sums deducted from his remuneration in respect of his pension contributions plus compound interest at the rate set out in Article 91 of the General Staff Regulations of the European Coal and Steel Community after deduction of any charges which may have been made on these sums;

12. Dismisses the applicant's application for the payment of interest;

13. Dismisses the applicant's application for the date on which his resignation takes effect to be fixed;

14. Orders the High Authority to reimburse to the applicant the costs incurred by him in Case 27/59;

Orders the High Authority to reimburse to the applicant one third of the costs incurred by him in Case 39/59;

Orders the High Authority to bear its own costs.

Rossi Donner Hammes

Delivered in open court in Luxembourg on 15 July 1960.

A. Van Houtte
Registrar

R. Rossi
President of the Second Chamber

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 10 MAY 1960[1]

Summary

I. Introduction 411
1. The facts of the case 411
2. Submissions of the parties 412
II. Admissibility 413
1. Admissibility of the first application for annulment 413
(A) Period for lodging an application 413
(B) The question whether the application for annulment has lost its purpose 413
2. Admissibility of the second application. 414

1 — Translated from the German.

III. The question whether the application lodged against the decision of 2 July 1959 is well founded 415

1. Determination of the date of resignation 415

2. The right to resign 416

3. Unity of the European Communities; uniform terms of service 417

(a) The inter-relationship of the three European Communities 417

(b) Uniform terms of service 419

(c) Consequences for the present case 419

(aa) Determination of the date of resignation 420

(bb) Payment of a resettlement allowance 420

(cc) Payment of a severance grant 421

IV. Summary and conclusion 422

Mr President,
Members of the Court,

My opinion today concerns two applications lodged by an official of the High Authority who applied to resign from the service and who entered the service of the European Investment Bank. The dispute concerns the question whether the high Authority could refuse the resignation and what legal consequences are caused by the fact that the High Authority subsequently accepted the resignation. The applications are in fact separate but the submissions of the parties were presented at the same hearing. Because of the factual connexion between the applications I shall not give separate opinions but shall deal with the cases together. I would have no objection if the Court intended to rule on both cases in a single judgment.

I — Introduction

1. *The facts of the case*

The applicant was an established official of the High Authority from 1 July 1956. By a letter of 18 March 1958 he submitted his resignation to the High Authority in order to transfer to the service of the European Investment Bank. The Director of Personnel informed himself of the applicant's plans verbally and by a letter of 24 April 1958 the High Authority informed the applicant that the Bank and the High Authority had decided that officials transferring from the European Coal and Steel Community (ECSC) to the service of the Bank would provisionally be regarded as being on leave on personal grounds until staff regulations for all the Communities had been drawn up to cover such transfers. If it subsequently appeared that the Staff Regulations of the Bank differed from the General Staff Regulations then the position of the official would have to be re-examined. The applicant was advised to request leave on personal grounds.

The applicant replied, in a letter of 25 April, that he did not wish to cause any difficulties if the High Authority believed that certain 'interim measures' (mesures conservatoires) were necessary. Therefore he was prepared to accept leave on personal grounds. In accordance with this on 2 May 1958 a decision was issued by the President of the High Authority granting to the applicant leave on personal grounds for two years (that is, for the period from 1 May 1958 to 30 April 1960).

On 11 February 1959, the applicant, who had in the meantime entered the service of the Bank, once again tendered his resignation. In a letter of 7 March 1959, the Director of Personnel of the High Authority who was acting on behalf of the President of the High Authority stated that the resignation

could not be accepted. The High Authority was prepared to reach an agreement with the Bank which would satisfy the applicant. At the same time the applicant was given a copy of a letter from the High Authority to the Bank of the same date containing proposals for a provisional regulation of the applicant's legal position. It stated that the question of a resettlement allowance was resolved: it was recognized that the institution to which the applicant was being transferred would pay the allowance. A severance grant would be paid if it became evident that the Staff Regulations of the Bank would take a completely different form from the subsequent joint staff regulations. However, there was nothing to suggest that these joint staff regulations would not be extended to the Bank. If this expectation were fulfilled the severance grant would be paid to the Pension Fund of the Bank. The formulation in Article 61 of the General Staff Regulations (hereinafter referred to as 'the General Regulations') could then be applied and the actuarial value of the applicant's retirement pension rights could be transferred to the Pension Fund of the Bank.

