

not to derogate from the system of contributing to the pension scheme but to prevent such officials from finding themselves financially in a less favourable position than if they had left the service before the entry into force of the measures on termination of service.

a result of the accession of Spain and Portugal as meaning that that provision made no derogation from the obligation to contribute to the pension scheme imposed on the recipient of an allowance granted in accordance with the provisions of Article 34 of the ECSC Staff Regulations.

Accordingly, the Court of First Instance was entitled to interpret Article 4(7) of Regulation No 3518/85 introducing special measures to terminate the service of officials of the European Communities as

2. If the grounds of a judgment of the Court of First Instance reveal an infringement of Community law but the operative part appears well founded on other legal grounds, the appeal must be dismissed.

REPORT FOR THE HEARING in Case C-30/91 P *

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I — Facts and procedure before the Court of First Instance

It is stated in the judgment of the Court of First Instance of 22 November 1990 in Case T-4/90 (*Lestelle v Commission* [1990] ECR II-689) that:

'1. The applicant who was born on 9 October 1925 entered the service of the European Coal and Steel Community (hereinafter "ECSC") on 1 June 1956 as an official.

2. By a memorandum of 30 June 1988 he requested the application of a measure termi-

nating his service under Council Regulation (ECSC, EEC, Euratom) No 3518/85 of 12 December 1985 introducing special measures to terminate the service of officials of the European Communities as a result of the accession of Spain and Portugal (OJ 1985 L 335, p. 56). His request was granted and his service was terminated on 1 November 1988. As from that date he received the monthly allowance provided for in Article 4 of Regulation No 3518/85, until 31 October 1990, the last day of the month during which he reached the age of 65 years. Thus, in respect of November and December 1988 an allowance equal to 70% of the basic salary for the grade and step which he held at the time of departure was paid to him in accordance with Article 4(1). The salary statements for those two months show

amongst other items a deduction in respect of the pension contribution.

3518/85, informed the Commission as follows:

3. By letter of 30 December 1988 the applicant informed the Commission's pensions department that in accordance with Article 5 of Regulation No 3518/85 he wished "to have the special provisions of the Staff Regulations of the European Coal and Steel Community applied to me, that is the payment of an allowance equal to 100% of my salary until October 1990, the day on which I shall reach the age of 65 years and fall within the terms of the ordinary retirement pension scheme". The amount of his allowance was corrected accordingly.

4. By a memorandum of 25 January 1989 the Head of the Pensions Department sent to the applicant a notice of the termination of his rights to the monthly allowance (hereinafter "payment notice"), namely "100% of the last basic salary from 1 November 1988 to 31 October 1990". That memorandum stated at paragraph C.5 that the applicant would "continue to contribute to the pension scheme of the European Communities for the period during which the right to the allowance is granted. The contribution is calculated on 100% of salary".

5. ...

6. ...

7. By letter of 22 March 1989, the applicant, relying on Article 4(7) of Regulation No

"I do not wish to increase my pension rights beyond the level at which they were established on 1 November 1988, the date on which my service terminated. Consequently I request you to cease my payments by way of contributions to the pension scheme and to carry out the appropriate rectifications".

8. ...

9. Since the Commission continued each month to deduct the pension contribution, the applicant, by memorandum of 24 April 1989 requested the Commission to regard the request contained in his letter of 22 March 1989 as a complaint within the meaning of Article 90 of the Staff Regulations of Officials of the European Communities (hereinafter "Staff Regulations").

10. By a decision of 24 October 1989, which was notified to the applicant in a letter of 30 October 1989, the Commission rejected that complaint on the ground, *inter alia*, that the "period during which the monthly allowance is paid is considered to be a period of service and gives rise to the payment of pension contributions".

In those circumstances Mr Lestelle brought an action on 29 January 1990 in which he claimed that the Court of First Instance should:

(1) declare the application admissible and well founded;

(2) consequently,

The defendant contended that the Court of First Instance should:

annul:

— dismiss the application as inadmissible and, in any event, as unfounded;

— the decision to continue, after 22 March 1989, to deduct pension contributions from the termination of service allowance which he receives pursuant to Council Regulation No 3518/85 of 12 December 1985;

— make an appropriate order as to costs.

In support of his application, Mr Lestelle pleaded an infringement of Article 4(7) of the abovementioned Regulation No 3518/85, and an alleged error of fact on the part of the administration.

