OPINION OF MR ADVOCATE-GENERAL REISCHL DELIVERED ON 24 NOVEMBER 1977 [1]

Mr President,
Members of the Court,

The case on which I shall today give my opinion concerns the calculation of the pension rights of a former official of the Commission and in particular the question of the extent to which those rights must be reduced in view of the fact that certain amounts were withdrawn from the applicant's account with the temporary joint provident scheme, which scheme formed the subject-matter of Staff Memorandum No 16 of the Commission of 19 June 1958.

The applicant entered the service of the Commission in 1958 and from November 1962 he was a director at grade A 2. He resigned his position as an official with effect from 1 October 1969: in so doing he exercised his right to opt for a severance grant instead of future pension rights. Subsequently, on the basis of proceedings which no longer concern us — I have described them in my opinion in Case 133/73 *(Bruns* v *Commission,* Orders of 7 December 1973 and 28 March 1975, [1975] ECR 627) — he stated that he had by then decided to opt for pension rights instead of the severance grant and that he would repay the latter to the Commission. In October 1972, since the applicant had encountered difficulties, he formally requested in addition that the Commission should adopt a decision to the effect that he was entitled to a pension and was required to repay the severance grant. In February 1973, after the repayment had been affected, apparently at the end of 1972, he submitted a complaint in the same terms. In reply to this a Member of the Commission stated to him in March 1973 that the severance grant had been properly paid to him and that the applicant was not entitled to a pension. This led the applicant in May 1973 to submit an application to the Court of Justice for the annulment of the decision of March 1973 and for a finding that he was entitled to a pension and that the payments which he had received in lieu of pension were to be repaid. In those proceedings, Case 133/73, the Commission submitted an objection of inadmissibility. I gave my views on that point in my opinion of 5 December 1973, wherein I considered that the application could not be considered inadmissible.

As a sequel to this the parties embarked upon negotiations which, after some considerable time, produced a positive result. Towards the beginning of 1975 it was agreed that the Commission should recognize the applicant's pension rights and that the applicant should repay the severance grant together with interest in the currency in which he had received it. Those proceedings were thereby concluded without a judgment.

Nevertheless, the dispute between the parties was not entirely ended.

In order to explain this regrettable circumstance I should like to return to the aforementioned Staff Memorandum No 16 of 1958 concerning social security and pensions. In that memorandum it was provided that for each servant there was to be established an account which would hold the payments made for his benefit, together with the annual compound interest. It was further provided that payments could be made from the account for maintaining pension rights in the servant's country of origin. The applicant had exercised the

1 — Translated from the German.

lastmentioned right, although he had not completely exhausted his account. Accordingly, on the entry into force of the Staff Regulations of Officials on 1 January 1962, when the remaining credit balances were transferred to the budget from which pensions were thenceforth to be paid, a residue of contributions paid together with a quantity of interest remained in the applicant's account.

As has already been said, how this is to be applied in the calculation of the pension is a matter of dispute. This point is governed by the first paragraph of Article 49 of Annex VIII to the Staff Regulations of Officials which reads:

'Where an official has exercised his option to withdraw from his account with the temporary joint provident scheme of the institutions of the Communities sums which he was required to contribute in his country of origin in order to maintain his pension rights there, his pension rights shall, in respect of the period when he was a member of the temporary provident scheme, be reduced in proportion to the sums withdrawn from his account.'

The administration of the Commission took that provision to mean that interest on the said account should not be taken into consideration. On the other hand, the applicant believes that everything remaining in the account on 31 December 1961 is to be taken into consideration. According to the method of calculation adopted, the basic monthly pension varies between an amount calculated by the applicant at FB 1 121 and by the Commission at FB 668.

The Commission's agent in Case 133/73 notified the relevant calculation to the applicant for the first time in connexion with the said negotiations in a letter of 1 April 1974. On 17 April 1974 the applicant formulated his views in response to a corresponding request, stating that he contested the view of the administration and maintained that the amount of the pension must be calculated on the basis of the credit balance on his account together with interest. By a letter of 7 March 1975 the applicant requested that the provisional calculation of his pension rights be checked from the point of view of the proportional reduction and that account be taken of his credit balance on 31 December 1961. Since, as it appears, the agent who had acted in Case 133/73 was then ill, an official in the Commission's Legal Department replied by a letter of 12 March 1975 to the effect that he would discuss the matter with the administration and notify the applicant of the outcome. It was also emphasized in that letter that settlement of the pension rights as from 1 January 1975 was conditional upon the formal approval by the Commission of the settlement.