It is this letter of the High Authority of 7 March 1959 that is the object of the first application for annulment (Case 27/59).

On 2 July 1959 the President of the High Authority informed the applicant that his resignation would now be accepted as the Bank had not concurred with the High Authority's proposal for a provisional regulation of the rights of the applicant. The letter did not specify a date on which the applicant's resignation would become definitive. At the same time the legal consequences of the notice were stated:

A resettlement allowance would not be paid as the applicant had received a settlement allowance from the Bank. The same applied for the reimbursement of removal expenses.

In respect of the severance grant the possibility of a settlement corresponding to Article 61 of the General Regulations could not be excluded. Therefore the rights of the applicant should be determined under Article 62 and capitalized in accordance with Article 91 of the General Regulations. As soon as definitive regulation of the pension scheme within the Communities was achieved the actuarial value would be paid to the Pension Fund of the Bank. If no provision for such a transfer were made the capital sum should be paid to the applicant.

After receiving this letter the applicant continued to maintain his first application and also lodged a second application for annulment against the Decision of 2 July 1959 in so far as it dealt with the effects of the resignation.

The application in the second case only contained a claim for the annulment of the decision of the High Authority but it was amplified in the applicant's reply. The applicant further seeks a ruling that his resignation took effect on 12 March 1959 or at the latest on 11 May 1959 and a ruling that the High Authority is obliged to pay to the applicant:

(a) a resettlement allowance,

(b) reimbursement of travel expenses from Luxembourg to Brussels for the applicant and his family,

(c) certain capital amounts from the pension fund,

(d) the severance grant,

(e) compensation for his annual leave and reimbursement of his travelling expenses for the annual leave,

(f) specified interest.

2. *Submissions of the parties*

In both proceedings the parties disagree over questions concerning the application of the Staff Regulations and the General Regulations of the European Coal and Steel Communities and also general legal principles. In the first action the applicant objects to the infringement of Article 41 of the Staff Regulations, infringement of general legal principles and misuse of power while

the High Authority primarily states that the application is inadmissible for failure to comply with the period for lodging an action and in addition that it has lost its purpose by virtue of the adoption of the decision which is challenged in the second application. In the second action the applicant objects to the infringement of Article 41 of the Staff Regulations, the infringement of Articles 12, 13, 14, 15 and 29 of the General Regulations, infringement of general legal principles and misuse of power. I shall examine the applicant's allegations in more detail in my examination of the applications.

II — Admissibility

1. *Admissibility of the first application for annulment*

A. Period for lodging an application

The rejection of the resignation is contained in a letter of the High Authority of 7 March 1959 which was transmitted to the applicant on 9 March 1959. The action for annulment was lodged at the Court of Justice on 8 May 1959 and was therefore in good time if no period or a period of two months was applicable for such an action but out of time if the action had to be lodged within a period of one month.

As the Court is aware, in the special Rules of Procedure of the Court of Justice of 21 February 1957 for disputes between the Community and persons to whom the Staff Regulations are applicable—which also includes former servants—a period of two months for lodging actions was prescribed (Article 2). These Rules of Procedure were abrogated from the entry into force of the new Rules of Procedure of the Court of Justice of 3 March 1959, that is, on 21 March 1959 (the day of publication of the latter) (cf. Article 110 of the new Rules of Procedure). The Rules of Procedure in force from 21 March 1959 contain no provision concerning the period for lodging an application in staff cases; in addition, no interim rule exists.

The consideration of whether or not a period does exist for such applications or whether such period as appears suitable in each individual case should be applied or whether the general provisions relating to time-limits for instituting proceedings contained in Article 33 of the ECSC Treaty are applicable is not relevant in the present case. The period for lodging an application can be compared to the statutory periods under national rules of procedure. It begins to run from the event specified by law, in this case the date on which the applicant received the decision of the High Authority, namely 9 March 1959. The Rules of Procedure of 21 February 1957 set this statutory period at two months. The applicant therefore had a period of two months for lodging his application. Under general procedural rules which apply in national law and which are also applicable here, a statutory period which has begun to run is not affected by a subsequent alteration of the law. The most recent regulation of this matter is contained in the interim provisions of the new German Rules of Procedure of the Administrative court (Verwaltungsgerichtsordnung) of 21 January 1960 Article 195 (6) (4) of which provides:[1]

> '4. In cases where the period for lodging an appeal or other legal remedy has begun to run before the entry into force of the law; the period and the jurisdiction to decide as to the remedy are governed by the previous provisions whereas any subsequent procedure is governed by the provisions of this law.'

