) (b), did not pursue the matter further at the time.

However, in January 1982 he once again submitted a request under Article 17 (2), which this time related to the adjusted sum of DM 2 006. At first he requested the administration (on 6 January 1982) to transfer the amount from 15 February 1982 to the bank branch in *Brussels*; after discussing the matter with the administration, he then amended the request on 12 January 1982 to ask that the transfers be made instead to an account with the same bank in *Aachen*. In his accompanying memorandum dated 6 January 1982 the applicant expressly referred in that connection to Article 17 (2) (b) of Annex VII to the Staff Regulations and to the rules for implementing that provision [Rules laying down the Procedure for the Transfer of Part of an Official's Emoluments], which entered into force in January 1980; he argued that because the commitments at issue required repayment in German marks they arose outside Belgium — a position which was recognized in the case of repayment obligations under loans concluded with the Beamtenheimstättenwerk gemeinnützige Bausparkasse für den öffentlichen Dienst GmbH [German Civil Service Building Society, hereinafter referred to as the BHW], a limited-liability company incorporated under German civil law. On 29 January 1982 that request was also refused by the administration on the ground that the commitments at issue did not arise outside Belgium because the loan

secured by the mortgage had been granted by a bank branch in Brussels, and hence the applicant's creditor was established ('installé') in Belgium.

The applicant takes the view that he is discriminated against in comparison with officials to whom the above-mentioned provision has been applied in respect of repayments to the BHW, and on 9 February 1982 he lodged a complaint against that decision. He argued that the decisive fact was that the creditor was a legal person with its registered office in the Federal Republic of Germany and that in that connection it was irrelevant that the contracts had been concluded with a branch in Belgium which was not empowered to act on its own account.

That complaint was answered by the Secretary-General of the Council by Decision No 211/82 of 23 March 1982. Under that decision, which refers to Article 17 of Annex VII to the Staff Regulations and the relevant implementing rules (in particular Article 5 of those rules, which relates to Article 17 (2) (c)) and acknowledges that the applicant had undertaken financial commitments in German marks, the applicant was granted exceptional authorization to have transferred from his salary the sum of DM 2 000 monthly to an account in Germany for the period from April 1982 to March 1983. It was also emphasized in the decision that the authorization would be terminated 'en cas de changement de la situation sur la base de laquelle elle a été prise' [in the event of a change in the situation on which the decision was based] and that the applicant must inform the administration of 'tout élément susceptible de modifier cette situation' [any factor which might alter that situation].

The applicant responded in a memorandum dated 29 May 1982 to the Director-General for Administration. In it he began by noting that the aforementioned decision referred to Article 17 (2) (c) of Annex VII to the Staff Regulations, and emphasized that the

request for authorization fulfilled the requirements of Article 17 (2) (b), which was therefore the only provision to be applicable. The applicant went on to explain that he had no interest in challenging the decision since he assumed that it would be extended automatically or at least upon a simple request if the situation remained unaltered. He added that in the absence of any communication to the contrary he would assume that the decision was to be extended for as long as his financial obligations remained in German marks.

A reply came in the form of the Council Secretary-General's Decision No 629/82 of 18 June 1982, which stated that because the situation which had provided the basis for the decision of 23 March 1982 no longer existed, the authorization contained in that decision was to be withdrawn with effect from July 1982; it added that any other authorizations of transfers of a part of the applicant's salary would be maintained 'dans la limite de 35% de sa rémunération nette' [up to 35% of his net remuneration].

At this point it must be noted that the *situation* mentioned in the decision is a reference to the measure adopted by the Belgo-Luxembourg Exchange Institute in December 1981, which was largely relaxed in June 1982 (it provided that only 25% of the salaries paid into the convertible accounts of Community officials could be used for the purchase of foreign currencies on the controlled market). It should also be mentioned in the same connection that the applicant, clearly influenced by the second point in the decision, concluded a loan agreement (adjusted a number of times subsequently) with the BHW in August 1982 and has since had 35% of his net salary regularly transferred to it under that

agreement by the General Secretariat of the Council.