A notice of assessment signed by a head of division was then issued on 18 April 1975 in which, as its annexes show, account had once again not been taken of the interest on the credit balance in effecting the reduction pursuant to Article 49 of Annex VIII to the Staff Regulations of Officials. The notice contained a rider at the end to the effect that it was issued 'subject to the condition that the settlement is formally approved by the Commission'. On 10 June 1976 the agent of the Commission wrote notifying the applicant that a decision formally recognizing his pension rights had not yet been adopted but that it would be adopted within the next few days. In a final comment on the question of the reduction it was stated that the administration of the Commission would communicate direct with Mr Bruns.

On 20 June 1975 a decision was taken, signed by a head of division for the Director of Personnel, which recognized the pension rights of the applicant, without further details, with effect from 1 January 1975. That decision was notified to the applicant by a letter from the

agent of the Commission dated 26 June 1975. It was further stated in that letter that the matter was thereby 'finally concluded'. On 7 July 1975 the applicant submitted a further complaint since he considered that the decision of 19 March 1973, which had been contested in Case 133/73, should also be annulled. The agent for the Commission replied to this in a letter of 17 July 1975 to the effect that the decision of the Commission of 19 March 1973 had become devoid of object.

The applicant, who clearly considered that the matter of the calculation of his pension rights had not yet been completely settled, wrote to the Commission again on 21 August 1975. Since the applicant considered that the reduction which had been effected was incorrect, he requested in his letter that the calculation of his pension contained in the notice of 18 April 1975 should be reviewed and stated that the letter was to be regarded, if the circumstances so required, as a request to take a decision relating to him within the meaning of Article 90 (1) of the Staff Regulations. When this produced no result, he sent reminders on 18 December 1975 and 2 February 1976 and then on 15 March 1976 he submitted a formal complaint to the Commission to the same effect. Following a reminder of 15 June 1976 the applicant finally learned, by way of a letter from the Commission of 9 August 1976 confirming the implied rejection of the complaint contained in the applicant's letter of 21 August 1975, that the Commission could not comply with his demand.

This led to the institution of the present proceedings on 30 September 1976. The applicant thereby wishes to obtain a ruling in favour of his view regarding the reduction of his pension rights pursuant to Article 49 of Annex VIII to the Staff Regulations of Officials. In addition he claimed that the decision of 9 August 1976 should be annulled. The application further contains the request that the Commission should be ordered to take into consideration in calculating the applicant's retirement pension rights for the period when he was a member of the temporary joint provident scheme of the Communities the amount credited to his account with that scheme at the time when the Staff Regulations entered into force. In the alternative, and in view of the submissions of the Commission, the wording of this latter request was amended to the effect that the Court of Justice should rule that for the purpose of calculating the applicant's pension rights for the period when he was a member of the temporary joint provident scheme of the Communities, consideration must be taken of the amount credited to this account under that scheme at the time when the Staff Regulations entered into force.

The Commission considers in the first place that the application is inadmissible because it was submitted out of time. The Commission accordingly submitted an initial application pursuant to Article 91 of the Rules of Procedure, which the Chamber did not, however, immediately settle (cf. Order of 19 January 1977). With regard to the substance of the case the Commission considers that only the interpretation which it has placed upon Article 49 of Annex VIII to the Staff Regulations is acceptable and that accordingly there is no occasion to declare that its calculation is incorrect and to make provision for a different reduction.

My views on this point are as follows:

I — The admissibility of the application

The Commission bases the justification for its view that the application is inadmissible on the fact that the calculation of the applicant's pension rights was effected in the notice of assessment of 18 April 1975 pursuant to a specific formula for reduction. Although the Commission had to

