

In Case 13/69

AUGUST JOSEPH VAN EICK, a former official of the Commission of the European Communities, residing at Ispra, represented by Ernest Arendt, avocat-avoué, with an address for service in Luxembourg at the Centre Louvigny, 34b/IV rue Philippe-II,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Jürgen Utermann, acting as Agent, with an address for service in Luxembourg at the Chambers of Emile Reuter, Legal Adviser of the Commission, with an address for service in Luxembourg at 4 boulevard Royal,

defendant,

Application for:

- the annulment of the decision of the Commission of the European Communities of 18 December 1968 removing the applicant from his post;
- the payment of damages.

THE COURT (First Chamber)

composed of: R. Monaco, President of Chamber (Rapporteur), A. M. Donner and J. Mertens de Wilmars, Judges,

Advocate-General: K. Roemer

Registrar: A. Van Houtte

gives the following

## JUDGMENT

### Issues of fact and of law

#### I — Facts and procedure

By a judgment of 11 July 1968 (Case 35/67), the Court of Justice annulled the decision

of the former Commission of the EAEC of 4 July 1967, by which the applicant was removed from his post following a disciplinary procedure.

In its grounds of judgment the Court held that the procedure before the Disciplinary Board as well as the opinion formulated by the latter were in order, but that the disputed decision to remove the applicant from his post was illegal, since the hearing of the person concerned laid down by the third paragraph of Article 7 of Annex IX to the Staff Regulations had not been carried out in a manner which conformed to that provision.

Following that judgment the applicant sent the Commission a letter dated 20 July 1968, in which he said he was 'prepared to put (his) capacities at the service of the new Commission', and stated: 'I put myself entirely at the disposal of the Commission for the implementation of the foregoing, despite the fact that the work which I have commenced following the decision annulled by the Court makes quite heavy demands upon my energy ... In order to regularize matters I desire at the same time to satisfy by this letter, the obligations which derive from the third paragraph of Article 12 of the Staff Regulations, in respect of the above-mentioned activities, in so far as that article is applicable in this connexion'.

The Commission replied to him by letter of 1 August 1968 in which after explaining that the questions concerning his reinstatement were 'currently being considered', it stated: 'However, as your letter appears to mean that you have in the meanwhile found a position elsewhere, it would be permissible for you to ask to be granted leave on personal grounds, or possibly the annual leave which remains due to you should you prefer to continue in your new position'.

By letter of 12 August 1968, the applicant specified that his new activity was connected 'with independent work, dealing with the future development of technology and society', which was therefore of 'primary and very general importance' and should not, in his opinion, 'as such interfere in the very least with the execution of what the Commission might propose in order to find an answer to the problem of (his) reinstatement'.

By letter of 20 September 1968 the Directorate General of Personnel and Administration summoned the applicant to attend a meeting 'in order to allow (his) adminis-

trative situation to be regularized following the judgment of the Court ... and to consider as a matter of urgency with (him) the various aspects of (his) administrative situation'.

A meeting was therefore held between the parties on 3 October 1968.

By letter of 20 November 1968 the Director General of Personnel and Administration informed the applicant that on 13 November the Commission had entrusted three of its members with the duty of hearing him, in accordance with the third paragraph of Article 7 of Annex IX to the Staff Regulations and summoned him to attend the meeting fixed for this purpose on 10 December 1968.

By letter of 6 December 1968 the applicant informed the Commission that 'in view of the circumstances' he would have 'nothing to say except to put forward (his) reservations'; he added: 'In view of the state of affairs, I shall consider, unless the Commission expressly requires something else from me, that I have properly complied with its request'.

The three members entrusted with the hearing thus decided to refer the matter verbally to the Commission by submitting proposals as to the further course of the procedure.

On 18 December 1968 the Commission decided to remove the applicant from his post and to terminate his duties as from 1 January 1969.

That decision notified to the person concerned by letter of 20 December 1968 is the subject of the present application.

Upon receiving the preliminary report of the Judge-Rapporteur and hearing the views of the Advocate-General, the First Chamber of the Court decided to open the oral procedure without any preparatory inquiry.

The parties presented oral argument at the hearing on 11 November 1969.

The Advocate-General delivered his opinion at the hearing on 27 November 1969.