Comments on Decision No 629/82 were submitted by a colleague of the applicant in a letter of 25 June 1982 addressed to the Secretary-General of the Council and by the applicant himself in a memorandum of 30 June 1982 addressed to the Director-General of the Legal Department (the memorandum concludes with an express request to communicate both documents to the Secretary-General). In the letter it was argued that developments in Belgium regarding convertibility (which had been the real reason for the decision) had nothing to do with the applicant's long-standing payment obligations; nothing had happened to alter those obligations, and the provision under which they should be considered was Article 17 (2) (b) of Annex VIII (VII is surely what was meant) to the Staff Regulations. In his own memorandum, the applicant put the point that the decisive consideration in applying that provision must, in the interests of equal treatment with debtors of the BHW, be that his repayment obligations were in German marks and owed to a German bank; in that connection no significance could be attached to the place where the contract was concluded or to the fact that the creditor bank had a branch in Brussels. He therefore requested that in view of the fact that the Belgian currency convertibility measures had no bearing on the interpretation of the Staff Regulations the decision should be reconsidered.

Finally, it should be mentioned that the Secretary-General of the Council wrote on 26 July 1982 in reply to the applicant's memorandum of 29 May 1982 that the decision of 23 March 1982 was a 'mesure exceptionnelle, utilisée pour pallier les effets négatifs que la situation en matière de convertibilité avait entraînés à l'époque' [an

exceptional measure adopted to offset the adverse effects produced at the time by the situation as regards convertibility] and could not therefore be maintained 'au moment que la pleine convertibilité des rémunérations a été réinstaurée' [when the full convertibility of remuneration was restored]. He went on to say, in connection with the problem of regular transfers of a part of an official's salary in German marks, that Article 17 of Annex VII to the Staff Regulations and the implementing rules were capable of giving rise to conflicting interpretations, that the method of applying those provisions could only be determined 'de commun accord avec les autres institutions' [by common accord with the other institutions], and that a working party had accordingly been set up to examine the question in detail.

The applicant was not satisfied with that answer to his case, and on 21 September 1982 he brought an action before the Court of Justice. He claims that the Court should:

- (a) Annul the decision of the Secretary-General of the Council of 18 June 1982;
- (b) In so far as is necessary, annul the implied rejection of the applicant's complaint lodged on 9 February 1982;
- (c) Declare that the applicant's original request falls within the scope of Article 17 (2) (b) of Annex VII to the Staff Regulations as from February 1982;
- (d) Order the Council to compensate him for the damage which he has sustained or will sustain in consequence, amounting at the time of the application to BFR 17 624.

The Council contends that the application is inadmissible and in any event unfounded and claims that it should therefore be dismissed and that the applicant should be ordered to bear the costs.

B. My opinion on those issues is as follows.

Admissibility

1. It is clear from the application as a whole that the applicant is essentially seeking a judgment in favour of his request, submitted in January 1982, for Article 17 (2) (b) of Annex VII to the Staff Regulations to be applied to his salary payments on account of his financial obligations towards a German bank.

(a) As a matter of principle, the Council takes the view that in so far as the application is for a *declaratory judgment* it must be held to be inadmissible because there is no provision for such a procedure in the Community law on staff matters.

In my view this is not a suitable case for deciding that particular point. It is evident that the applicant's only concern is to be granted a legal advantage (the adoption of an administrative measure benefiting him) on the basis of the above-mentioned provision of the Staff Regulations. For that purpose an official in his position is required to submit a request under Article 90 of the Staff Regulations; if it is rejected he must then lodge a complaint, and if that is rejected he may bring an action before the Court of Justice provided that he does so within three months.