As regards the *first plea in law*, the Court of First Instance stated that:

'32. In support of the first plea in law the applicant contends that by stating in the first sentence "provided that the contribution ... is paid", Article 4(7) of Regulation No 3518/85 unequivocally establishes the optional nature of the contribution. He also refers in that connection to the other language versions of that provision.

33. ...

34. ...

35. ...

36. ...

hold:

that under Article 4(7) of the aforementioned Regulation No 3518/85 the payment of contributions to the pension scheme constitutes an option and not an obligation as regards former officials to whom that regulation applies;

(3) order the defendant to pay the costs, including the costs necessarily incurred for the purposes of the procedure and in particular the costs of an address for service, travelling expenses, subsistence and lawyers' fees.

37. In order to interpret the proviso at issue, and thus to assess whether the pension contribution is optional or compulsory, it should be remembered that during the relevant period the applicant, at his express request and in accordance with Article 5(1) of Regulation No 3518/85, received the allowance provided for in Article 34 of the ECSC Staff Regulations which may be claimed by officials having non-active status. Under Article 95 of the Rules and Regulations of the ECSC, an official in receipt of the allowance provided for in Article 34 of the ECSC Staff Regulations is to continue to make contributions to the pension scheme.

38. Article 4(7) of Regulation No 3518/85 does not envisage any derogation from the obligation to pay contributions to the pension scheme incumbent on the recipient of an allowance under Article 34 of the ECSC Staff Regulations. Whilst reaffirming the continuation of the obligation to pay contributions during the period in which the allowance is paid, the provision seeks to give to the recipient of the allowance the assurance that the payment of the contribution is such as to secure for him new pension rights, so long as he has not yet completed the number of years of pensionable service conferring entitlement to the maximum amount of retirement pension provided for in Article 77 of the Staff Regulations. Although it is true, therefore, that the provisions of Article 4(7) of Regulation No 3518/85 are without relevance and cannot be invoked by the recipient of an allowance under Article 34 of the ECSC Staff Regulations who fulfils the conditions for the maximum pension entitlement, the person concerned nevertheless remains subject to the general obligation to make contributions imposed on him by Article 95 of the Rules and Regulations of the ECSC.

39. That interpretation is corroborated by the fact that the provisions of Article 4(7) and Article 5(1) of Regulation No 3518/85 are analogous, on the one hand, to the provisions of Article 5(7) and Article 7(1) of Regulation No 259/68 instituting special measures temporarily applicable to officials of the Commission, adopted by the Council on 29 February 1968 (OJ, English Special Edition 1968 (I), p. 30), and, on the other hand, to the provisions of Article 3(7) and Article 5(1) of Regulation (Euratom, ECSC, EEC) No 2530/72 introducing special and temporary measures applicable to the recruitment of officials of the European Communities in consequence of the accession of new Member States, and for the termination of service of officials of those Communities, adopted by the Council on 4 December 1972 (OJ, English Special Edition 1972, 1 — 8 December, p. 11). During the period of application of those regulations no official of the Communities could yet have completed the number of years of pensionable service conferring entitlement to the maximum amount of the retirement pension; it follows that the optional nature of the contribution in such a case could not have a reason at that time, either in fact or, consequently, in law.

40. It follows from all the foregoing considerations that in the present case the payment of contributions to the pension scheme was an obligation for the applicant. The first plea in law must therefore be rejected.'

On the *second plea*, the Court of First Instance stated that:

'41. In support of this plea the applicant contends that the administration erred in stating that on 1 November 1988 the

applicant had not acquired the maximum pension rights possible for him. (...) On the date of termination of his service, 31 October 1988, the applicant had completed the maximum number of reckonable years for the award of the retirement pension.

By an order of 4 June 1991, the Court granted the Union syndicale — Luxembourg leave to intervene in support of Mr Lestelle's conclusions.

Mr Lestelle claims that the Court should:

42. ...

— set aside the judgement appealed against in its entirety and, making good the omission of the Court of First Instance;

43. Pension scheme contributions are compulsory in all cases, even where the official in question has completed the number of years of pensionable service prescribed by Article 77 of the Staff Regulations for entitlement to the maximum amount of the retirement pension.

— annul the decision to continue, after 22 March 1989, to deduct pension contributions from the termination of service allowance which he receives pursuant to Council Regulation No 3518/85;

44. Accordingly, the fact that the Director of Personnel and Administration erred in the reasons he gave in his reply to the applicant's complaint is irrelevant, since the rejection decision was in any event justified. The second plea in law should therefore also be rejected.'