## II — Conclusions of the parties

The *applicant* claims that the Court should:  
(1) Annul the decision of 18 December 1968 for infringement of an essential

procedural requirement, as being *ultra vires* or for misuse of powers and on the ground of a mistake of fact; and hold consequently that the applicant has a right to the salary and all other allowances and payments attaching to the position of an official as from 1 January 1969;

- (2) Hold that the defendant is obliged to reimburse the applicant for the costs occasioned by the disciplinary procedure under Article 10 of Annex IX to the Staff Regulations; and order the defendant to pay the applicant under this head the sum of 25 000 francs;
- (3) Hold that the contested decision was taken in irregular circumstances and amounts to a wrongful act on the part of the defendant; and order the latter to pay the applicant damages, the amount of which is left to the discretion of the Court;
- (4) Order the defendant to pay the costs.

The *defendant* contends that the Court should:

- (1) Reject the submissions and requests put forward by the applicant;
- (2) Order him to pay the costs of the proceedings to the extent provided for in Article 70 of the Rules of Procedure of the Court.

### III — Submissions and arguments of the parties

The submissions and arguments of the parties may be summarized as follows:

#### *Admissibility*

The *defendant* raises no objection to the admissibility of the application. It observes, however, in respect of the application for reimbursement of the costs consequent upon the disciplinary procedure, that the Court by its judgment in Case 35/67 has already held that in the event of the annulment of a disciplinary decision, the provision relied upon by the applicant in support of this request is not applicable, since no disciplinary measure has been pronounced at that stage of the procedure;

since the situation would be the same in case of the annulment of the contested decision, this head of the conclusions must at the present stage of the proceedings be regarded as inadmissible.

#### *The substance of the case*

##### A — The application for annulment

###### *1. Infringement of the third paragraph of Article 7 of Annex IX to the Staff Regulations*

The applicant states that according to the wording of that provision the appointing authority must take its decision 'within one month' from the date on which the opinion of the Disciplinary Board was transmitted. Since that opinion was transmitted in the present case on 26 June 1967, the contested decision to remove the applicant from his post, adopted on 18 December 1968, is out of time and void in view of the actual wording of the above-mentioned provision. It follows that the disciplinary procedure and the opinion of the Disciplinary Board must be regarded as null and void, the nullity of these measures being only the logical consequence of the failure to adhere to the time-limit laid down by the third paragraph of Article 7 of Annex IX to the Staff Regulations.

The *defendant* replies that the argument of the applicant to the extent to which he means that the limitation period of one month begins to run as from the date of the opinion of the Disciplinary Board would have the illogical result that the Court, when it decides upon an application concerning a disciplinary matter and annuls the decision to impose a disciplinary measure taken at the end of the disciplinary procedure, would necessarily have to annul that procedure as a whole.

The Court would thus find itself legally unable to limit the annulment to the final decision, as it did in the judgment in Case 35/67, by allowing the procedure before the Disciplinary Board and the opinion of the latter to stand.

If the applicant means on the contrary that the said limitation period begins to run as

from the day of the notification of the judgment in Case 35/67 to the Commission, his argument raises the problem of the meaning to be given to the third paragraph of Article 7 mentioned above.

To the extent to which it lays down the time-limit of one month, that article undoubtedly amounts to a 'lex imperfecta' since it does not expressly provide any sanction for failure to observe that time-limit.

It is a matter of a provision which is based on concern for good administrative management regarding which the laws of the Member States in respect of criminal procedure include many examples.

Furthermore it is not possible to complain that the Commission delayed its final decision without good reason.

The procedure followed from the Court's judgment of 15 July 1968 until the decision of 18 December 1968 proves, on the contrary, that the Commission was motivated by a constant concern to fulfil its duty to help the applicant.

The *applicant* replies that he does not intend to bring into question the judgment of the Court of 11 July 1968 which upheld the regularity of the disciplinary procedure and of the opinion of the Disciplinary Board, but that he is quite simply deducing from the failure to comply with the time-limit of one month the logical consequence that these measures are null and void.

The arguments which the defendant bases on national law are of no value since they refer to legal situations different from that in the present case, which involves a limitation period in a disciplinary matter. This is clearly a period of an exclusionary character, in the same way as is the period for bringing appeals under national law or, under Community law, the periods prescribed by Articles 90 and 91 of the Staff Regulations.

The attitude of the representatives of the Commission since the interview of 3 October 1968 is far from compatible with the 'duty to assist' which, the defendant claims, influences it in respect of him, since on that occasion the Director General of Personnel and Administration informed him of the intention of the Commission to remove him from his post and advised him

for that reason to make the first move by giving his resignation.