concede that the notice had been made conditional upon the approval by the Commission of the settlement, it was clear, first, that, since the subject-matter of the settlement coincided with the subject-matter of Case 133/73, namely the recognition in principle of the pension rights, that condition did not relate to the detailed calculation of the pension claim; secondly, the decision of 20 June 1975 constituted the enactment of a final measure with regard to the settlement. That means that the notice of assessment and its calculations have at the same time become final; in the Commission's view, the applicant himself has recognized this, since he stated in his letter of 21 August 1975 that the notice of assessment became final through the decision of 20 June 1975; that is, the decisive time-limit therefore ran from the date of notification of the decision of 20 June 1975. If the letter of 21 August 1975 is regarded as a complaint, and this view is supported by the fact that the letter concerns the review of the calculation of the rate of pension, then it was submitted within the time-limit. Since that complaint produced no response it must be accepted that after four months, that is on 21 December 1975, an implied decision of rejection had occurred. There was thereafter a period of three months for lodging an application. However, since the application was submitted on 30 September 1976 the applicant failed to observe that time-limit, a situation which is not affected by the express decision of the Commission of 9 August 1976 and the proceedings to contest that decision, in that the latter was merely an express confirmatory measure which, moreover, was not enacted within the time-limits, as is required under Article 91 of the Staff Regulations of Officials. There seems to be no justification whatever for what is plainly the applicant's real intention, namely to respond first of all to a contestable decision with a request pursuant to Article 90 of the Staff Regulations of Officials, for which there is no time-limit, and following an implied decision rejecting it to continue the procedure further. In the Commission's view, such manipulation of time-limits, which are moreover more generously calculated under the Staff Regulations than under Article 173 of the EEC Treaty, is open to the objection that a decision regarding a request of this nature, as has been established on a number of occasions in cases before the Court, is no more than a confirmatory measure, which does not cause new time-limits to run.

On the other hand, the applicant points out in particular that the settlement required the approval of a Member of the Commission. This requirement arose because the decision which was contested in Case 133/73 was also signed by a Member of the Commission and because this was moreover provided for in the letter of 1 April 1974. Nevertheless such approval, to which the condition contained in the letter of 18 April 1975 also relates, has never been forthcoming. The decision of 20 June 1975 was in fact signed only by a head of division and indeed only recognizes the pension rights in principle, not the detailed calculation thereof. Likewise, it is incorrect to say that the detailed calculation, and in particular the question of the reduction, were not considered in the negotiations concerning the settlement. This is shown by the fact that the applicant was requested in a letter of 1 April 1974 to indicate his views on the calculation of his pension payments, which he did in a letter of 17 April 1974. Moreover, in the letter of 12 March 1975 in response to his reminder of 7 March 1975 it was stated that the question of the reduction was to be discussed with the administration of the Commission; further, the agent of the Commission also assured him in a letter of 10 June 1975 that the administration would communicate with him direct on this matter. In fact this did not take place. However, if the administration had

considered that *everything* had been concluded by the decision of 20 June 1975 it could easily have stated this clearly in the form of a covering letter. In view of these facts the applicant believes that he was entitled to consider that the matter of the reduction of his pension rights had not yet been finally settled and that accordingly he might initially submit a request to the appointing authority and that he was required to proceed by complaint and application only after that request had been refused. If this view were not accepted, reference could in any case be made to Article 41 of Annex VIII to the Staff Regulations of Officials, in accordance with which the amount of pension may at any time be calculated afresh if there has been error or omission of any kind. Properly understood, that provision is also applicable to cases of erroneous application of the law and requires amendment to be made regardless of previous measures and the time-limits which have begun to run in connexion with such measures.

In examining this issue I shall first of all consider the lastmentioned provision since, if the applicant's view which I have expounded proves to be correct, the question of the observance of the time-limit after the adoption of the decision of 20 June 1975 is clearly bereft of importance.

Two questions concerning Article 41 of Annex VIII arise, corresponding to the objections of the Commission:

1. Does the concept of 'error [of calculation]' also include erroneous interpretation of the Staff Regulations?
2. Does the provision merely empower the administration to make a rectification, without conferring upon the official in question a corresponding right of action in connexion with decisions which have already become final?

In connexion with the first question I take the view it is arguable that Article 41 is applicable to errors of law since that article is concerned very generally with errors or omissions in calculation *of any kind.*

On the other hand, I concur with the view of the Commission on the second question. The wording of the provision in fact indicates that it is merely intended to enable the administration to act. Since under the Staff Regulations the principle prevails that the person concerned has only a limited period within which to contest acts adversely affecting him the wording of Article 41 of Annex VIII would have had to be quite different if, by that article, it had been intended that the person concerned may contest at any time, without regard to time-limits, the correctness of decisions as to his pension which are addressed to him. Article 41 of Annex VIII would thus be of no assistance whatsoever to the applicant if in the present case the relevant time-limits had in fact already expired.