Accordingly, as the application was lodged within the period of two months it is within the prescribed period and therefore admissible.

B. The question whether the application for annulment has lost its purpose

In the first application for annulment the applicant was objecting to the refusal of the High Authority to make his resignation definitive. This refusal was expressed by the

1 — Cf. also paragraph 137 of the framework legislation relating to officials (Beamtenrechtsrahmengesetz) which entered into force on 1 September 1957 and 'Traité élémentaire de procédure civile' by Morel, 2nd edition, 1949, p. 17 *et seq*.

Director of the Personnel Department in the name of and by delegation from the President of the High Authority, that is, the nominating authority within the meaning of Article 1 of Annex 1 to the Staff Regulations of the High Authority. The refusal is a decision of the High Authority which may be contested as, under the system of the Staff Regulations of the ECSC Treaty as set out in Article 41, resignation is not unilateral and automatic but requires an answer from the High Authority which determines at what date the resignation becomes fully effective.

Without the applicant lodging a fresh application the High Authority accepted the resignation tendered on 11 February 1959 by a decision of 2 July. By this acceptance the High Authority revoked its original refusal, that is, the decision of 7 March 1959, and replaced it by another positive decision. The course of events cannot be described in any other way, as under Article 41 of the Staff Regulations the decision of the High Authority is always to be taken in conjunction with the tendering of resignation together with which it produces the legal effects which were sought. However, if the contested decision is revoked by the High Authority itself, the basis is removed from the application for annulment brought against this decision. There is no longer any refusal which may be revoked by the Court of Justice. The purpose of the first application for annulment, to cause the High Authority to accept the resignation has, therefore, already been attained. The first application for annulment solely related to the revocation of the refusal of the High Authority. Nevertheless the applicant has not dropped his application or stated that the principal objective has been achieved. He takes the view that a ruling by the Court of Justice that the refusal was inadmissible is necessary in respect of the time at which the resignation takes effect. However, even if the unamended application for annulment is changed into an application for a ruling that the refusal was inadmissible, the applicant is still not successful. There is no legal interest in obtaining such a ruling and for the continuation of the first action. As is known, the applicant also challenged the decision in which the resignation was accepted in so far as its effects, including the time on which the notice takes effect, are at issue. He was *obliged* to contest this decision if he wished to prevent the ruling of these legal effects from acquiring more or less the force of *res judicata*. Thus, in the second proceedings the question will have to be examined whether the decision of the High Authority must be revoked as it does not comply with the requirements concerning the fixing of the dates of giving notice. A decision on this question does not require prior determination of the admissibility of the original refusal of the High Authority.

I am therefore of the opinion that the first application for annulment lost its purpose by virtue of the adoption of the subsequent decision by the High Authority and that any interest requiring protection in the continuation of these proceedings cannot be assumed to exist. As the applicant continues to maintain his application there is no possibility other than dismissing this application as being inadmissible.

2. *Admissibility of the second application*

No particular observations are necessary with regard to compliance with the period for lodging the application: the contested decision was adopted on 2 July; the application for its annulment was lodged at the Court of Justice on 31 July.

However, although the application only seeks the annulment of the Decision of 2 July 'in so far as this decision affects the consequences of the notice and the considerations of an economic nature related to the termination of employment', in his rejoinder the applicant extended his application: he seeks a ruling by the Court of certain legal consequences of the resignation. Having regard to the content of the contested decision, it is evident that even in the context of an application for annulment the Court of Justice must, in connexion with the revocation of the decision, examine some, but not all, questions the solution of which may be the subject of the subsequent application for a declaratory ruling. Thus the Court of Justice would have to rule in

what way the decision fails to comply with the requirements of Article 41 of the Staff Regulations concerning determination of the date on which the notice takes effect. It would also have to rule on how the question of the resettlement allowance and the severance grant should properly be decided. In applications for annulment such judicial rulings only occur, however, in the grounds of judgment which would thus enable the High Authority to adopt further measures in accordance with Article 44 of the Treaty. In his rejoinder in the application for a declaratory ruling, however, the applicant seeks certain judicial rulings in the *operative part* of the decision. In my opinion and in view of Article 34 of the Treaty no interest exists for this to be done. An extension of the original application, however, is inadmissible for a different reason even if account is taken of the points which are expressly dealt with in the contested decision. This is *a fortiori* true for problems which are not even concerned with the contested decision. Thus in the letter of the High Authority of 2 July no mention is made of travelling expenses, compensation for the annual leave or interest. In the context of the *procedure for annulment* no judgment need be made in this respect. These points are therefore raised for the first time in these proceedings by the application for a declaratory ruling.

