she is gainfully employed, subject to the condition that, by the very fact of the occupation in question, compulsory insurance against the same risks is also provided by virtue of other legal provisions or regulations. On the contrary, Article 3(1) of the Insurance Rules must be interpreted as referring to both the case where the spouse's occupation gives rise in itself, by virtue of legal provisions or regulations, to an obligation to insure against sickness and also the case where the occupation only makes it possible for him or her to benefit, by virtue of legal provisions or regulations, from voluntary insurance against the same risks.

2. The right to rely on the principle of the protection of legitimate expectations extends to any individual who is in a situation in which it appears that the conduct of the Community administration has led him to entertain reasonable expectations.

An official may not plead a breach of the principle of the protection of legitimate expectations unless the administration has given him precise assurances. Promises which do not take account of the provisions of the Staff Regulations cannot give rise to a legitimate expectation on the part of the person concerned.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)

17 December 1992 *

In Case T-20/91,

Helmut Holtbecker, an official of the Commission of the European Communities, residing at Ispra (Italy), represented by Giuseppe Marchesini, Avvocato with right of audience before the Italian Court of Cassation, with an address for service in Luxembourg at the chambers of Ernest Arendt, 8-10 Rue Mathias Hardt,

applicant,

v

Commission of the European Communities, represented by Enrico Traversa, of its Legal Service, acting as Agent, assisted by Alberto Dal Ferro, of the Vicence Bar,

* Language of the case: Italian.

with an address for service in Luxembourg at the office of Roberto Hayder, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of the decision of the office responsible for settling claims at Ispra of 10 July 1990 refusing to refund the medical expenses incurred by the applicant's spouse, for a declaration that the provisions of the second subparagraph of Article 3(1) of the Rules on sickness insurance for officials of the European Communities are unlawful and for an order that the Commission of the European Communities reimburse the applicant for the medical expenses incurred by his spouse or, in the alternative, pay an amount equivalent to the loss that the applicant considers that he has suffered,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fourth Chamber),

composed of: R. García-Valdecasas, President, R. Schintgen and C. P. Briët, Judges,

Registrar: J. C. Wiwinius, Legal Secretary,

having regard to the written procedure and further to the hearing on 21 May 1992,

gives the following

Judgment

The facts of the case

1 The applicant, Mr Helmut Holtbecker, is an official of the Commission of the European Communities (hereinafter 'Commission') attached to the Joint Research Centre, Ispra (hereinafter 'Joint Research Centre'), the town where

he resides. His spouse, Mrs Ursula Holtbecker, established her residence at Zurich from 1 May 1987 and began working there. She does not belong to any sickness insurance scheme.

2 On 11 May 1988 the head of the administration and personnel division of the Joint Research Centre, at the applicant's request, issued him with a certificate stating that Mrs Ursula Holtbecker was covered ('angeschlossen') by the sickness insurance scheme common to the institutions of the European Communities (hereinafter 'joint scheme') that was applicable to her husband.

3 On a number of occasions between 1987 and 1990 the applicant sought reimbursement for medical expenses of a relatively modest amount incurred by his spouse. Those reimbursements were granted by the administration without being questioned.

4 In 1990, however, the office responsible for settling claims at the Joint Research Centre rejected two applications submitted by the applicant regarding the reimbursement of medical expenses to be incurred or already incurred by Mrs Holtbecker. The first, submitted on 28 March 1990, was an application for prior authorization for treatment prescribed on 26 March 1990 and to be provided, between 28 March and 18 April 1990, in a clinic at Leuderbad (Switzerland). That authorization was refused on 8 May 1990 on the following ground: 'Application submitted out of time. Supporting documents from the primary sickness insurance fund not submitted'.