With regard now to the applicant's response to the decisions concerning him which, it is alleged, was out of time, and in particular with regard to the notice of 18 April 1975, which the Commission considers to be decisive and which speaks of the formal approval by the Commission of the settlement, it must be established from the outset that the settlement within the framework of Case 133/73 did not concern the detailed calculation of the pension, but only the recognition in principle that the applicant was entitled to a pension in place of a severance grant. The situation is not altered by the fact that the detailed calculation of the pension was also discussed in the context of the negotiations on the settlement, since both the draft settlement, which was submitted to the applicant with the letter of 1 April 1974, and the letter from the Commission of 12 March 1975, in which reference is made in connexion with the question of the reduction to a 'new problem', establish clearly that the

detailed calculation of the pension claim constituted a specific problem outside the scope of the settlement. When reference was made to approval of the settlement by the Commission it did not concern the calculation of the pension rights.

Furthermore, the said approval has never formally been granted. It may thus at the most be asked whether it is sufficient that other facts have made it clear that the condition contained in the letter of 18 April 1975 has become devoid of object. In this connexion reference may be made to the letter sent on 26 June 1975 with the decision of 20 June 1975. That letter relates to a decision of the Commission which might be considered as evidence that it is the measure to which the said condition relates, and furthermore it indeed relates to a final settlement of the matter. In this respect it may also be considered relevant that in response to the doubts expressed by the applicant on 7 July 1975 it was explained in a letter of 17 July 1975 that the decision of 19 March 1973, which was at issue in Case 133/73, had become devoid of object.

None the less I hesitate to accept that there was also a final decision with regard to the detailed calculation, chiefly because of the letter from the Commission's agent of 10 June 1975, which has frequently been referred to in the procedure. In that letter it was expressly stated with regard to the problem of the reduction of the pension rights pursuant to Article 49 of Annex VIII to the Staff Regulations of Officials that the administration would communicate with the applicant direct, and this in conjunction with the statement that a formal decision had not yet been taken recognizing the applicant's pension rights. That special communication has never taken place. On the other hand, if the administration really considered that the decision of 20 June 1975 had settled the problem of the reduction it would have been easy for it to notify this clearly to the applicant, either in the letter of 26 June 1975 or that of 17 July 1975. At this point the question of the finality of the decision concerning the reduction remained unnecessarily and vexatiously obscure, and that is certainly the fault of the Commission. Nevertheless, in view of this state of affairs the applicant was entitled to understand that the notice of 18 April 1975 had not yet become final in the summer of 1975 and that there was consequently no reason for him at that point to submit a formal complaint. Instead, in order to expedite matters, a formal request seemed appropriate, like that which the applicant in fact submitted to the Commission on 21 August 1975.

Calculating from that date the applicant has indeed complied with all the appropriate time-limits. Since the Commission regrettably failed to reply to the request it must be considered that it was rejected on 21 December 1975. Subsequently, on 15 March 1976, the applicant submitted in good time a formal complaint, the time-limit being three months. Since that complaint likewise received no reply after four months, that is on 15 July 1976, it too must be considered to have been rejected. Since from that time the applicant had a period of three months within which to submit his application and since in the course of that period he learnt by a letter of 9 August 1976 that his complaint had been expressly rejected, the application filed on 30 September 1976 cannot be considered to have been out of time, in particular in view of the second subparagraph of Article 91 (3).

The application is thus admissible.

II — Before I turn to the substance of the application I wish however to deal with two remarks of the Commission concerning the wording of the applicant's conclusions.

Thus the Commission criticized the first head of the conclusions because, even if

it were found to be justified, the notice of assessment of 18 April 1975 would not thereby be annulled. Regarding the second head in its original form it expressed doubt as to whether the Court of Justice can order the Commission to act in the way the applicant wishes.

I do not consider that either of these questions entails particular difficulties. If the Court agrees with what I have said concerning admissibility it is clear that the notice of 18 April 1975 has not become final and that it rather contains a calculation which was to be further discussed. There is accordingly no ground for requesting the annulment of that notice.