In accordance with Article 95 (1) of the Rules of Procedure of the Court of Justice the general procedural rules are also applicable to actions by servants of the Communities. Article 22 of the Protocol on the Statute of the Court of Justice of the ECSC provides that the application shall contain the subject-matter of the dispute and the submissions. This requirement is repeated in Article 38 (1) of the Rules of Procedure. Therefore in the application the subject-matter of the action must be clearly defined and it must be stated what judgment is sought from the Court of Justice. No provision is made for subsequent extension of the application. This is evident *a contrario* from Article 42 (1) and (2) of the Rules of Procedure which provide that in certain circumstances evidence may be indicated and fresh submissions may be raised in proceedings after the lodging of the application. In proceedings in which the Court has unlimited jurisdiction—which must include staff cases—no exceptions are provided from this principle. Here, too, the judge is restricted to the submissions of the parties contained in the application. Only if the application contains a claim to replace the decision of the administration by a decision of the Court of Justice can the Court of Justice act in this way. Accordingly the extension of the claims in the application by a subsequent submission must be regarded as inadmissible.

In the present case, therefore, the Court of Justice has only to examine whether the decision of the High Authority of 2 July 1959 was defective in so far as it concerns the effects of the resignation. As Article 41 of the Statute of the Court of Justice does not provide that the decision of the nominating authority whereby the resignation becomes definitive has to make provision as to *all* the consequences of the resignation the failure to deal with other rights connected with termination of service cannot be taken into consideration in examining the legality of the decision concerning the resignation. In this respect there were no preliminary examinations under administrative law which constitute a necessary pre-condition for lodging an application.

III — The question whether the application lodged against the decision of 2 July 1959 is well founded

1. *Determination of the date of resignation*

The first objection is against the fact that in the decision the time at which the resignation should take effect is not expressly determined. From this the applicant draws the conclusion that the relevant date for the purposes of Article 41 of the Staff Regulations must be regarded as that of the decision (2 July) or of notification of the decision (7 July). However, this constitutes an infringement of Article 41 which provides specific periods for a decision concerning resignation. The High Authority itself regards the date of the adoption of the deci-

sion (2 July) as decisive but it does not regard the fixing of this date as an infringement of the Treaty, as the particular situation of the applicant (transferred to another institution of the European institutions with the granting of leave on personal grounds) excluded his right to give notice so long as the High Authority and the Bank were seeking agreement concerning regulation of this transfer. The High Authority was thereby released from compliance with the provisions of Article 41.

The contents of Article 41 were frequently referred to in the proceedings: the appointing authority must take its decision confirming the resignation within one month of receiving the letter of resignation and it must specify the date on which the resignation is to take effect. For officials in category A a period of three months from the date of tendering the letter of resignation is applicable.

It must first be examined whether the decision of the High Authority can be annulled because it does *not expressly* specify a date for the termination of the service. The sense of the provision in Article 41 is evident: by the clear specification of this time any error which might possibly affect the financial consequences of termination of service is excluded. In the present case there is no such clear specification. There are three possibilities: the relevant date may be that of notification of the decision, of the adoption of the decision or a date to be fixed in accordance with Article 41. This legal uncertainty is in itself unacceptable. It must be noted that it appeared clear to the applicant that the third possibility was inconceivable. For him it was evident that the High Authority could only have intended 2 July or a later date. For that reason he did not seek the revocation of the decision on formal grounds. It would not have produced the desired clarification of the legal position, as in the proceedings the High Authority stated what date it would expressly specify if it were so required, namely 2 July 1959. The applicant rather seeks an answer to the question whether the High Authority was obliged to specify an *earlier* date for the termination of service. In view of this position the Court of Justice does not need to examine further the question of form. In any event, I am of the opinion that the decision should not be annulled for this reason.