The *defendant* objects that the applicant does not appear to take account 'of the very fact of the existence of disciplinary proceedings which in view of the seriousness of the shortcomings alleged carried a serious risk' for him.

The failure to comply with the time-limit provided for in the third paragraph of Article 7 of Annex IX to the Regulations must to a great extent be attributed to reasons beyond the control of the Commission, since the judgment of the Court was given just before the holidays and at the time when the new Commission had just carried out the re-organization of its administrative departments after the merger of the executives.

In any case the third paragraph of Article 7 mentioned above does not lay down an exclusionary limitation period, which, however, clearly does not imply that the institution may at will let disciplinary proceedings linger on beyond reasonable limits imposed by an exhaustive study of the case.

## 2. Abuse of powers (alternative submission)

The *applicant* states that according to the contested decision 'there is no chance' of the person concerned being able to make a useful contribution to the work of the Commission and that 'consequently it does not appear appropriate to impose only a disciplinary measure providing him with that opportunity'.

Thus this decision is either *ultra vires* or constitutes a misuse of powers since the applicant was not put in a position to make such a contribution either before or after the judgment of the Court.

In fact the disciplinary measure of removal from post amounts in the present case to disguised dismissal for incompetence without the appropriate provisions and procedure prescribed by the Staff Regulations having been observed.

The *defendant* replies that the contested decision was not to the slightest extent motivated by considerations of expediency such as the applicant believes he finds in the

reasoning mentioned above, but that it is intended only to state that, in view of the serious shortcomings justifying disciplinary measures, the Commission has chosen, from amongst those laid down by the Staff Regulations, the disciplinary measure which appeared to it to be the most appropriate; such a choice embodies within it a judgment of expediency.

Although the Commission has refused to accept the point of view expressed by the Disciplinary Board that the applicant should once more be given a chance of engaging in useful co-operation, it is because it has decided in the exercise of its unrestricted discretion that where, as in the present case, a servant has behaved so intolerably, there is no hope of his making a useful contribution to its work.

In view of the grounds and the operative part of the judgment of 11 July 1968 the Commission was perfectly within its rights in making a final decision in the present case, relying only on the facts found against the applicant in the opinion of the Disciplinary Board, and was not required to take into consideration the manner in which the applicant might have behaved after the delivery of the said judgment.

For these reasons the disputed removal of the applicant from his post cannot be regarded as disguised dismissal for incompetence.

Moreover, no misuse of powers would have been possible on this point, since the procedure applicable to dismissal for incompetence is in any case the same.

The *applicant* replies that the contested decision had clearly already been taken before 18 December 1968, since its wording is identical with that of the decision of 4 July 1967 which was annulled by the Court.

It was to avoid adopting it that the Director General of Personnel and Administration suggested to him at the meeting of 3 October that he should resign voluntarily.

Thus the procedure set in train after the judgment of 11 July 1968 was no more than a pure formality, since that judgment should at least have prompted the Commission 'to give a chance to the applicant' who had already put himself at its disposal by his letter of 20 July 1968.

The *defendant* mentions on this subject that

by the very terms of that letter the applicant said he was ready to take up his duties without awaiting the end of the disciplinary procedure. It was in this sense that the relevant department of the Commission replied to him that it was considering the mode of his reinstatement, that is to say, a return to his duties, while waiting for a final decision to be arrived at.

### *3. Misuse of powers (in the further alternative)*

The *applicant* points out that the reason of 'expediency' relied on in support of the contested decision does not reside in objective data considered by the Commission but in the latter's general policy which is currently directed towards reducing considerably the number of scientific officials employed by the nuclear research centres. Thus the disciplinary measure of removal from post was taken as a pretext to achieve a more general aim quite foreign to disciplinary action.

The *defendant* replies that the allegation of the applicant is merely gratuitous since it is well known that the Commission has expended considerable efforts to persuade the financial authorities to keep the whole of its scientific and technical staff in employment.

### *4. Wrong evaluation of facts (in the further alternative)*

The applicant maintains that the evaluation of his behaviour appearing in the contested decision, particularly in the third recital, is incorrect and in any case too severe.

The Commission neglected to take into account that his employment in the library at Ispra was not a duty to which his professional training was suited; and that, further, not only did he prove his spirit of initiative but moreover his day-to-day work gave rise to no criticism.