The applicant began that process by submitting a request on 6 January 1982, and on 8 February 1982 he wrote a complaint in response to its rejection. The only question at issue is therefore what was the ultimate fate of that complaint and whether the applicant took the right action after that rejection as regards the commencement of proceedings before this Court. If he did not — and I shall be addressing that question presently — then he could certainly not seek to resolve the legal issue he has raised by means of a request for a declaratory judgment, which would amount to a device for circumventing the time-limits laid down for such actions by the Staff Regulations.

(b) It is common ground that following the rejection of his request the applicant lodged a complaint dated 8 February 1982 in due time. However, the Council takes the view that the complaint had already been rejected by Decision No 211/82 of 23 March 1982. That decision confirmed the decision of 29 January 1982 which had formed the subject-matter of the applicant's complaint. Therefore the application had to be lodged within three months (in addition to the extension on account of distance for Belgium), that is to say, before the end of June 1982.

It contends that even if the decision of 23 March is not regarded as a decision on the applicant's complaint, the latter must in any event be regarded as having been impliedly rejected on 9 June 1982 (Article 90 (2), last sentence). If that is the case, however, the application should have been lodged at the latest, having regard to the extension on account of distance for Belgium, on 11 September 1982. Thus it is established that the application lodged on 21 September 1982 was in either event out of time.

(aa) That view is certainly correct in so far as the applicant was seeking the transfer of part of his salary *from February* 1982 and compensation (on the basis of the difference between the normal exchange-rate and that applicable under Article 17 of Annex VII to the Staff Regulations) for the fact that transfers had not been made under the above-mentioned provision in February and March 1982.

It is in fact quite clear from Decision No 211/82 that it authorizes transfers of DM 2 000 only *from April* 1982; the request for such an authorization for February and March 1982 is therefore rejected by

implication, though not expressly. For that reason the applicant should have brought proceedings before the Court of Justice on that point before the end of June 1982; it is obvious that his claim could not be pursued by means of a complaint which was not lodged until autumn 1982.

The same applies to the *claim for compensation* in respect of February and March (to which reference had already been made in the complaint of 8 February). Since its sole purpose is to restore the position which would have existed if his request of January 1982 had been granted he cannot be permitted to achieve that result by means of a claim for compensation if he failed to take action in due time against the measure which allegedly caused the damage. Were it otherwise, actions based on the liability of the institutions could be used to circumvent the time-limits laid down by the Staff Regulations.

(bb) In addition, I accept the Council's view that *Decision No. 211/82 contained an implied rejection of the applicant's complaint* concerning his request for the application of Article 17 (2) (b) of Annex VII to the Staff Regulations.

It is true that in one place that decision refers quite generally to Article 17 of Annex VII to the Staff Regulations. However, the fact that the decision was taken with reference to Article 17 (2) (c) is made clear by the reference to Article 5 of the rules for implementing Article 17 (which refers to Article 17 (2) (c) alone), by the stress on the fact that the authorization of transfers was made 'à titre tout à fait *exceptionnel*' (echoing the language of Article 17 (2) (c) of Annex VII), and by the *limitation* of the effect of the decision to a period of one year, which would have been incomprehensible if the decision had been

taken under Article 17 (2) (b), in view of the unexpired period of repayment of about 10 years which still remained.

In any event that is also the way in which the applicant interpreted the decision at the time, as is apparent from his memorandum of 29 May 1982. He points out in that memorandum that Article 5 of the rules for implementing Article 17, to which the decision refers, relates to subparagraph (c), and continues: 'je persiste de mon côté à penser que ma demande répond pleinement aux critères de la même disposition sous (b), de sorte qu'à mon avis aussi le seul paragraphe (b) *aurait pu être appliqué*' [for my part I remain of the belief that my request fully satisfies the criteria of subparagraph (b) of that provision, so that in my opinion only subparagraph (b) was applicable]. In addition he mentions that he expects that Article 6 of the implementing rules will be applied to him *by analogy*; in other words, he sees that that provision is not directly relevant precisely because it refers only to transfers under Article 17 (2) (a) and (b).