2. *The right to resign*

I shall therefore turn to the question whether the decision was defective because it did not specify a date for the resignation to take effect falling before 2 July 1959, in the opinion of the applicant either 12 March or 11 May, in other words, whether the High Authority was free to accept or reject the resignation of the applicant in derogation from the wording of Article 41.

As the wording of Article 41 is quite clear in this respect, it is not necessary to place particular emphasis on the fact that an official has a *fundamental right* to have his resignation accepted by the appointing authority. This corresponds to the system of national law relating to officials in which the employer is *obliged* to comply with an application for a decision terminating service.[1] There only remains the question whether this rule does not apply in particular circumstances. If this is the case, then the acceptance of the resignation, while failing to comply with the time-limits, does not constitute a breach of the Treaty.

It should first be asked what effect the granting to the applicant of leave on personal grounds has on his legal position. The granting of leave on personal grounds in the strict sense of the term and in normal circumstances has no influence on the *status* of an official. The legal consequences of granting leave are set out in Article 33 of the Staff Regulations: the official does not carry out his duties; payment of his remuneration is suspended etc. However, an official on leave remains an official. As such he has the right to seek his release from his contract of service at any time. Article 41 governing resignation makes no exception for officials on leave. Corresponding principles apply in national law relating to offi-

1 — Cf. Article 30 of the German law relating to officials (Bundesbeamtengesetz) of 18 September 1957.

the right of an official to tender his resignation cannot be revoked.

It has, however, already been stated that in the present case neither the granting of leave on personal grounds nor the tendering of resignation took place in circumstances which correspond to the normal situation and to the spirit of these provisions. The applicant transferred from the service of the High Authority, that is, the European Coal and Steel Community, to the services of the European Investment Bank which is, it is true, not an institution but nevertheless an establishment of the Economic Community which was subsequently established. At the present time no particular legal rules for such a transfer exist. For that reason the High Authority chose to use, for all these cases, the means of leave on personal grounds, which was in fact intended for a different situation, in order to await the adoption of uniform staff regulations during this period or to seek particular regulation of transfers by agreement with the bodies concerned. It may appear doubtful whether this is a renunciation of the right to resign on the part of the official concerned or contractual exclusion of resignation for a particular period. The High Authority in any event takes the view that an alteration of the factual and legal relations—the creation of other European Communities with the possibility of employment in their institutions—entitles it to apply the rules of the Staff Regulations in a manner different from their original intention, which was designed for other situations, in cases where officials do not finally leave the service of the European Communities but change their employment within the Communities and continue their career.

3. *Unity of the European Communities; uniform terms of service*

We thus reach a point which is equally important for the alleged exclusion of the right of resignation and for determining the consequences of resignation for transfers to the service of another European body. Three questions must be examined here:

(a) In what relationship do the European Communities stand to one another; is there a conceptual and legal link which allows one to talk of the unity of the European Communities?

(b) Does this unity necessarily require the introduction of staff regulations which are uniform as to their main elements and which provide particular rules for transfer from one Community to another?

(c) Is the introduction of such regulations for the Bank as well to be expected in the foreseeable future?

(a) The inter-relationship of the three European Communities

If one examines the relevant provisions of the Treaty it is evident that each of the three Communities possesses its own legal personality (cf. Article 6 of the ECSC Treaty; Article 210 of the EEC Treaty; Article 184 of the Euratom Treaty). The European Investment Bank also has its own legal personality (cf. Article 129 of the ECSC Treaty). It is well known that at the time of the drafting of the ECSC Treaty the partial economic integration of Member States in the coal and steel sector was only to be the first step which was to be followed by further more extensive measures in the same direction. This idea is expressed in the preamble to the ECSC Treaty where it is stated that:

'Recognizing that Europe can be built only through practical achievements which will first of all create real solidarity, and through the establishment of common bases for economic development.

. . .

Resolved to substitute for age-old rivalries the merging of their essential interests; to create, by establishing an economic community, the basis for a broader and deeper community among peoples long divided by bloody conflicts; and to lay the foundations for institutions which will give direction to a destiny henceforward shared,

. . . .'