With regard to the wording of the second head, it was altered in the reply in order to meet any objections and in consequence there is no longer any question as to whether the Court of Justice may issue instructions to the Commission. The new version is concerned to obtain a ruling from the Court of Justice concerning the interpretation of the Staff Regulations of Officials and undoubtedly does not give rise to any objections. I should merely like to add that it does not appear to me that the original wording is inadmissible since orders of the Court of Justice to the administration are not questionable, at least where the legal situation affords the administration no discretion. It may at this point be stated without compromising subsequent consideration of the substance that this undoubtedly applies to Article 49 of Annex VIII to the Staff Regulations of Officials.

III — Substance

We now come to the central point of the dispute, that is the interpretation of the first paragraph of Article 49 of Annex VIII to the Staff Regulations of Officials, which I have already quoted.

The fact that reference is made in Article 49 to 'sums' (Beträge) and not 'contributions' (Beiträge) withdrawn has been adopted by the applicant as the chief basis for his argument that the reduction must be so effected that the sums withdrawn are compared to the total credit balance including interest before the withdrawal. He claims in addition that the provident fund existing before the Staff Regulations entered into force constituted an independent institution liable for payment of benefits, that it was a self-insurance scheme. The credit balance consisting of contributions and interest standing to each official's account constituted the equivalent of his full pension rights. Accordingly, if that interest were not taken into account in calculating pension rights when a reduction was to be effected a proportion of the said equivalent would be disregarded. The applicant also points out that on termination of his service an official is entitled under the above-mentioned Staff Memorandum to claim the reimbursement of the sums entered to his account together with interest and that this furthermore corresponds to the provisions regarding the severance grant set out in Article 12 (a) of Annex VIII to the Staff Regulations.

The Commission, on the other hand, considers that the first paragraph of Article 49 of Annex VIII to the Staff Regulations must be interpreted in the light of the pension scheme under the Staff Regulations, in accordance with which only the number of years of service and the last basic salary are relevant. If interest on the credit balance with the provident scheme in existence before the Staff Regulations entered into force were taken into account the result would be a smaller reduction and a greater number of years of service for officials in that situation. However, this would constitute a preference in comparison with officials who had made no withdrawals from their accounts and with officials who entered the service only after the Staff Regulations of Officials entered into force and who had no opportunity at all to effect

withdrawals. Furthermore, it is of significance that there is no reference to interest in the arrangements governing repayment of arrears of contributions for the period before the Staff Regulations entered into force.

In this connexion it appears to me of prime importance that the wording of Article 49 of Annex VIII to the Staff Regulations of Officials cannot be interpreted decisively in favour of the applicant's view. It merely refers to a reduction in proportion to the sums withdrawn from the official's account. That article does not state clearly to what reference amount the sums transferred are to be related, whether to the account of the individual official or solely to the contributions paid.

The Commission was also correct in pointing out that the provision in the said Staff Memorandum No 16 was not concerned with a pension scheme properly so-called, a fact which thus counts against the applicant's argument. There is nothing to indicate that the provident fund was to finance itself; in particular, no provision whatsoever was made for pension benefits under point III of those arrangements. It is accordingly a mistake to infer on the basis of Staff Memorandum No 16 that the total credit balance must be considered as the equivalent of the full pension rights. In reality the arrangements were merely intended to prepare for the pension scheme under the Staff Regulations by accumulating by the appropriate time certain funds necessary to that scheme. Consequently, express provision was made in the staff memorandum to the effect that when the pension scheme entered into force sums in the individual accounts should be transferred to the pension fund under detailed rules to be laid down at that time. That is what happened after the entry into force of the Staff Regulations by budget transfer since, in accordance with Article 83 (1) of the Staff Regulations, benefits paid under the pension scheme are charged to the budget. In addition, reference may be made *inter alia* to the provision in Article 51 of Annex VIII to the Staff Regulations of Officials. On this view, however, it appears to be perfectly in order that the transfer should also apply, without special provision, to amounts by way of interest, since the budget from which the benefits are financed had to be established when the Staff Regulations entered into force as though it had received the contributions at the appropriate time, that is, as if they had been paid directly.

In addition, objections to the applicant's view can be put forward on the basis of the abovementioned provision concerning the severance grant contained in Article 12 (a) of Annex VIII to the Staff Regulations of Officials. As was previously the case with Staff Memorandum No 16, provision is made there for payment of sums in the official's account under the temporary provident scheme, including interest, and what is more, compound interest. In fact the view cannot be discounted that if it had really been intended in Article 49 of Annex VIII that interest should be taken into account, this would have been clearly expressed.