There are therefore compelling reasons for concluding that the question whether the applicant was eligible for application of Article 17 (2) (b) of Annex VII to the Staff Regulations could only be resolved in proceedings brought before the Court at the latest three months after the adoption of Decision No 211/82 of 23 March 1982, and that a complaint submitted in September 1982 could not be used for that purpose.

Even if it is conceded in favour of the applicant that Decision No 211/82 of 23 March 1982 did not contain a rejection of his complaint of 8 February 1982, that complaint was rejected by implied decision at the latest on 9 June 1982 by effluxion of time (last sentence of Article 90 (2) of the Staff Regulations). In that case the period within which proceedings must be brought expired on 11 September 1982. The

application lodged on 21 September is therefore out of time on that basis as well.

Decision No 629/82 of 18 June 1982 cannot be regarded in any event as a decision on the applicant's complaint of 8 February 1982.

Nor is there any case for saying that Decision No 629/82 made it possible to apply Article 91 (3) of the Staff Regulations, which provides:

'... nevertheless, where a complaint is rejected by express decision after being rejected by implied decision but before the period for lodging an appeal has expired, the period for lodging the appeal shall start to run afresh.'

That argument fails for the simple reason that the aforementioned decision nowhere contains an express rejection of the complaint relating to the application of Article 17 (2) (b) of Annex VII to the Staff Regulations, but — if we leave aside point 2 of that decision and the authorization it contains — only provides for the withdrawal of the authorization in Decision No 211/82 (which was based on Article 17 (2) (c)).

Another consideration arises from the applicant's attempt in these proceedings to give Decision No 211/82 a different interpretation from the one he gave it in his memorandum of 29 May 1982. As far as the Council was concerned (as is clear at least from the memorandum dated 26 July 1982, although there are other grounds for that view), Decision No 211/82 was adopted as a provisional measure to compensate for the measures adopted in Belgium in December 1981 in relation to currency convertibility. The applicant, however, maintains that that was unnecessary because for the purpose of meeting obligations to pay fixed instalments in a foreign currency it would also have been possible for him to be given authorization for more than 25% of his salary in Belgian francs to be transferred by a Belgian

bank at the controlled rate (a possibility of which he himself had taken advantage, to the knowledge of the Council's administration, on 9 March 1983). He adds that in any event it was not appropriate in his case to have recourse to Article 17 (2) (c) since that provision envisages only *isolated* transfers (whereas the applicant had standing commitments) and because it would not have permitted a transfer by an official of *Netherlands* nationality in *German marks*. Furthermore, in view of the fact that such a departure from the provisions of the Staff Regulations could not have been justified on grounds of urgency (the effect of the aforementioned Belgian measures could have been obviated in another way, by payments in convertible francs), and the fact that only Article 17 (2) (b) entitled the applicant to have transfers made in German marks, the only conclusion to be drawn is that Decision No 211/82 was in fact based on subparagraph (b) and that for that reason it did not contain an implied rejection of his complaint. Notwithstanding those arguments, it must be said that the facts I have stated above place it beyond doubt that Decision No 211/82 was actually based on Article 17 (2) (c). Similarly, it is certain — and here I agree with the Council — that whether Article 17 (2) (c) could have been applied in the applicant's favour is not significant for the purposes of determining the admissibility of an application based on Article 17 (2) (b). The only relevant point is that that provision was intended and that it was thereby made clear that an application of Article 17 (2) (b) could not be considered in the applicant's case.

Finally, it is also clear from this that the applicant cannot argue that his action is admissible on the basis of the judgment in Case 54/77¹ (the judgment states that

where the decision initially complained of has been amended the period for lodging an application is extended and begins to run only after a reasoned and definitive decision on the applicant's claim). In that case, which related to the withdrawal of an expatriation allowance, the original negative decision was subsequently amended by the grant of a differential allowance *ad personam* so that it was in fact possible to say that the decision to withdraw the expatriation allowance had been reconsidered. In this case, however, the facts are different because Decision No 211/82 did nothing to alter the refusal of the request based on Article 17 (2) (b) but instead confirmed it and confined itself by the same token to the adoption of another measure under Article 17 (2) (c), which was in turn rescinded by Decision No 629/82. In the light of that it is difficult to maintain that the time-limit for challenging the refusal of the request based on Article 17 (2) (b) should be calculated from the adoption of Decision No 629/82, which did not express a position on the applicant's actual request.