The European Treaties therefore constitute no more than the partial achievement of a far-reaching general programme which is characterized by the overriding concept of a more extensive integration of European States. This elementary fact takes precedence over the consideration that various treaties and various communities were established to ensure the legal achievement of the plan. Together with the Treaties of Rome the Member States created an important legal link for the three Communities in the form of the Convention on certain Institutions common to the European Communities which provides for *one* Court of Justice and *one* Parliament for all three Communities (cf. Articles 1 and 3). Incidentally and to illustrate this attempt at unification, it may be mentioned that the Economic and Social Committee is also common to the EEC and Euratom (cf. Article 5 of the Convention). Further, it should not be overlooked that the Council of Ministers (in the Bank, the Board of Governors), which in all three Communities and in the Bank is of great importance by virtue of its extensive powers and because it is an institution composed of representatives of the Member States represents a strong guarantee for the coordination of the Communities. Finally, it is known that for a long time efforts have been made to form common departments in the European executives and this is a goal which receives particularly strong support from the elected representatives in the Parliament. While it is true that at present *legal unity* of the three European Communities cannot be said to exist, the fact must not be overlooked that already existing *legal links* between the three Communities and the *unity of ideals* of the institutions constitute a reality giving impetus to closer legal unity. In evaluating factual situations which affect several Communities at once this fact must not be overlooked.

It cannot be denied that the Bank possesses a special position. The provisions of the Treaty and of the Protocol on the Statute of the Bank make this clear. However, it is also clear that the Bank is not intended to lead an independent existence but constitutes *an instrument of the European Economic Community*. The Members of the Bank are the Member States of the European Economic Community. The official duties of the Bank—for that is what they are—are closely connected with the objectives of the Economic Community (cf. in this respect Article 130 of the EEC Treaty):

'The task of the European Investment Bank shall be to contribute, by having recourse to the capital market and utilizing its own resources, to the balanced and steady development of the common market in the interest of the Community. For this purpose the Bank shall, operating on a non-profit-making basis, grant loans and give guarantees which facilitate the financing of the following projects in all sectors of the economy:

(a) projects for developing less developed regions;

(b) projects for modernizing or converting undertakings or for developing fresh activities called for by the progressive establishment of the common market, where these projects are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States;

(c) projects of common interest to several Member States which are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States.'

Cf. also Article 20 of the Protocol on the Statute of the European Investment Bank:

'In its loan and guarantee operations, the Bank shall observe the following principles:

1. It shall ensure that its funds are employed as rationally as possible in the interests of the Community.

...

(b) where the execution of the project contributes to an increase in economic productivity in general and promotes the attainment of the common market.

...'

The necessity of giving the Investment Bank a statute corresponding to its commercial functions must therefore not have the effect of overlooking the primary functional connexion with the European Economic Community and thus the European Communities.

(b) Uniform terms of service

To treat the three Communities and their institutions and instruments in isolation in dealing with the question of staff matters would scarcely be compatible with the abovementioned considerations. It may well be accepted that this will be avoided as the determing of staff regulations for these new Communities is chiefly entrusted to the Council of Ministers, which may well be said to be more or less an institution common to the three Communities. In this respect the attempt has been made up to now to create a statute which is as uniform as possible for all the Communities, that is, a uniform European law relating to officials. In 1958 the decision was made that:

'The Permanent Representatives shall study the problems raised by the adoption of the Staff Regulations of Officials of the Communities of the Common Market and of Euratom in particular in order to harmonize Staff Regulations of the three existing European Communities'.

On 9 October 1959 the following consideration was felt necessary:

'...

In an exchange of views between the Council it was stated in what proceedings the competent authorities of the ECSC Treaty may be invited to examine the possible acceptance of the scale of remuneration proposed by the two new Communities.'

On the same day the Council gave the following directive to the 'Staff Regulations Working Party':

'The rules concerning the remuneration of officials of both the new Communities must be such that they can be accepted by the ECSC and can thus become common rules for the three Communities ...'

Finally there exists a decision of the Council concerning the Staff Regulations of 11 March 1960 which states:

'The entire Staff Regulations shall be based on the ECSC Staff Regulations. The Governments and the Commissions shall inform the Secretariat General before 1 April 1960 of any alterations which they would like to be made.'

(c) Consequences for the present case

The assumption of the High Authority that the adoption may be expected in the foreseeable future of staff regulations creating law which is in essence uniform for all European officials and which also provides particular rules for the transfer of an official from one Community to another cannot be dismissed out of hand. The urgent need for such a rule is evident and this necessity influences, not as a legal provision but still as a legal fact, the interpretation and application of the staff rules in force at the present which are necessarily not comprehensive in dealing with the transfer from one body to another. The fact that the High Authority rejects a strict textual application of certain provisions of the staff rules as the situation in question is not the one for which those rules were established cannot be turned into an objection of inadmissible denial of justice on its part. On the contrary, it must be stated that officials who seek a literal application of staff provisions without consideration of the fact that in the particular situation of the official such an application is contrary to the *sense and* purpose of the provisions lay themselves open to the objection of an inadmissible exercise of a legal right.

