2. A complaint is lodged within the meaning of Article 90(2) of the Staff Regulations when it reaches the institution to which it is addressed. The principle of legal certainty requires that the date on which the complaint is considered, vis-à-vis the official, to have been lodged with the administration must correspond with that on which the period allowed for replying to the complaint begins to run. That date is the date on which the administration is able to be apprised of the complaint; the mere posting of the complaint cannot of itself indicate with sufficient certainty the date on which the letter containing the complaint will be delivered to the institution to which it is addressed.

On the other hand, an official cannot be expected to suffer on account of factors beyond his control which may delay the transmission of his complaint, such as deficiencies or delays in transmission from one department to another within the institution in question. It is therefore the date of receipt in the institution's post department which is decisive in determining whether the complaint has been lodged within the period of three months laid down by Article 90(2) of the Staff Regulations.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
25 September 1991 *

In Case T-54/90,

Max Lacroix, a former official of the Commission of the European Communities, residing at Montreal (Canada), represented by Charles Kaufhold, of the Luxembourg Bar, with an address for service in Luxembourg at his Chambers, 7, Côte d'Eich,

applicant,

v

Commission of the European Communities, represented by Sean van Raepenbusch, a member of its Legal Service, acting as Agent, with an address for service in

* Language of the case: French.

Luxembourg at the office of Guido Berardis, a member of its Legal Service, Wagner Centre, Kirchberg,

defendant,

concerning, at this stage of the proceedings, the admissibility of an application seeking, first, the annulment of the Commission's decision of 12 January 1990 abolishing with retroactive effect the 'differential compensation' allowance received by the applicant and, secondly, the annulment of the Commission's decision of 13 March 1990 regarding the recovery of sums alleged to have been wrongly paid to the applicant,

THE COURT OF FIRST INSTANCE (Fourth Chamber),

composed of: R. Schintgen, President, D. A. O. Edward and R. García-Valdecasas, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 11 June 1991,

gives the following

Judgment

The factual background to the application

1 The applicant, Max Lacroix, born on 9 February 1913, went into retirement with effect from 1 March 1978. He continued to reside in Brussels, where he was last employed, until he left Belgium in February 1991 to take up residence in Canada.

2 By a letter dated 30 August 1988, the head of the specialized department dealing with pensions informed the applicant that the Council, having on 5 October 1987 adopted Regulation (Euratom, ECSC, EEC) No 3019/87 laying down special and exceptional provisions applicable to officials of the European Communities serving in a third country (Official Journal 1987 L 286, p. 3), had laid down, in relation to countries outside the Community, new weightings, which were however applicable only to the remuneration of officials in active employment. Article 3 of Council Regulation (ECSC, EEC, Euratom) No 2175/88 of 18 July 1988 laying down the weightings applicable in third countries (Official Journal 1988 L 191, p. 1) provided that the weighting to be applied to pensions where the recipients have established their residence in a country outside the Community was to be 100. The head of the department stated that these new rules of calculation were to apply with effect from 10 October 1987, without affecting retroactively the amount of the applicant's pension. He stated: 'In order to ensure as far as possible that your purchasing power is maintained, and for as long as you continue to reside in Canada, you will be paid a compensatory allowance in the sum of CAD 225.62 per month'.

3 Following the adoption by the Council on 24 October 1988 of Regulations (ECSC, EEC, Euratom) Nos 3294/88 and 3295/88 (Official Journal 1988 L 293, p. 1) correcting the weightings applicable in various Member States apart from Belgium to the remuneration of officials serving in one of those States and the pensions of former officials residing in one of those States, two circular letters were sent by the administration on 5 December 1988 and 5 January 1989 to all retired personnel, including the applicant, drawing their attention to the consequences of the introduction of the new weightings by the regulations referred to above following the five-yearly verifications carried out in 1980 and 1985.

4 The applicant's pension slip for the month of December 1988 contained a statement of account in relation to a so-called 'differential compensation' allowance. This allowance was paid to the applicant from July 1988 until November 1989 inclusive. During that period, various adjustments were made to the amount of the allowance. It appears from the documents before the Court that the total amount of allowances paid to the applicant amounted to CAD 5 787.37.