5 The second application, submitted on 26 May 1990, concerned the reimbursement of hospital fees incurred by Mrs Holtbecker between 8 and 17 May 1990 in a clinic at Varese (Italy). In a memorandum of 10 July 1990 the head of the office responsible for settling claims at the Joint Research Centre informed the applicant that his application had been rejected, on the following ground: 'According to the provisions of Articles 3 and 6 of the rules relating to Article 72 of the Staff Regulations, before being able to claim the reimbursement of any medical expenses whatsoever, even under the supplementary scheme, [Mrs Holtbecker] should have been a member of another public scheme and, furthermore, should have first sought reimbursement from her own scheme of the medical expenses or subscriptions covered by that scheme'.

6 By a memorandum registered by the administration on 22 August 1990, the applicant lodged a complaint against the decision of 10 July 1990. He stated that since his wife had worked in Switzerland he had always supplied the administration with the supporting documents requested and pointed out that he had never been informed that his wife needed to be covered by another public sickness insurance scheme and that during recent years his previous applications for the reimbursement of medical expenses relating to his wife had always been settled without question, which had left him in no doubt as to the lawfulness of the situation. Furthermore, the applicant claimed that the provisions referred to by the head of the office responsible for the payment of claims did not take account of the situation applicable in Switzerland, where his wife could not join a public sickness insurance scheme because in that country there are only private sickness insurance funds, which, moreover, provide only partial cover. He therefore sought the annulment of the decision brought to his notice by the memorandum of 10 July from the head of the office responsible for the payment of claims (hereinafter the 'decision of 10 July').

7 That complaint did not receive an express reply from the administration.

Procedure

8 It was in those circumstances that, by an application lodged at the Registry of the Court of First Instance on 25 March 1991, the applicant brought the present action for the annulment of the decision of 10 July 1990, a declaration that the provisions of the second subparagraph of Article 3(1) of the Rules on sickness insurance for officials of the European Communities (hereinafter the 'Insurance Rules') are unlawful, an order that the Commission reimburse the medical expenses at issue and, in the alternative, an order that the Commission must compensate him for the loss that he considers that he has suffered.

9 Upon hearing the Report of the Judge-Rapporteur, the Court decided to open the oral procedure without any preparatory inquiry. By letter of 1 April 1992 from the Registrar, however, the Court invited the defendant to produce various documents, in particular the text of the statutory provisions pursuant to which Mrs Holtbecker would have been able to join a sickness insurance fund, and to reply to a question aimed at specifying the applications for reimbursement referred to in the decision of 10 July 1990.

10 The oral procedure took place on 21 May 1992. The parties' representatives were heard in their oral pleadings and in their answers to the questions put by the Court. The Court asked the defendant to produce documents showing that Mrs Holtbecker could have joined a sickness insurance fund in the canton of Zurich.

11 On 15 and 19 June 1992 the defendant produced various documents, including two memoranda from the Helvetia and Winterthur sickness funds stating that any person residing in Switzerland who has not reached the age of 65 years can become a member.

12 In his observations lodged, together with other documents, on 30 June 1992, the applicant claimed, in regard to those memoranda, that the Helvetia and Winterthur sickness funds can only provide voluntary insurance cover governed by private law to persons who are not subject to compulsory insurance.

13 By decision of 17 September 1992 the President of the Fourth Chamber declared the oral procedure closed.

14 The applicant submits that the Court should:

1. annul the contested decision in that it is contrary, regard being had to the specific context of the present case, to the obligation for social cover laid down in Article 72 of the Staff Regulations of officials of the European Communities (hereinafter 'the Staff Regulations') and declare unlawful the provisions of the second subparagraph of Article 3(1) of the Insurance Rules.

2. annul the decision on the further ground that it is manifestly unfair, since its effects are contrary to the principle of non-discrimination and it fails to observe the right to the protection of legitimate expectations;

3. order the Commission to reimburse, in accordance with Article 72 of the Staff Regulations, the medical expenses referred to in the contested decision, plus interest for late payment with effect from the date of the application for reimbursement up to the date of payment;

4. very much in the alternative, order the Commission to repair the loss suffered by the applicant as a result of the error and act of the administration equal to the amount of the expenses mentioned in paragraph 3, above;

5. in any event, order the defendant to pay the costs.