The Court is in the present case entitled by reason of the nature of the application to substitute its own decision for that of the Commission by starting from a different evaluation of the facts.

The *defendant* observes that the third recital of the decision in dispute, referred to by the applicant, repeats the opinion of the Disciplinary Board of 23 June 1967. Since the Court in its judgment of 11 July 1968 has annulled the contested decision to remove the applicant from his post but has left intact the procedure before the Disciplinary Board and the opinion expressed by the latter, this submission must be regarded as inadmissible, to the extent to which it calls in question the said recital.

The arguments of the applicant concerning the nature of the work carried out before his appointment to the library, the nature of his employment in the library and his spirit of initiative are without foundation. Furthermore, in the operative part of his application the applicant has requested only the annulment of the contested measure, without asking the Court itself to take a decision on a disciplinary matter.

This should not cause any surprise, since the Court has never considered that it should substitute its own decision for that of the institutions, and since it is not for the Court to direct the institutions to take this or that measure.

An evaluation by the Court concerning the 'too severe' nature of the disputed action would amount precisely to a consideration of questions of administrative expediency, which is completely outside the powers of the Court.

The *applicant* explains that by the present submission he is not raising doubts concerning a question already decided by the Court.

In Case 35/67 he had criticized the technical illegality of the opinion of the Disciplinary Board; although it is true that this submission was not accepted by the Court and can no longer be relied upon, it is equally undeniable that it is admissible for the applicant to submit other criticisms concerning this same opinion.

As regards the powers of the Court in the present matter, its powers of evaluation in this case which is concerned with property

rights are, as regards fact and law, sovereign and unlimited.

The defendant raises the objection that in Case 35/67 the applicant not only criticized the form of the opinion of the Disciplinary Board but, by means of the submission made against the decision of the Commission, he also criticized that opinion as regards its substance to the extent to which the contested decision repeated its recitals. It is, in addition, incorrect to state that the present proceedings put property rights in question so that the Court, which has unlimited jurisdiction, could impose a less disciplinary measure than that which is contested.

On the one hand, the main head of the application concerns the annulment of a decision of a disciplinary nature and is not principally directed towards obtaining a declaration that the Commission owes a sum of money and, on the other hand, it is the annulment of the contested disciplinary measure rather than the imposition by the Court of another less severe disciplinary measure that the application seeks.

**B —** The claim for reimbursement of the costs occasioned by the disciplinary procedure (Article 10 of Annex IX to the Staff Regulations)

In addition to the arguments put forward in support of its objection of inadmissibility, the *defendant* states that no evidence of the amount claimed has been produced by the applicant in support of his request.

**C —** The claim for damages

The *defendant* states that for the reasons already set out it is not possible to accuse the Commission of any wrongful act or omission and that furthermore the applicant has produced no evidence of the alleged damage, and that this claim is therefore without any foundation.

## Grounds of judgment

### A — The application for annulment

#### (a) *The submission of infringement of the third paragraph of Article 7 of Annex IX to the Staff Regulations*

- 1 The applicant maintains that the contested decision infringes the third paragraph of Article 7 of Annex IX to the Staff Regulations of Officials in that it was adopted after the expiry of the period laid down therein which was in the nature of a period of limitation.
- 2 Under the third paragraph of Article 7 of Annex IX to the Staff Regulations the appointing authority is to take its decision within one month.
- 3 Taking account of the special features inherent in the subject-matter governed by Annex IX to the Staff Regulations and having regard to the other provisions of that Annex applicable to disciplinary proceedings, the time-limit laid down by the above-mentioned article cannot be regarded as a mandatory period of limitation the failure to observe which entails the nullity of the measures adopted after its expiry.
- 4 By fixing this time-limit that article lays down a rule of good administration, the purpose of which is to avoid in the interests both of the administration and of officials unjustified delay on the part of the appointing authority in adopting the decision terminating the disciplinary proceedings.
- 5 However, to admit that it is of no effect would devalue this provision of its legal content.
- 6 Prompted by the necessity to ensure the efficient and equitable working of disciplinary proceedings, that provision imposes on the institution the obligation to use its best endeavours to observe the time-limit fixed.
- 7 Although failure to observe the time-limit does not entail the nullity of the measures taken after it has been exceeded, such failure may as regards the institution amount to an omission capable of rendering it liable for any damage caused to those concerned.
- 8 Under the first and third paragraphs of Article 7 of Annex IX to the Staff Regulations, the period of one month laid down therein begins to run as from the day on which the opinion of the Disciplinary Board was transmitted to the appointing authority.