5 By a letter dated 12 January 1990, received by Mr Lacroix on 22 January 1990, the head of the unit dealing with pensions and former members of staff informed the applicant that 'the differential compensation (code 341) awarded since July 1988 should not have applied' and that 'accordingly, it has been abolished with effect from 1 December 1989'. He added that, 'as regards the previous months, that is to say from 1 July 1988, abolition will be effected as soon as possible' and went on to state that he would inform the applicant 'in due course of the total sum due and of the manner in which it is to be repaid'.

6 By a letter dated 13 March 1990, the head of that unit informed the applicant that the total sum to be deducted from his pension amounted to CAD 5 787.37 and that this sum was to be recovered in six monthly instalments with effect from April 1990.

7 Those deductions were in fact made from Mr Lacroix' pension during the course of the following months.

8 By a letter dated 21 April 1990, posted on that day, received by the Commission's registry on 27 April 1990 and recorded as having been received in its Secretariat-General on 30 April 1990, the applicant lodged a complaint against the decisions contained in the two letters dated 12 January 1990 and 13 March 1990. He complained that the first decision contained no reasons, that it failed to take account of his vested rights and that it had been taken without regard to Article 85 of the Staff Regulations applicable to officials of the European Communities (hereinafter referred to as 'the Staff Regulations'). The second decision was likewise invalid, by virtue of the invalidity affecting the first decision. He further contended that the sum subject to recovery exceeded that which had been paid to him.

9 Following an exchange of correspondence between the administration and the applicant, the Commission's Director-General for Administration and Personnel, by a letter dated 9 November 1990, received by Mr Lacroix on 3 December 1990, informed the applicant as follows:

'Having investigated the matter at length, I am pleased to inform you that your complaint has been favourably received.

The basic conditions for the application of Article 85 of the Staff Regulations were not met in this case.

Accordingly, the sum of CAD 5 787.37 will be paid to you. This corresponds to the total wrongly deducted from your pension.

In the circumstances, your complaint is upheld in its entirety and thus does not need to be pursued any further.'

Procedure

10 Those were the circumstances in which, by an application lodged on 28 December 1990 at the Registry of the Court of First Instance, the applicant brought this action, seeking the annulment of the decisions of 12 January 1990 and 13 March 1990 and of the implied decision to reject his complaint dated 21 April 1990.

11 The Commission, without submitting any defence to its substance, contested the application by raising an objection of inadmissibility which was recorded as having been received at the Registry of the Court of First Instance on 12 February 1991.

12 The applicant lodged written observations, recorded as having been received at the Registry of the Court of First Instance on 10 April 1991, seeking the dismissal of the objection of inadmissibility.

13 Upon hearing the report of the Judge-Rapporteur, the Court decided to open the oral procedure, limited to the question of admissibility, without any preparatory inquiry.

14 The hearing took place on 11 June 1991. The representatives of the parties submitted oral argument and replied to the questions put by the Court.

15 The applicant claims that the Court should:

— declare the action admissible by reason of its having been brought in accordance with the rules contained in the Staff Regulations;

— annul the Commission's implied decision to reject his complaint dated 21 April 1990, in so far as the complaint was not entirely disposed of by the Commission's letter dated 9 November 1990;

— hold that there has been a wrongful failure to satisfy the complaint, in so far as the decisions dated 12 January 1990 and 13 March 1990 have not been expressly annulled for being in breach of the second paragraph of Article 25 of the Staff Regulations;

— annul the aforesaid decisions on the grounds that they do not state the reasons upon which they are based or that they are based on the wrong reasons;

— annul the aforesaid decisions on the ground that they infringe a vested right since they arbitrarily deprive the applicant of an allowance which has been paid to him during a period of several months and which has become part of his pension;

— hold that the so-called 'differential compensation' allowance remains definitively due to him and acquired by him, both until the present time and in the future;

— hold that the Commission is obliged to pay to him those allowances not received up to now and those allowances still to fall due, together with interest at the rate of 10%, alternatively with interest at the rate prescribed by law, from the dates on which they became or become due;

— order the defendant to pay all the expenses and costs of the proceedings.