— in any event, order the defendant to pay the costs of the two sets of proceedings.

The Commission contends that the Court should:

II — Object and grounds of appeal

— dismiss the appeal as unfounded;

By a document lodged at the Court Registry on 26 January 1991, Jean Lestelle appealed against the abovementioned judgment of the Court of First Instance, which was notified to the applicant on 26 November 1990, on the ground that the judgment was given in breach of Community law.

— in the alternative, if the judgment appealed against is set aside, itself give final judgment in the case by rejecting the claims put forward by the applicant at

first instance, on the basis of the defendant's earlier pleadings and of the observations now submitted;

remuneration provided for in Article 47(1) and for a further two years an allowance equal to one-half of that remuneration.

— make an appropriate order as to costs.

III — Principal statutory provisions cited in the judgment of the Court of First Instance or in the appeal

A — *The ECSC Staff Regulations*

Article 34 of the Staff Regulations of the ECSC of July 1956 (not published), hereinafter 'the ECSC Staff Regulations' provided as follows:

'An official shall have non-active status where for a period limited to 4 years he ceases to perform any functions or to enjoy rights to salary, allowances and advancement, but continues to acquire fresh pension rights on the basis of the salary relating to his grade and step in his institution.

The following officials shall be placed on non-active status:

Officials whose employment is terminated, when the requirements of the service dictate staff reductions involving the abolition of posts. (...)

Those officials shall receive for two years a monthly allowance corresponding to the

On the expiry of four years on non-active status, officials shall receive a proportional pension under the conditions laid down in the pensions scheme.'

Article 47(1) referred to the 'Rules and Regulations of the Community' for the purpose of determining the salary corresponding to each grade and step and family allowances.

The ECSC Staff Regulations were repealed with effect from 1 January 1962 by the regulation adopted by the Committee of Presidents of the ECSC laying down the Staff Regulations of ECSC officials (not published).

B — *The ECSC Rules and Regulations*

Article 50 of the Rules and Regulations of the European Coal and Steel Community of July 1956 (not published), provided as follows:

'In calculating the retirement pension rights of an official permitted to retire following a period of non-active status under Article 34 of the Staff Regulations, the number of actual years service completed by that official until the time he is awarded a pension shall be doubled.

The total number of reckonable years' service for the calculation of such an official's pension may not however be greater than 30 or greater than the number of years service which he could have completed if he had remained in service until the age of 65.¹

Article 93 provided, *inter alia*, that all established officials of the European Coal and Steel Community, were to contribute 'to the accumulation of their pensions on the basis of 7.5% of their basic salary' and that the 'officials' contributions are to be deducted from their salary and paid each month into the pension fund (...)'.

Article 94 added that:

'All salaries are subject to the deduction mentioned in the preceding article.'

Finally, Article 95 provided that:

'Any official on non-active status and in receipt of the allowance provided for in Article 42 of the Staff Regulations shall continue to pay to the pension fund the deduction referred to in Article 93 above, calculated on the basis of the full salary corresponding to his step and grade (...)'

Like the ECSC Staff Regulations, the ECSC Rules and Regulations were repealed with effect from 1 January 1962.

C — *The Staff Regulations*

Article 77 of the Staff Regulations of Officials of the European Communities (hereinafter 'the Staff Regulations') provides in the version amended by Regulation (Euratom, ECSC, EEC) No 1473/72 of 16 July 1972 (OJ 1972 L 160, p. 1):

'An official who has completed at least 10 years service shall be entitled to a retirement pension (...). The maximum retirement pension shall be 70% of the final basic salary carried by the last grade in which the official was classified for at least one year. It shall be payable to an official who has completed 35 years' service reckoned in accordance with Article 3 of Annex VIII. Where the number of years of service is less than 35, the above maximum shall be reduced accordingly (...). The pensionable age shall be 60 years'.

D — *The first regulation on termination of service*

Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ, English Special Edition 1968 (I), p. 30, hereinafter 'the first

¹ — Unofficial translation.

regulation on termination of service'), provides in Article 4(1) thereof:

'Until 30 June 1968 the Commission is authorized, in the interests of the service and in order either to rationalize its administration or to meet requirements resulting from a reduction in the number of posts, to adopt measures terminating the service of officials, provided for in Article 47 of the Staff Regulations, in manner provided hereinafter'.

Article 5(1) provides that an official affected by any such measure is to be entitled for a limited period to an allowance until the day on which he reaches the age of 65.