15 The defendant claims that the Court should:

1. dismiss the application as unfounded;

2. make an order for costs in accordance with the law.

16 At the hearing on 21 May 1992 the applicant stated that his action sought the annulment of the decision of 10 July 1880 only in so far as it rejects the claim for reimbursement of 26 May 1990 concerning his wife's hospital fees in '*La Quiete*' clinic at Varese.

Substance

The pleas in law for annulment

17 In support of his application, the applicant relies on three submissions: first, the breach of Article 72 of the Staff Regulations, secondly, the existence of manifest unfairness constituting a breach of the principle of non-discrimination and, thirdly, the breach of the principle of the protection of legitimate expectations.

18 It is appropriate first of all to set out the provisions that constitute the legal framework of the present dispute.

19 Article 72(1) of the Staff Regulations reads as follows:

'An official, his spouse, where such spouse is not eligible for benefits of the same nature and of the same level by virtue of any other legal provision or regulations, his children and other dependants within the meaning of Article 2 of Annex VII are insured against sickness up to 80% of the expenditure incurred subject to rules drawn up by agreement between the institutions of the Communities after consulting the Staff Regulations Committee.'

20 Article 3(1) of the Insurance Rules in force at the material time provided as follows:

'The persons covered by a member's insurance shall be:

1. the spouse, unless he or she is a member of the Scheme, provided that:

— *he or she is not gainfully employed; or*

— *if he or she is gainfully employed, he or she is covered by a public scheme of sickness insurance and his or her annual income from such employment before tax does not exceed the basic annual salary of an official in the third step of grade B 4, subject to the weighting for the country in which the spouse is so employed.'*

21 Article 6(1) of the Insurance Rules provides as follows:

'Where a member or a person covered by his insurance may claim reimbursement of expenses incurred under any other compulsory sickness insurance, the member shall:

(a) notify the office responsible for settling claims;

(b) in the first instance apply, or have the person concerned apply, for reimbursement under the other scheme;

(c) attach to any application for reimbursement made under this Scheme a statement, together with supporting documents, of reimbursements which the member or the person covered by his insurance has obtained under the other scheme.'

The first submission, based on the breach of Article 72 of the Staff Regulations

Arguments of the parties

22 The applicant contends that, in accordance with the requirements of Article 72 of the Staff Regulations, his spouse is insured against sickness under the joint scheme because she is not eligible for 'benefits of the same nature and of the same level by virtue of any other legal provision or regulations'. He considers that this concept refers to the public sickness insurance schemes membership of which is compulsory by virtue of legal provisions or regulations, such as exist in the majority of the Member States of the Communities. According to the applicant, the sole criterion of the existence of legal provisions is not in itself conclusive, since all insurance schemes, whether public or private, base not only their rules but also a public system of control and guarantees in favour of the insured on national laws. He finds support for that interpretation in the *Provisions for the interpretation of the insurance rules* (See *Informations Administratives*, special interinstitutional issue of 31 December 1990), which, as regards Article 3(1), provide in paragraph (d): 'The

offices responsible for settling claims have a list of the public sickness insurance schemes in the countries of the Community. The determining factor that characterises such a scheme is the obligation to be insured'.

23 In order to show that his wife is not subject to any compulsory insurance scheme in Switzerland, the applicant produced a certificate drawn up by the head of the *Amt für Sozialversicherung der Stadt Zürich* (Social Security Department, Zurich) on 15 October stating that, according to the provisions of the *Verordnung über die obligatorisch Krankenpflegeversicherung* (Compulsory Sickness Insurance Order) of the town of Zurich, Mrs Holtbecker is not under any obligation to be insured and, accordingly, is not required to belong to a compulsory sickness insurance scheme. The applicant states that his spouse could not even apply to become a member of such an insurance scheme, since that option is reserved solely for persons who have reached the age of 60 or 65 years, respectively, and are in specific situations.

24 The applicant further states that his spouse, who is of German nationality, is no longer subject to a public sickness insurance scheme in Germany, since she is employed in Switzerland.