It must also not be overlooked that the reticence of the High Authority does not constitute a definitive refusal. The High Authority's intention is that no final ruling should be made so long as there are no relevant provisions creating satisfactory solutions. The rights of officials affected are therefore not endangered; these and the rights of the employer are preserved unchanged by means of an interim measure

('mesure conservatoire') for a transitional period.

Such circumstances have occurred in the previous administrative practice of the ECSC. When in the past an official of the Court of Justice of the European Coal and Steel Community entered the service of the High Authority, literal interpretation of the Staff Regulations would have required resignation with all the legal and financial consequences and the commencement of a new career with a fresh calculation of seniority and eligibility for promotion. In practice the administration rejected this ruling and preferred to accept a transfer which maintained vested rights without giving rise to any financial payments occasioned by the termination of service in one institution and the entry into another institution of the Community. This administrative practice constituting the closing of a lacuna in the Staff Regulations by interpretation was justified by the efforts by the administrations not to make use of public funds without good reason and not by virtue of a strict application of provisions but at the same time to recognize the vested rights of the official in the new post.

It is also possible to imagine how the transfer of an official from the Secretariat of the Council of Ministers of the European Coal and Steel Community to the Secretariat of the Council of Ministers of the Euratom Community before the merger of the Secretariats would have taken effect. In this case too, a literal application of the Staff Regulations of the Coal and Steel Community would have required the resignation with corresponding financial rights of an official who entered the Secretariat of the Council of Ministers of another Community whose staff regulations were not yet known. It may be asked whether the legal separation of the three Secretariats should have such a far-reaching significance, although the management of the administration of the three Secretariats lay in the hands of a single person, one Secretary-General. These questions emphasize the unsuitability of such rules.

After these general observations I shall return to the individual questions at issue and I reach the following conclusions:

(aa) Determination of the date of resignation

Resignation entails the final departure of an official from the service of the Community with the termination of all legal relations unless pension rights exist. This legal form therefore is not suitable for cases where officials are not leaving the service of the European Communities altogether but only wish to change the employer within the Communities. I am therefore of the opinion that the High Authority did not conflict with the principles of the Staff Regulations in refusing to accept the applicant's resignation and by applying to him an interim measure, namely leave on personal grounds. It is irrelevant whether the particular circumstances of the granting of leave on personal grounds are regarded as excluding resignation for the duration of that leave or whether resignation for the purposes envisaged in the present case is regarded as impossible irrespective of the leave granted. This question is not of decisive importance and therefore the applicant's objection that he only accepted leave with reservations is also not relevant. However, if it is clear that the High Authority was entitled to refuse to accept the resignation, then *a fortiori* the High Authority cannot be criticized on the ground that, when it finally accepted the resignation, it failed to comply with the provisions of Article 41 concerning time-limits. The right to refuse resignation includes the less extensive right of deviating from the provisions of Article 41 in fixing the date of resignation.

The implied fixing of 2 July 1959 as the date of resignation is therefore not an infringement of the law.

(bb) Payment of a resettlement allowance

It became evident in the course of the proceedings that after his appointment to the Bank the applicant received a resettlement allowance to the amount of four months' remuneration, an amount which is greater

than the resettlement allowance which he seeks from the High Authority. In his claim against the High Authority he refers to Article 12 of the General Regulations of the ECSC whereby established officials have a right to a resettlement allowance on termination of their service with the Communities if they have completed at least four years' service with the Communities. The resettlement allowance is to be paid against evidence that the official and his family have resettled at a place situated more than 25 km from the place where the official was employed.

The parties take differing views as to the nature and purpose of this allowance. The applicant's view is that it is additional remuneration while the High Authority sees the purpose of the allowance as the flat-rate reimbursement of costs which arise from the transfer of the official's residence on termination of service. The wording of the above-mentioned provision confirms the view of the High Authority. That the allowance is intended to reimburse expenses is shown by the conditions for making a claim, which, moreover, also apply for the counterpart on entry into service, the installation allowance. A *flat-rate* reimbursement is of course not unusual: it is also set out in other provisions of the Staff Regulations, for example, Article 20. Finally, a widow and children also have a right to this allowance and its extent is independent of the number of years of service so long as the period of service was at least four years.