Article 5(7) provides:

'During the period for which he is entitled to receive the grant the official shall, up to a maximum five years, continue to acquire further rights to retirement pension based on the salary attaching to his grade and step, provided that he pays the contributions provided for in the Staff Regulations during that period. (...)

For the purposes of Article 77 of the Staff Regulations an official receiving the allowance provided for in paragraph 1 shall be treated as an official removed from his post in the interest of the service. (...)

Article 7(1) stipulates, however, that ECSC officials 'to whom the measures provided for in Article 4(1) are applied, may request that their remuneration be determined in accordance with the provisions of Article 34 of the Staff Regulations of the European Coal and Steel Community and Article 50 of the Rules and Regulations of the European Coal and Steel Community.'

E — The second and third regulations on termination of service

On the accession of Denmark, Ireland and the United Kingdom, the Council adopted Regulation (Euratom, ECSC, EEC) No 2530/72 of 4 December 1972 introducing special and temporary measures applicable to the recruitment of the officials of the European Communities in consequence of the accession of new Member States, and for the termination of service of officials of those Communities (OJ, English Special Edition 1972 (1-8 December, p. 11), hereinafter 'the second regulation on termination of service').

Under Article 2(1) of that regulation, the institutions were authorized to adopt for certain of their officials measures terminating their service as provided for in Article 47 of the Staff Regulations.

Article 3(1) provided that an official affected by such a measure was to be entitled to an allowance for a limited period expiring not later than the day on which he reached the age of 65.

Paragraph 7 of that article adds that:

F — *The fourth regulation on termination of service*

'During the period for which he is entitled to receive the allowance the official shall continue to acquire further rights to retirement pension based on the salary attaching to his grade and step, provided that he pays the contributions provided for in the Staff Regulations during that period and provided that the total pension does not exceed the maximum amount laid down in Article 77, second subparagraph of the Staff Regulations. (...)

For the purposes of Article 77 of the Staff Regulations an official receiving the allowance provided for in paragraph 1 shall be treated as an official removed from his post in the interests of the service. (...)

Finally, Article 5(1) contains a provision analogous to that in Article 7(1) of the first regulation on termination of service.

Moreover, on the accession of Greece, the Council adopted a third regulation on termination of service, namely Regulation (ECSC, EEC, Euratom) No 2150/82 of 28 July 1982 introducing special and temporary measures to terminate the service of officials of the European Communities as a result of the accession of the Hellenic Republic (OJ 1982 C 228, p. 1).

On the accession of Spain and Portugal, the Council adopted Regulation (ECSC, EEC, Euratom) No 3518/85 of 12 December 1985 introducing special measures to terminate the service of officials of the European Communities as a result of the accession of Spain and Portugal (OJ 1983 L 335, p. 56), hereinafter 'the fourth regulation on termination of service'.

Pursuant to Article 1 of the fourth regulation on termination of service, the institutions were authorized until 31 December 1990 to adopt measures terminating the service of officials who had reached the age of 55.

Article 4 thereof provides that:

'1. A former official affected by the measure provided for in Article 1 shall be entitled to a monthly allowance equal to 70% of the basic salary for the grade and step held at the time of departure, determined by reference to the table set out in Article 66 of the Staff Regulations in force on the first day in the month for which the allowance is payable.

2. Entitlement to the allowance shall cease not later than the last day of the month in which the former official attains the age of 65 and in any event as soon as the former official is eligible for the maximum retirement pension.

At that point the former official shall automatically receive a retirement pension, which shall take effect on the first day of the calendar month following the month in which the allowance was paid for the last time.

(...)

7. During the period for which he is entitled to receive the allowance, the former official shall continue to acquire further rights to retirement pension based on the salary attaching to his grade and step, provided that the contribution provided for in the Staff Regulations by reference to that salary is paid during that period ... (...)'

Article 5 provides that:

'1. Officials referred to in the last paragraph of Article 2 of Council Regulation (EEC, Euratom, ECSC) No 259/68 and in Article 102(5) of the Staff Regulations, with the exception of those who occupied an established post in grades A 1 or A 2 under the Staff Regulations of the European Coal and Steel Community before 1 January 1962 and to whom the measures under Article 1 are applied, shall be entitled to ask for their pecuniary claims to be settled in accordance with Article 34 of the Staff Regulations of the European Coal and Steel Community and Article 50 of the Rules and Regulations of the European Coal and Steel Community.