(c) Therefore the only conclusion to be drawn with regard to the question whether the applicant was entitled to have Article 17 (2) (b) of Annex VII to the Staff Regulations applied to him from 15 February 1982 is that his application of 21 September 1982 is out of time. For that reason the applicant's claim for the annulment of the rejection of his complaint of 9 February 1982, his claim for a declaratory judgment

¹ — Judgment of 9 March 1978 in Case 54/77 *Herpels v Commission*, (1978) ECR 585.

and his claim for damages in so far as it relates to compensation for the failure to apply Article 17 (2) (b) in his case in February and March 1982 must all be dismissed on grounds of inadmissibility.

Consequently, I do not think it necessary to examine yet another argument against the admissibility of the action, which turns on whether, as regards the applicability of Article 17 (2) (b), the applicant has an *interest in bringing proceedings*, because he was authorized by Decision No 629/82 to transfer 35% of his salary abroad and also made use of that facility under Article 17 (2) (b) from August 1982 pursuant to a building loan agreement with the BHW, and because transfers above that amount are prohibited by Article 3 of the rules for implementing Article 17.

2. The application is also, as the Court will recall, for the *annulment of Decision No 629/82*.

In that respect there are no objections of inadmissibility on grounds of time, since, as the applicant has stated without being challenged, that decision first reached him on 21 June 1982, and if the time-limit is calculated from that date and the extension on account of distance for Belgium added, the application was lodged in due time on 21 September 1982. However, there are two other arguments against the admissibility of the action, namely non-compliance with Article 91 (2) of the Staff Regulations (failure to lodge a *prior complaint*) and *absence of an interest in bringing proceedings*.

(a) With regard to the first point the applicant seeks to justify his position on two

grounds. In the first place he states that a further complaint was not necessary because Decision No 629/82 expressed the Council's definitive position on the application of Article 17 (2) (b) of Annex VII to the Staff Regulations and thereby confirmed the refusal on 29 January 1982 of the applicant's request for the application of that provision, against which he had already lodged a complaint. In the second place, he takes the view that if nevertheless a complaint is held to be necessary, it will be found in the above-mentioned memoranda which had been sent to the Secretary-General of the Council by a colleague of the applicant on 25 June 1982 and to the Director-General of the Legal Department by the applicant himself on 30 June 1982.

In my view neither of those arguments carries conviction.

(aa) It is clear from the content of Decision No 629/82 that no view is expressed on the application of Article 17 (2) (b) of Annex VII to the Staff Regulations or on the complaint of 9 February 1982. Apart from authorizing the transfers, it confines itself to rescinding Decision No 211/82, which, however, had been adopted on the basis of Article 17 (2) (c). Clearly, therefore, it cannot be maintained that Decision No 629/82 constitutes a final rejection of the applicant's request based on Article 17 (2) (b).

(bb) The attempt to describe the above-mentioned memoranda as complaints must fail if only because they are *not designated as such*. It is true that no special requirements as to form are laid down by Article 90 of the Staff Regulations (as may, for instance, be seen from the judgment in Case 54/77,

cited above). In this case, however, it should not be overlooked that the applicant is a qualified lawyer. He may therefore be expected to designate his correspondence with the administration correctly, as indeed he clearly did in the complaint lodged on 9 February 1982.

