

Upon hearing the parties;  
Upon hearing the opinion of the Advocate-General;  
Having regard to the Protocols on the Statute of the Court of Justice of the European Economic Community and of the European Atomic Energy Community;  
Having regard to Articles 179, 212, 215 and 246(3) of the Treaty establishing the EEC and Articles 152, 186, 188 and 214(3) of the Treaty establishing the EAEC;  
Having regard to Article 42 of the Staff Regulations of Officials of the ECSC;  
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT (First Chamber)

hereby

- 1. Dismisses Application 12/61;**
- 2. Orders the applicant to bear his own costs while the costs incurred by the defendants are to be borne by them.**

O. Riese

L. Delvaux

N. Catalano

Delivered in open court in Luxembourg on 14 December 1961.

A. Van Houtte  
Registrar

O. Riese  
President of the  
First Chamber

OPINION OF MR ADVOCATE-GENERAL LAGRANGE  
DELIVERED ON 23 NOVEMBER 1961<sup>1</sup>

*Mr President,  
Members of the Court,*

This action appears to be extremely simple. Mr Gorter, a Netherlands official, was employed at the Secretariat of the Councils of the Communities under the so-called 'Brussels Rules' by a letter of 4 October 1958, with effect from 1 November 1958.

He was employed in the Legal Department. The work carried out by the applicant was held to be unsatisfactory by the Secretariat and the heads of the Legal Department, in particular by one of them of French nationality.

Following approaches made by the Secretary General of the Councils and later an application made by Mr Gorter himself

<sup>1</sup> - Translated from the French.

in order to examine the possibility of reinstatement in his national administration, a post was offered to him in the Netherlands at the beginning of March 1961. On 30 March 1961 the applicant informed the Secretary General that he had accepted the offer of employment made to him by the Netherlands Government and that he tendered his resignation with effect from 1 May. On 22 April the Secretary General informed Mr Gorter that he had taken note of his letter of resignation and would take all possible steps to pay the sums due to him under the rules then in force.

The conclusions in the application do not seek the annulment of an administrative decision but the award of compensation of FB 1 348 230 to be paid by the Communities.

It appears that the claim is based on two distinct legal principles: on the one hand, the *liability* of the Communities caused by conduct contrary both to good faith and to the general principles of good administration; on the other hand, the *rights* that the applicant claims from the application of a provision of the Staff Regulations of Officials of the ECSC, Article 42 concerning retirement in the interests of the service, a provision which is well known to the Court.

These arguments cannot be accepted.

As to the first point, the applicant argues as

though he had been subject to wrongful dismissal. However he was not dismissed; he tendered his resignation which was accepted. In these circumstances he cannot claim any monetary compensation other than that due to him under his contract for the period of completion of service. It is not denied that this has been done.

The situation would be different only if it were shown that the resignation was tendered under pressure or by reason of threats or in circumstances equivalent to disguised dismissal.

However, nothing in the file or in the arguments submitted to the Court show that this was in fact the case. The applicant was quite free to take his decision and in tendering his resignation in the circumstances known to the Court, he must necessarily accept the consequences of his act.

With regard to the provisions of Article 42 of the Staff Regulations of the ECSC, the applicant has no right to claim the application of these provisions, since, even if it were accepted (as I do not think can be the case) that this provision is applicable to servants employed under Article 246(3) of the EEC Treaty (Article 214 of the Euratom Treaty), that is under the so-called 'Brussels Rules', it only relates to officials who are retired in the interests of the service which is not the case here.

I am therefore of the opinion that:

the application should be dismissed,  
the parties should bear their own costs in accordance with Article 70 of the Rules of Procedure.