2. Nevertheless, Article 4(3) and (5) to (9) of this regulation shall continue to apply to the officials referred to in this article and their entitled beneficiaries.'

IV — Summary of the pleas and arguments of the parties

In support of his appeal, Mr Lestelle pleads an infringement of Article 4(7) of the fourth regulation on termination of service and an infringement of the principle that judgments should contain a statement of the reasons on which they are based.

A — Infringement of Article 4(7) of the fourth regulation on termination of service

According to Mr Lestelle, that provision was infringed by the Court of First Instance in paragraph 38 of its judgment.

The allegation is as follows:

first, the Court of First Instance, it is claimed, based its decision on the ECSC Staff Regulations which are no longer in force;

secondly, the Court of First Instance did not take into consideration the fact that the fourth regulation on termination of service temporarily provided for arrangements derogating from the ordinary rules of law;

thirdly, the Court of First Instance was wrong to reason by analogy in comparing the fourth regulation on termination of service with the earlier regulations.

1. *The maintenance of the ECSC arrangements*

(a) Principal claim

Mr Lestelle recalls that in paragraph 38 of the judgment the Court of First Instance bases its decision on the ground that 'the recipient of an allowance under Article 34 of the ECSC Staff Regulations ... nevertheless remains subject to the general obligation to make contributions imposed on him by Article 95 of the Rules and Regulations of the ECSC'.

Mr Lestelle points out that the ECSC Staff Regulations and the Rules and Regulations of the ECSC were repealed by the first regulation on termination of service.

In his view, when Article 5 of the fourth regulation on termination of service refers to Article 34 of the ECSC Staff Regulations and to Article 50 of the Rules and Regulations of the ECSC, it is merely seeking to confer on former ECSC officials pecuniary rights analogous to those which they could have obtained within the context of the ECSC Staff Regulations, if they had been placed on non-active status. Its purpose was not to bring those provisions back into force.

Consequently, by placing reliance on Article 95 of the Rules and Regulations of the ECSC, the Court of First Instance based its decision on a provision which is no longer applicable.

The *Commission* acknowledges that the reference made by Article 5 of the fourth regulation on termination of service to the former Article 34 of the ECSC Staff Regulations is intended to preserve for the benefit of former ECSC officials pecuniary rights identical to those obtainable under the previous arrangements on non-active status. However, it adds that that Article 5 must be interpreted as a reference to the totality of the rights conferred by the former Article 34. Those rights cannot be determined without reference to the charges imposed on them, such as the pension deduction.

Were Mr Lestelle's view to be accepted, the result would be that former ECSC officials having requested termination of service would be granted higher amounts (because of exemption from the pension contribution) than those granted under the earlier provisions to their colleagues who prior to 1962 had been able to benefit from a non-active status allowance.

(b) *The alternative claim*

Mr Lestelle goes on to argue that owing to the absurd consequences which would ensue, the fourth regulation on termination of service could not have brought back into force the old ECSC arrangements.

In that connection he claims that on the assumption that Article 95 of the Rules and Regulations of the ECSC is still applicable, there is no reason why the other provisions of the ECSC Staff Regulations and the ECSC Rules and Regulations should not likewise be applicable.

Those provisions include Article 50 of the Rules and Regulations of the ECSC which provides that the number of years of actual service for calculating the retirement pension rights of an ECSC official are to be doubled provided, however, that the total number of reckonable years is not greater than 30.

If that provision were still in force, the inference to be drawn from it would be that, at the time when the fourth regulation on termination of service was adopted, all former ECSC officials were entitled to lay claim to maximum pension entitlement. In fact, more than 17 years separate the repeal of the ECSC arrangements on 5 March 1968 and the entry into force of the fourth regulation on termination of service. As a result of the doubling of the number of years of actual service, the ceiling of 30 years would therefore be exceeded.

However, Article 5(2) of the fourth regulation on termination of service, which refers specifically to Article 4(7) thereof, gives ECSC officials the possibility of continuing to acquire further rights to retirement pension provided that contributions are paid.

That article would, then, cease to serve any purpose, if this hypothesis were true, and the Community legislature could not have adopted such a meaningless provision.

The *Commission's* response first of all is that personally Mr Lestelle has no reason to request the application of Article 50 of the Rules and Regulations of the ECSC. He has

completed 36 years 9 months and 12 days of service, which therefore exceeds the maximum of 35 years capable of being taken into consideration for pension purposes under the Staff Regulations. The Court of First Instance was, then, right to hold that the provisions of Article 4(7) of the fourth regulation on termination of service were irrelevant in such a case.