There is no need to decide whether under the law relating to officials of the ECSC the general principle applies that in any event an official may only receive such an allowance once and that he has no such right if he receives similar allowances from a third party on termination of service. It may be asked, however, whether the concept 'termination of service' after the creation of the new Communities with their institutions and other bodies is to be interpreted in such a way that it excludes the case of transfer to another Community. I believe that this question must be answered in the affirmative in view of the inter-relationship of the three Communities—including the European Investment Bank. A transfer within the Communities does not justify the double payment of allowances even if the sources financing the allowances are not identical. True European spirit, which may be expected from all officials in view of their duty of loyalty and which includes the general objective of European integration, necessarily implies that an attempt to profit by duplicated claims for allowances on transfer of posts within the European Communities must be regarded as an abuse of the law. Even at the present moment when no express ruling exists, it may be said that in this respect the *definitive* refusal of the High Authority to pay the resettlement allowance is lawful, although the High Authority accepted the resignation, which, as we have seen, was not a suitable measure to cover the transfer to another European Community.

I therefore propose that the application should be dismissed in this respect as well.

(cc) Payment of a severance grant

The applicant finally contests the refusal of the High Authority to pay the sum standing to his credit in the pension scheme and the severance grant. The proposal made by the High Authority to the applicant is known and it is also known that another official in the same circumstances accepted this proposal. The applicant, however, insists on the application of Article 62 of the Staff Regulations whereby, in cases of termination of service before the official reaches the age of 60, he has a right to payment of a severance grant if he has no right to have the actuarial value of the pension rights transferred to another pension fund. This possibility of transfer is mentioned in Article 61 to which the parties have both referred: where an official leaves the service of the Communities in order *inter alia* to enter the service of a supra-national organization with which the Community has reached an agreement he is entitled to request the transfer of his pension rights.

From Article 61 the applicant deduced that when the Staff Regulations were drawn up

the situation envisaged was of other supranational communities, thus including the Economic Community, and he points to the fact that Article 61 only provided a *right* to transfer if a corresponding agreement existed but did not lay down an obligation for the official to accept such transfer. Article 61 also shows that compliance with his rights under Article 62 cannot be refused.

In this respect as well I find it impossible to accept the view advocated by the applicant. It appears to me doubtful whether at the time when the Staff Rules were drafted (they were adopted on 5 and 29 March 1956) there already existed such precise conceptions of the new Communities, which at that time were only discussed in very broad terms, that Article 61 could also have been intended for them. The actual position of the Communities which were subsequently established showed in any event that their relationship with the ECSC in the context of European attempts at integration is so close that the provision of Article 61 is not suitable and appropriate to it. It can rather be accepted that, in view of the strong links between the three Communities, for transfers within the meaning of Article 61 taking place within the European Communities, special provisions will be adopted which are more appropriate to the particular nature of these Communities than Article 61 and which in particular provide for compulsory transfer of pension rights. I therefore believe that the applicant cannot rely on Article 61. I rather believe that in this respect as well the High Authority must be allowed to leave undecided a solution to the questions in dispute until the provisions of the new staff regulations are known. In fact, the High Authority is here exercising a duty of responsibility for officials which it undertakes so long as an official has not finally left the services of the European Communities. It seeks to ensure that the applicant has proper provision for his retirement by making available the possibility of transfer of his pension rights. If these amounts were paid out immediately the applicant would lose the years of service for the High Authority in any subsequent calculation of his pension rights. Thus, by this system the applicant suffers no loss as the final solution of the problem is not prejudiced.

I am of the opinion that for all these reasons the system adopted by the High Authority is not an infringement of legal provisions or legal principles.

IV. Conclusion

The remaining claims of the applicant are inadmissible and for that reason need not be examined further. For that reason I reach the following conclusion:

I propose that the Court should:

(a) Dismiss Application No 27/59 as inadmissible;

(b) Dismiss Application No 39/59 as inadmissible in so far as the claims were extended in the reply and as being without foundation for the rest.

The decision as to costs should be made in accordance with Articles 69 and 70 of the Rules of Procedure.