25 The applicant also explains that Article 72 of the Staff Regulations cannot be interpreted as requiring the spouse of an official to contract voluntary private insurance. In that regard, he refers to the judgment of the Court of Justice in Case 58/88 *Olbrechts* v *Commission* [1989] ECR 2661, where it was held that in order to be covered by the joint scheme the spouse of an official who is a member is not required in all circumstances to endeavour to obtain cover by virtue of other legal provisions.

26 The applicant considers that, taking account of the scope that should be given to Article 72 of the Staff Regulations, the second subparagraph of Article 3(1) of the Insurance Rules is unlawful in so far as, taken literally, it has the effect of excluding from the joint scheme the spouse of a member who cannot claim the right to

corresponding benefits under another compulsory scheme. Since Article 3 of the Insurance Rules is simply a provision for the application of Article 72 of the Staff Regulations, it cannot be contrary to that article.

27 The defendant states that Article 72(1) of the Staff Regulations and Article 3(1) of the Insurance Rules are intended to provide the spouse of an official who is not gainfully employed and, in certain conditions, a spouse who is gainfully employed with sickness insurance equivalent to that covering the official. Those conditions, according to the defendant, are that the activity in question does not produce income in excess of a certain amount and that the spouse is insured against the same risks 'by virtue of ... other legal provisions or regulations'. The provisions referred to are those of the law of the State in which the spouse is working. The Commission interprets the concept of 'legal provisions or regulations' as meaning, broadly, the existence of provisions laid down by a public authority and not, therefore, contractual in nature. What is necessary, therefore, is that the person concerned is able to obtain sickness insurance on the basis of an insurance scheme based primarily on laws or regulations, and not merely on a contract subject to private law. The purpose of that rule is to prevent a spouse who is able to benefit from a sickness insurance scheme by virtue of the laws or regulations of a State from not doing so and remaining a burden on the Community scheme alone.

28 Referring to the *Olbrechts* v *Commission* judgment, the Commission claims that by stating that whether the spouse is covered by a member's insurance does not depend on it being totally impossible him or her to be eligible by virtue of other provisions for benefits of the same nature and of the same level the Court did not mean to eliminate the obligation for the person concerned to obtain sickness insurance by virtue of 'any other legal provision or regulations' but only to define the scope of that obligation, which exists only within the limits of what is reasonable.

29 As regards the argument which the applicant bases on the provisions for the interpretation of the Insurance Rules, in particular the provision that the characteristic feature of a public sickness insurance scheme is the obligation to beinsured, the

Commission observes that that provision concerns only the public sickness insurance schemes existing in the Member States of the Community. It is therefore irrelevant in the present case, as Mrs Holtbecker works in Switzerland.

30 In that context, the Commission contends that, under the provisions applicable in Zurich, Mrs Holtbecker could easily have joined one of the numerous sickness insurance schemes authorized by the Swiss authorities, even though those provisions did not require her to do so. Membership of one of those funds, which are not merely insurance companies subject to private law but bodies controlled and subsidized by the State and required to comply with specific statutory obligations, would not have called for any particular effort to obtain information on the part of the applicant's spouse and would have been quite normal.

31 Consequently, according to the defendant, it does not require the members's spouse, in order to be eligible for supplementary insurance under the Community scheme, to enter into an insurance contract governed by private law, but to become a member of a sickness insurance scheme, whether optional or compulsory, based on legal provisions or regulations, that is a scheme that is governed in full or in part by public law.

32 The defendant therefore considers that Mrs Holtbecker did not satisfy the conditions necessary to rely on insurance under the joint scheme by Article 72(1) of the Staff Regulations in conjunction with Article 3(1) of the Insurance Rules, which, according to the defendant, is consistent with Article 72(1) of the Staff Regulations as it should be interpreted.

Findings of the Court

33 According to Article 72(1) of the Staff Regulations the spouse of an official who is not eligible by virtue of other legal provisions or regulations for benefits of the

same nature and of the same level as those which the official can claim is, subject to rules to be specified, insured against sickness by the joint sickness insurance scheme.