It is nonetheless true that that provision is by no means absurd. Not all ECSC officials can necessarily show evidence of completion of the maximum number of years. That is the case, for example, of those who have spent long periods on leave for personal reasons or on secondment at their request or of those who, having resigned, have been reappointed.

Consequently, by providing in Article 5(2) of the fourth regulation on termination of service that in respect of former ECSC officials requesting termination of service Article 4(7) was to remain applicable, the Community legislature did not 'enact an absurd provision which cannot be applied'.

2. *Arrangements derogating from ordinary law*

Mr Lestelle goes on to argue that by basing its reasoning on Article 34 of the ECSC Staff Regulations, the Court of First Instance applied to him a provision which was unrelated to his situation.

In fact, that provision refers only to non-active status, that is to say the situation of an official who for a period of four years temporarily ceases to perform his duties, whilst nevertheless retaining the right to be reinstated.

In contradistinction, the fourth regulation on termination of service has an entirely different objective since it concerns the definitive termination of service.

The *Commission* replies that the previous arrangements concerning non-active status provided for in Article 34 of the ECSC Staff Regulations were brought into force again by the fourth regulation on termination of service only with regard to pecuniary rights. The allowance to which a former ECSC official is entitled under that regulation is exactly the same as the one which would have been paid to him in the event of his being placed on non-active status, if the former ECSC Staff Regulations had continued in existence. In the latter case, however, the allowance would have been subject to pension deductions.

Moreover, Article 5(1) of the fourth regulation on termination of service corresponds to Article 7(1) of the second regulation thereon. In regard to the latter provision, the Court has already stated in its judgment in Case 28/74 (*Gillet v Commission* [1975] ECR 463) that it is intended 'to prevent the official from finding himself financially in a less favourable position than he would have been in if he had left the service before the new system had entered into force ...'. The provisions on termination of service are thus intended to preserve rights acquired under

the ECSC arrangements. They cannot therefore be interpreted as seeking to confer greater rights on former ECSC officials, by deciding that it is inappropriate to make a deduction in respect of the pension contribution from their termination of service allowance, whereas under the old arrangements concerning non-active status such a deduction was made under Article 95 of the Rules and Regulations of the ECSC.

3. *Comparison with the earlier regulations*

Mr Lestelle goes on to argue that the Court of First Instance was wrong to interpret the fourth regulation on termination of service in the light of the first and second regulations thereon.

There is no provision in those two regulations enabling former ECSC officials who opted for arrangements under Article 34 of the ECSC Staff Regulations and Article 50 of the Rules and Regulations of the ECSC to acquire fresh pension rights during their termination of service, by means of contributions deducted from their allowance. The fourth regulation which does expressly provide for this possibility creates a different legal situation.

The *Commission* disputes that interpretation of the first two regulations on termination of service. In its view, the acquisition of additional pension rights was entirely possible within the legal framework established by

those regulations. They referred to all the pecuniary rights mentioned in Article 34 of the ECSC Staff Regulations. Included amongst them was the right to acquire additional pensionable years as a result of contributions.

B — Infringement of the principle that judgments must be supported by a statement of reasons

The second plea takes issue, like the first, with paragraph 38 of the judgment.

According to *Mr Lestelle*, that paragraph does not contain a satisfactory response to the arguments put forward by him, in either the written procedure or the oral procedure. In those procedures he gave an interpretation of the expression 'provided that' appearing in Article 4(7) of the fourth regulation on termination of service, which was the interpretation 'usually given by the Community legislature', in particular in Article 4(6) of that regulation and in the first two subparagraphs of Article 1(1) of the Staff Regula-

tions. In rejecting that interpretation, the Court of First Instance did not specify what meaning was to be given to the phrase in question. The judgment did not therefore contain an adequate statement of reasons, as required by Article 33 of the EEC Statute of the Court of Justice.

As far as the *Commission* is concerned, the Court of First Instance explained in full the meaning to be given to the phrase in question, particularly at paragraphs 38 and 43 of the judgment where it interpreted it as meaning that the contribution is obligatory and not optional, as *Mr Lestelle* maintained. A more detailed statement of reasons was not necessary because the Court of First Instance considered, on the one hand, that Article 4(7) was not applicable to *Mr Lestelle's* case and, on the other, that the deduction was in any event obligatory under Article 95 of the ECSC Staff Regulations.

R. Joliet
Judge-Rapporteur