16 The defendant claims that the Court should:

— dismiss the action as inadmissible in so far as it relates to the decision dated 12 January 1990, as well as the implied rejection of the complaint lodged against that decision;

— hold that there is no need to give a decision on the application in so far as it relates to the decision dated 13 March 1990;

— dismiss as inadmissible the other heads of claim;

— make an appropriate order as to costs.

Admissibility

17 In support of its objection of inadmissibility, the defendant makes two submissions: that the complaint concerning the decision dated 12 January 1990 was out of time and that the action is nugatory in so far as it seeks the annulment of the decision of 13 March 1990.

The first submission: the complaint was out of time

18 The defendant contends that, in so far as the application seeks the annulment of the decision dated 12 January 1990, it was not preceded by a complaint lodged within the prescribed period of three months laid down in Article 90(2) of the Staff Regulations. According to Article 91(2) of the said Staff Regulations, the application should consequently be declared inadmissible.

19 The defendant states, in support of this submission, that the decision in question, which was despatched by the administration on 17 January 1990, was received by the defendant, by his own account, on 22 January 1990. However, the complaint submitted against it by the applicant was not recorded as having been received in the Secretariat-General of the Commission until 30 April 1990, that is to say more than three months after it was received by the applicant. The defendant further submits that the complaint should also be considered to have been submitted out of time even if the date upon which it reached the Commission's registry, namely 27 April 1990, is taken into account and not the date upon which it was recorded as having been received in the Secretariat-General.

20 In support of his contention that this plea of inadmissibility should be rejected, the applicant pleads that the time-limit of three months was complied with in the present case, because the letter containing his complaint was posted on 21 April 1990, within the time-limit laid down by the Staff Regulations. He contends that the Staff Regulations do not require the complaint to be received by the institution within the prescribed period of three months. On the contrary, the fact that no

rigid formalities are applicable to the pre-litigation procedure (a complaint may be lodged merely by letter) must, he argues, lead to the conclusion that in this matter the date of posting must be conclusive since otherwise the prescribed period of three months would be reduced, producing inequality between officials depending on the place where they live. The applicant goes on to argue that since the rules are silent on the question of the date to be taken into consideration, which must be either the date of despatch or the date of receipt of the complaint, the point should be decided in favour of the party whose rights are restricted, that is to say in favour of the official.

21 During the course of the hearing, the applicant again stated that there is nothing to prevent account from being taken of the date on which the letter containing the complaint is posted, thereby enabling the official concerned to avoid being out of time, and treating the date of receipt of the letter by the institution as constituting the point in time from which the period in which the institution must reply to the complaint begins to run.

22 It is to be noted that in the instant case the applicant has not mentioned any exceptional circumstances, such as a strike or a case of force majeure, which might have delayed the posting or the carriage of his letter, thus preventing it from reaching its destination in good time.

23 The question to be determined by the Court concerns the date to be taken as the starting point for the period laid down in the Staff Regulations for the submission of a complaint prior to an appeal in the event that the complaint is sent by post, and is namely whether that date is the date on which the letter was posted, the date on which it was received by the institution's registry or the date on which it was officially registered at the competent department. It should be borne in mind in this regard that the documents submitted to the Court show that the letter containing the complaint was posted on 21 April 1990, that it was received by the Commission's registry on 27 April 1990 and that the complaint was registered at the Secretariat-General on 30 April 1990.

24 As a preliminary point, it should be noted that the Court has consistently held that the time-limits laid down by Articles 90 and 91 of the Staff Regulations for submitting complaints and commencing actions are intended to ensure legal certainty. They are thus a matter of public policy and cannot be left to the discretion of the parties or of the Court. The fact that an institution goes into the

substance of a request which is out of time and therefore inadmissible cannot have the effect of derogating from the system of mandatory time-limits laid down by Articles 90 and 91 of the Staff Regulations and the re-establishing of a right of action which has is definitively time-barred (see the judgment of the Court of Justice in Case 227/83 *Moussis* v *Commission* [1984] ECR 3133). It is to be noted that in this regard the drafters of the Staff Regulations did not provide for special rules for retired officials, and in particular for those resident outside the territory of the Community, who are not able to submit their complaints through official channels within the institution itself.