In addition it is significant that, strictly speaking, those memoranda do not relate to the *content* of Decision No 629/82, so that they cannot be regarded as complaints against that decision. The same applies unequivocally to the memorandum from the applicant's colleague. It states in essence that the applicant's obligations in German marks are covered by Article 17 (2) (b) of Annex VII to the Staff Regulations, and goes on to request that a 'réponse complète' [comprehensive reply] be given to the applicant's claims based on that provision. It does not, however, contain any specific criticism of the position adopted in Decision No 629/82 (withdrawal of the authorization of transfers under Article 17 (2) (c)). The same clearly applies to the applicant's memorandum. It, too, states in essence that because he has obligations in German marks the conditions of Article 17 (2) (b) are fulfilled, adding that his request and the ensuing complaint under that provision never received a satisfactory reply (but that, as has already been said, was not the subject of Decision No 629/82). If nevertheless it is maintained — without any further evidence — that Decision No 629/82 contains a contradictory statement of reasons and frustrates the applicant's legitimate expectations, then it would be right to ask whether such statements, together with the request to reconsider the decision, satisfy the criteria for a complaint.

(b) Furthermore, it seems to me that there is merit in the Council's argument regarding the applicant's *interest in bringing proceedings* in connection with Decision No 629/82.

Here again it should be borne in mind that that decision also granted the applicant an authorization (clearly based on Article 17 (2) (b) of Annex VII to the Staff Regulations and Article 2 of the rules for implementing Article 17) to have 35% of his salary transferred, and that the applicant availed himself of that facility in connection with a building loan agreement concluded with the BHW. It is also relevant that under Article 3 of those rules regular transfers out of salaries may not exceed 35%. If the decision were to be annulled solely in respect of the rescission of Decision No 211/82, that would revive the authorization of transfers of DM 2 000 for at most one year. However, that could not be put into practice for the simple reason that the applicant has availed himself of the authorization to make transfers contained in Decision No 629/82 and has thereby exhausted his legal rights. Therefore it is impossible to see in point of fact what his interest might be in the annulment of Decision No 629/82 solely in so far as it rescinded Decision No 211/82. Above all it would surely be impossible for sums already transferred to the BHW to be retrospectively withdrawn in part and paid into an account with the bank with which the applicant has repayment obligations under a loan agreement (although it is clear that this part of the application is solely intended to ensure that if the application succeeds as a whole the applicant will be able to reduce the amount of his loan with the BHW *for the future* in order to be able

to meet his other loan commitments by means of transfers under Article 17 (2) (b)).

(c) Finally, the same reasoning makes it clear how the applicant's *claim for damages*, in so far as it relates to the period after July 1982, should be determined. Since Decision No 629/82 authorized the applicant to make transfers of a part of his salary up to the maximum amount permitted by Article 17 (2) (b), and since he has made use of that authorization, it is impossible to see in what way he may be adversely affected by the way in which his original request under Article 17 (2) (b) was dealt with. At all events he has not provided sufficient evidence that an authorization of transfers for bank loan repayments would place him in a better position than his savings contract with the BHW, and in particular he has not made it clear in what way the treatment of his various claims by the Council could constitute a *wrongful act or omission* by the administration, which is what he is required

to show in a claim for damages. Therefore his claim for damages must be held to be inadmissible, if only on the ground of insufficient evidence.

3. Accordingly, I can only conclude that the application as a whole fails to overcome the barrier of inadmissibility and that it should therefore be dismissed.

Because I consider that the conclusion which I have reached is ineluctable (although it cannot be denied that the Council's administration might have shown more clarity in its treatment of the applicant's case, particularly in its statements of the reasons on which Decisions Nos 211/82 and 629/82 were based), I do not propose to put forward an alternative opinion as to the substance at this stage. However, should the First Chamber not endorse my opinion as to the admissibility of the action, I am ready to examine the substance of the application if it should so request.

C. I propose accordingly that Mr Brautigam's application should be dismissed as inadmissible. Under Article 69 (2) of the Rules of Procedure, taken in conjunction with Article 70, the parties are required to bear their own costs. There are no grounds for awarding the entire costs against the applicant, as the defendant has requested.