However, I consider the argument which the Commission adduced in favour of its view, based on the pension scheme under the Staff Regulations, to be of prime importance. Indeed it is quite obvious that, since Article 49 is not as clear as it should be and since, although restricted to the exceptional case of the transfer of sums from the temporary provident fund, it incontestably constitutes part of the pension scheme, for the purpose of the investigation of the meaning and scope of Article 49 it is necessary to proceed from the basic principles which govern the pension scheme under the Staff Regulations.

In this connexion it is significant that that pension scheme does not recognize

any capital sum in favour of individual officials which would have to be considered as the equivalent of the pension rights. Instead, the latter are established solely on the basis of length of service and of the last basic salary. In this connexion I would refer to Article 77 of the Staff Regulations of Officials, which applies to all officials, to Article 2 of Annex VIII to the Staff Regulations of Officials and, with regard to the calculation of years of service, to Article 3 of Annex VIII, from which it may be clearly inferred that the important factor is length of service and the contributions paid during that time. The first paragraph of Article 48 of Annex VIII complements the said Article 3; it makes clear that specified periods of service completed before the Staff Regulations entered into force are to be taken into account in the calculation. However, in the light of that system, the most appropriate solution for the purposes of the related Article 49, which is exclusively concerned with the reduction of pension rights, is to take into consideration only contribution payments in respect of those specified periods of service and to disregard such sums as arose, in consequence of the temporary investment of contributions paid during the period before the Staff Regulations entered into force, in favour of the fund or institution to which they were ultimately assigned.

If a different procedure were adopted and the interest included in the reference amount this would — as the Commission has correctly noted — favour to a certain degree officials to whom Article 49 is applicable, none of whom, as the Commission maintains, has ever been able also to withdraw sums from his account by way of interest. In fact it may be assumed that contributions withdrawn could be applied to establishing or maintaining pension rights which are equivalent in value to those provided by the Community. If in addition interest were taken into account for the purpose of calculating pension rights this would in fact result in recognizing a longer period of service than that actually acquired. Results of this nature are however excluded in the case of officials who have not withdrawn anything from their accounts and who, because interest is not included in calculating their pension rights, can claim pension rights solely on the basis of the periods of service actually acquired. Nor could anything comparable be forthcoming for officials who entered the service of the Communities after the Staff Regulations entered into force and who consequently had no opportunity to withdraw sums from a fund which included amounts by way of interest.

Finally, a weighty argument in favour of the Commission's view can also be put forward on the basis of the second paragraph of Article 48 of Annex VIII to the Staff Regulations of Officials. Pursuant to the first sentences of the second paragraph of Article 48, if an official so requests, his pension rights shall be computed from the date on which he entered the service of an institution of one of the three European Communities in any capacity whatever. That paragraph continues:

'Where during the whole or part of his previous service he had not contributed under the provident scheme, he shall be entitled, by payment in instalments, to buy in the pension rights for which he had been unable to contribute. The amounts contributed by the official, together with the corresponding amounts contributed by the institution, shall be deemed to have been standing to the official's credit under the temporary provident scheme at the date of entry into force of these Staff Regulations.'

It follows from that provision, and not merely from the implementing provisions enacted by the Commission which state the matter expressly (Staff Courier of 29 July 1969), that payment of the contributions is sufficient to buy in

pension rights and that accordingly interest is not to be paid. The fact that full pension rights nevertheless exist means that they have been acquired despite the fact that the fund has not been placed in the position which it would have occupied if the contributions had been paid at the appropriate time. It must consequently be accepted that on any coherent interpretation of Article 49, that is to say, in connexion with the application of the provisions regarding reduction, interest is equally irrelevant.

The foregoing leads me to the conclusion that the Commission correctly interpreted Article 49 of Annex VIII to the Staff Regulations of Officials and that consequently it is impossible to contest the decision whereby it refused to alter the calculation contained in its notice of 18 April 1975. Since the second head of claim also relates to the interpretation of Article 49, and the foregoing thus applies equally to it, the application as a whole should be dismissed as unfounded.

IV — To sum up:

In my view there can be no doubt that the application was submitted in good time and is accordingly admissible. However, since the Commission's interpretation of the Staff Regulations is correct, the application must be dismissed as unfounded, with the consequences regarding costs which follow pursuant to Article 70 of the Staff Regulations of Officials.