25 In those circumstances, the fact that in the present case the defendant did not, at the pre-litigation stage, point out that the complaint was out of time and that the applicant was barred from bringing an action before the Court cannot deprive the administration of its right to raise, at the stage of Court proceedings, a plea of inadmissibility based on the late submission of the complaint, still less exempt the Court from the obligation incumbent upon it to check that the time-limits laid down by the Staff Regulations have been complied with (see also the judgments of the Court of First Instance in Case T-130/89 *B.* v *Commission* [1990] ECR II-761; in Case T-6/90 *Petrilli* v *Commission* [1990] ECR II-765; in Case T-19/90 *Von Hoessle* v *Court of Auditors* [1991] ECR II-615 and the order of the Court of First Instance of 7 June 1991 in Case T-14/91 *Weyrich* v *Commission* [1991] ECR II-235).

26 In order to determine the date upon which the complaint is to be considered to have been submitted, it is appropriate to refer first of all to Article 90(2) of the Staff Regulations, the first subparagraph of which provides that '. . . the complaint must be lodged within three months . . .' and the second subparagraph of which provides that 'the authority shall notify the person concerned of its reasoned decision within four months from the date on which the complaint was lodged . . .'. The principle of legal certainty which, as the Court has consistently held, forms part of the legal order of the Community, requires any decision of the administration which produces legal effects to be clear, precise and brought to the knowledge of the person concerned, so that that person is able to know for certain the point in time at which the decision comes into existence and produces its legal effects, particularly as regards access to the legal remedies for which provision is made, in this instance by the Staff Regulations (judgment of the Court of Justice in Joined Cases 205/82 to 215/82 *Deutsche Milchkontor GmbH and Others* v *Germany* [1983] ECR 2633; judgment of the Court of First Instance in Joined Cases T-18/89 and T-24/89 *Tagaras* v *Court of Justice* [1991] ECR II-53; order of the Court of First Instance in Case T-14/91, cited above). The Court therefore considers that, for the purposes of determining the date upon which the complaint was lodged, the principle of legal certainty precludes the possibility of taking two

different dates into account and that the date on which the complaint is, in relation to the applicant, deemed to have been lodged with the administration must also be that on which the period in which the administration must reply begins to run.

27 In deciding this issue, namely the determination of the date to be taken into account, it should be recalled first of all that, in paragraphs 8 and 13 of its judgment in Case 195/80 *Michel* v *Parliament* [1981] ECR 2861, the Court of Justice, having considered the question concerning the point in time from which the period for lodging the complaint begins to run, expressly took into consideration as the final point in time of that period the date on which the letter containing the complaint was delivered to the institution's post department. Similarly, the Court of First Instance, in its judgment in Joined Cases T-18/89 and T-24/89, cited above, stated that in that case 'from the time of receipt of the complaint the Court of Justice had a period of four months within which to reply to it'.

28 It follows from this case-law that Article 90 of the Staff Regulations, which provides that the complaint must be 'lodged' within a period of three months, must be interpreted as meaning that the complaint 'is not lodged when it is posted but when it is received' (see the Opinion of Advocate General Sir Gordon Slynn in Case 195/80 [1981] ECR 2822, cited above) or, in the words of the Court of Justice itself, when it 'reaches' the institution to which it is sent (see the aforementioned judgment, paragraph 13).

29 The first point to be made in this regard is that in the interests of the parties to the dispute and third parties who might be concerned legal certainty requires the points in time at which any prescribed period begins and ceases to run to be clearly defined and strictly complied with. Secondly, and more particularly as regards Community civil service disputes, the date on which the complaint is lodged constitutes the point at which the period during which the authority must notify the complainant of its decision begins to run and that notification in turn starts time running for the lodging of an appeal. In those circumstances, the Court holds that the date upon which the administration is able to be apprised of the complaint is the only date which may be taken into consideration, since posting alone cannot of itself indicate with sufficient certainty the date on which the letter containing the complaint will be delivered to the institution to which it is addressed.