- 9 In the present case the judgment of the Court of 11 July 1968 annulling the decision of 4 July 1967 to remove the applicant from his post had the effect of postponing the commencement of the period to the date of its notification to the parties.
- 10 In the present case it should therefore be considered whether the appointing authority has justified its delay in adopting the decision of 18 December 1968 imposing the disciplinary measure of removal from post.
- 11 The defendant alleges that this delay was due, on the one hand, to the difficulties created by the re-structuring of the departments required by the merger of the executives and, on the other hand, by its obligation to carry out its duty to assist the applicant.
- 12 It is not disputed that during the meeting on 3 October 1968 the appropriate departments of the Commission considered with the applicant all the consequences, including that of removal from post, which the opinion of the Disciplinary Board, as well as the aforementioned judgment of the Court might have for him.
- 13 In the present case that examination would have been neither possible nor useful if the disciplinary file of the applicant had not been at that time sufficiently complete to enable the appointing authority to take its decision under the third paragraph of Article 7 of Annex IX to the Staff Regulations.
- 14 From this it may be inferred that at the time of that meeting the difficulties relating to the re-structuring of the departments on which the defendant relied had disappeared.
- 15 On the other hand, on the same occasion the Commission discharged its duty of help towards the applicant by informing him of the consequences of a possible removal from his post and by suggesting to him measures which it considered capable of reconciling his personal interests with those of the institution.
- 16 It thus follows that the difficulties relied upon by the defendant, even if they might initially have delayed the application of the third paragraph of Article 7 of Annex IX to the Staff Regulations, are not of such a character as to justify the delay which in fact occurred in the adoption of the disputed decision.
- 17 The length of this delay cannot be explained solely by the sometimes inevitable slowness of the administrative machine.
- 18 It has therefore to be concluded that in the present case the defendant has not justified the delay which occurred.

*(b) The submission of misuse of powers*

- 19 The applicant maintains that, contrary to the wish expressed by the Disciplinary Board, the Commission deliberately deprived him of any opportunity of making a worthwhile contribution to its work.
- 20 The reasons of 'expediency' relied upon in support of the disputed decision are according to the applicant only a pretext for not allowing him such an opportunity.
- 21 He says that the real reasons for the contested decision are to be found in the general policy of the Commission which was trying to reduce considerably the number of scientific officials employed at the nuclear research centres.
- 22 The applicant deduces from these circumstances that the contested decision constitutes a misuse of powers.
- 23 The reasons given for the disputed removal from post are the conclusions reached by the Disciplinary Board following an inquiry concerning the conduct of the applicant in the service.
- 24 The evaluation of the seriousness of the shortcomings of which the Disciplinary Board thus found the applicant to be guilty and the choice of the disciplinary measure which appears, in view of these shortcomings, as being the most appropriate lie within the discretionary power of the appointing authority.
- 25 In the present case the applicant has shown nothing of a factual or legal nature capable of demonstrating that this evaluation bore no relationship to the shortcomings established or that the disciplinary measure imposed was disproportionate to the facts found against him.
- 26 This submission must therefore be rejected as unfounded.

*(c) Wrong evaluation of facts*

- 27 The applicant maintains that the contested decision is illegal in that it wrongly evaluates his conduct.
- 28 He points out in this respect a series of factors which the Commission did not take into account for the purpose of that evaluation.
- 29 The evaluation of the applicant's conduct contained in the second and third recitals of the contested decision is based on the conclusions arrived at by the Disciplinary Board in its opinion of 23 June 1967.

- 30 By means of this submission, the applicant again calls in issue whether these conclusions and, consequently, the said opinion were well founded.
- 31 In its judgment of 11 July 1968 in Case 35/67 the Court found that the proceedings before the Disciplinary Board as well as the opinion expressed by the latter must be regarded as lawful.
- 32 According to Article 42 of the Protocol on the Statute of the Court of Justice of the EAEC, an application for revision of a judgment may be made only on discovery of a fact which is of such a nature as to be a decisive factor and which, before the judgment was given, was unknown to the Court and the party claiming the revision.
- 33 The matters of fact alleged in support of the present submission were not unknown to the applicant before the judgment of 11 July 1968.
- 34 Therefore this submission, which is in conflict with the effects of *res judicata*, must be rejected as inadmissible.