30 On the other hand, it is self-evident that no official should suffer on account of factors beyond his control which may delay the transmission of his letter of complaint. In particular, he cannot be held responsible for any deficiencies or delays in the transmission of communications from one department to another within the institution to which they are addressed.

31 In the present case, it appears from the documents before the Court — and this point is not in issue — that the letter containing the complaint, which was registered at the Secretariat-General on 30 April 1990, was received in the Commission's registry on 27 April 1990. It is accordingly the latter date which must be taken into account in order to determine whether the complaint was lodged within the period of three months laid down by the Staff Regulations.

32 According to his own statements, which have not been contradicted by the Commission, the applicant received the contested decision of 12 January 1990 on 22 January 1990, so that his complaint should have been lodged by 22 April 1990 (see paragraph 8 of the judgment of the Court of Justice in Case 152/85 *Misset* v *Council* [1987] ECR 223). It follows that the complaint lodged on 27 April 1990 must be considered as having been lodged out of time.

33 Accordingly, the application is inadmissible, in so far as it seeks the annulment of the decision of 12 January 1990.

The second submission: the application is nugatory

34 The defendant contends that in so far as it seeks the annulment of the decision of 13 March 1990 fixing the amount to be recovered and laying down the manner in which recovery was to take place the application had become devoid of purpose even before it was made in view of the decision of 9 November 1990 by which the administration informed the applicant that the sum wrongly subjected to recovery was to be repaid to him.

35 Consequently, the defendant asks the Court to declare that there is no need to rule on this head of claim.

36 The applicant did not reply to this submission in his observations lodged on 10 April 1991.

37 The Court finds that the decision of 13 March 1990 is limited to stating the total amount — CAD 5 787.37 — of the sums which are alleged to have been wrongly paid to Mr Lacroix and the manner in which they were to be recovered. The Commission informed the applicant by letter dated 9 November 1990 that it had accepted the complaint which he had addressed to it and that the sums which had been deducted from his pension would be repaid to him.

38 Since the applicant had already obtained satisfaction on this point before his application was lodged on 28 December 1990, it follows that he has not established any legitimate interest in applying for the annulment of the decision contested by him and that this head of claim must likewise be declared inadmissible.

39 It follows from all of the foregoing considerations that the application must be dismissed as inadmissible.

Costs

40 Under the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. However, those rules provide that institutions are to bear their own costs in proceedings brought by servants of the Communities. Furthermore, the Court may order that the parties bear their own costs in whole or in part where the circumstances are exceptional.

41 In this case, account should be taken of the fact that the Commission, by addressing to the applicant decisions giving rise to doubt regarding the existence of his rights and by failing to reply to the various letters which the applicant sent to it before lodging his complaint, conducted itself in a way which contributed to the institution of the proceedings. Secondly, the Commission, although aware of the fact that the complaint had been lodged out of time and that any appeal would therefore be inadmissible, did not draw this point to the attention of the applicant in good time. First of all, the defendant did not show any reaction at all when it

received the letter which the applicant sent to it on 2 June 1990, in which he expressly stated that his complaint had reached the Commission's registry on 27 April 1990. Secondly, it appears from the answers given to the questions put by the Court at the hearing that the officials of the Commission likewise failed to mention the fact that the complaint was out of time during various telephone conversations held with the applicant in the course of the administrative procedure. In the circumstances, the Court considers that the defendant should be ordered to bear one half of the costs of the applicant.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. **Dismisses the application as inadmissible;**

2. **Orders the defendant to bear its own costs and one half of the costs of the applicant, who is ordered to bear the other half of his own costs.**

Schintgen Edward García-Valdecasas

Delivered in open court in Luxembourg on 25 September 1991.

H. Jung
Registrar

R. García-Valdecasas
President