**B — The claim for reimbursement of costs occasioned by the disciplinary proceedings**

- 35 The applicant claims under Article 10 of Annex IX to the Staff Regulations of Officials reimbursement of the costs which he incurred during the course of the disciplinary proceedings.
- 36 Under that provision costs incurred on the initiative of the official concerned during such proceedings, in particular fees due to a person chosen for his defence from outside the European Communities, shall be borne by the official where the disciplinary proceedings result in any of the measures provided for under Article 86 (2) (c) to (g) of the Staff Regulations.
- 37 In the present case the disciplinary proceedings resulted in one of the measures mentioned above.
- 38 The applicant has not alleged that the costs of which he is claiming reimbursement were not in whole or in part incurred on his initiative.
- 39 His claim for reimbursement must therefore be rejected as unfounded.

**C — The claim for damages**

- 40 The applicant submits lastly that the Commission should be ordered to pay him

damages because it acted improperly when it adopted the contested decision and because of this committed a wrongful act.

- 41 An action for damages must be founded on the one hand upon the existence of an unlawful act or omission on the part of the institution responsible and on the other on the existence of present damage resulting from that act or omission.
- 42 In the present case the applicant has indicated nothing capable of enabling the nature or existence of such damage to be established.
- 43 In these circumstances his claim must be rejected as unfounded.

#### Costs

- 44 The applicant has failed in his application.
- 45 Under Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs.
- 46 Nevertheless, under Article 70 of the said Rules, the costs incurred by institutions in proceedings commenced by officials of the Communities shall be borne by the former.

On those grounds,

Upon reading the pleadings;  
Upon hearing the report of the Judge-Rapporteur;  
Upon hearing the parties;  
Upon hearing the opinion of the Advocate-General;  
Having regard to the Treaty establishing the European Atomic Energy Community;  
Having regard to the Protocol on the Statute of the Court of Justice of the European Atomic Energy Community;  
Having regard to the Rules of Procedure of the European Communities, especially Annex IX;  
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT (First Chamber)

hereby:

- 1. Dismisses the application as unfounded;**

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

Monaco

Donner

Mertens de Wilmars

Delivered in open court in Luxembourg on 4 February 1970.

A. Van Houtte  
RegistrarR. Monaco  
President of the First Chamber**OPINION OF MR ADVOCATE-GENERAL ROEMER  
DELIVERED ON 3 DECEMBER 1969<sup>1</sup>***Mr President,  
Members of the Court,*

The case upon which I have to give my opinion today is connected with Case 35/67. In respect of the main points I can therefore refer to the facts of that case and have therefore only to mention briefly the following:

As you know, after conducting formal disciplinary proceedings the Euratom Commission decided on 4 July 1967 to remove the applicant from his post as from 1 August 1967. That decision was annulled by the judgment of the Court of 11 July 1968 on the ground that the Commission could not delegate one of its officials to hold the final hearing of the applicant provided for by the third paragraph of Article 7 of Annex IX to the Staff Regulations. It was consequently clear that the applicant remained in the service of the Communities. By letter of 20 July 1968, the applicant stated that he was available to serve the new single Commission which had been formed in the meanwhile. However the applicant was not actually reinstated. By letter of 1 August 1968 the Commission informed him first of all that the question of his reinstatement was being examined and that he could apply for leave on personal grounds or possibly take the annual leave to which he was entitled. After the applicant had replied

by letter of 12 August 1968 in which he stated again that he held himself at the disposal of the Commission with a view to taking up active service again, he was invited by letter from the Directorate General of Personnel and Administration dated 20 September 1968 to a meeting during which the various aspects of his administrative situation were considered. The meeting was held on 3 October 1968. It remained however without result, since according to the undisputed statement of the applicant the only advice given to him, which he did not accept, was to resign *voluntarily* from the service. Later in accordance with the judgment of the Court of 11 July 1968 the Commission by a decision of 13 November 1968 entrusted three of its members to conduct the hearing required by Article 7 of Annex IX to the Staff Regulations. The hearing should have taken place on 10 December 1968 in Brussels. Although he received in good time the letter of 20 November 1968 calling upon him to attend, the applicant did not comply with the summons. He confined himself instead to stating in a letter of 6 December 1968 that because of circumstances he had nothing to say except to reserve his position. That situation led the Commission on 18 December 1968 to adopt a decision terminating the disciplinary proceedings without having heard the applicant. Taking account

<sup>1</sup> — Translated from the German.