34 Article 3(1) of the Insurance Rules states that the benefit of the joint sickness insurance scheme is granted to the spouse of a member, where he or she is gainfully employed, only provided that he or she is insured, by virtue of other legal provisions or regulations, against the same risks and that his or her annual income from employment does not exceed a certain threshold.

35 Both Article 72 of the Staff Regulations and Article 3 of the Insurance Rules take as their starting point the idea that, as far as possible, an official's spouse who is in paid work must seek reimbursement of his or her medical expenses under the sickness insurance scheme which covers him or her, by virtue of his or her own occupation, against the risks of sickness, since only supplementary cover is provided under the Community scheme.

36 Neither Article 72(1) of the Staff Regulations nor Article 3(1) of the Insurance Rules makes the spouse's cover under the joint scheme, where he or she is gainfully employed, subject to the condition that, by the very fact of the occupation in question, compulsory insurance against the same risks is provided by virtue of other legal provisions or regulations. On the contrary Article 3(1) of the Insurance Rules must be interpreted as referring to both the case where the spouse's occupation gives rise in itself, by virtue of legal provisions or regulations, to an obligation to insure against sickness and also the case where the occupation makes it possible for him or her to benefit, by virtue of legal provisions or regulations, from voluntary insurance against the same risks.

37 It follows from those findings that not only are Article 72(1) of the Staff Regulations and Article 3(1) of the Insurance Rules not contradictory but that, as they pursue the same objective, they are mutually complementary.

38 Accordingly, the Court must ascertain whether in the present case Mrs Holtbecker's occupation in Zurich gave rise in itself, by virtue of legal provisions or regulations in force in the place of work, to an obligation to be insured against sickness or the right to benefit from voluntary insurance against the same risks.

39 The Court finds that it is apparent from the certificate drawn up on 15 October 1990 by the head of the Zurich Social Security Department, which was produced by the applicant and the content of which was not disputed by the defendant, that Mrs Holtbecker, in so far as she is gainfully employed at Zurich, is not thereby subjected to a compulsory sickness insurance scheme.

40 The Court also notes that, in the light of the documents provided by the defendant at the Court's request, and in particular from document No 2, dated April 1990 and entitled *Sickness insurance: case-law and administrative practice*, published by the Federal Social Insurance Office, Berne, that Article 5, first paragraph, of the Federal Sickness Insurance Act of 13 July 1911, which grants every Swiss citizen the right to become a member of a fund provided that he or she meets the statutory conditions for admission, is also applied by analogy to foreign nationals, according to consistent practice.

41 The Court further observes that the Helvetia and Winterthur sickness funds, which are recognized by the Swiss authorities and subject to Federal law on sickness insurance, confirmed in their memoranda dated 4 June and 9 June 1992, respectively, which were sent to and have been produced by the Commission, that any

person residing or permanently staying in Switzerland who has not reached the age of 65 years may become a member of those funds. It follows that any person in the same situation as Mrs Holtbecker's meets the statutory conditions for admission required by those funds and that if she had applied to become a member her application could not have been refused.

42 The Court draws the conclusion that Mrs Holtbecker, because of her occupation and by virtue of the legal provisions and regulations in force in her place of work, was entitled to benefit, without showing particular diligence, from social sickness insurance.

43 Accordingly, the submission must be dismissed as unfounded.

The second submission, based on manifest injustice constituting a breach of the principle of non-discrimination

Arguments of the parties

44 The applicant contends that the interpretation of Article 3 of the Insurance Rules accepted by the office responsible for settling claims leads to manifest injustice. A spouse of a Community official who is in gainful employment and cannot join a compulsory national scheme by virtue of legal provisions or regulations is deprived of any social insurance, whether under the national laws or the Community rules, while a spouse who belongs to a compulsory national insurance scheme also benefits from supplementary insurance under the joint scheme for the part of the expenses that is not reimbursed under the national scheme.

45 According to the applicant, that interpretation is also discriminatory in so far as it has the effect that the benefit of insurance under the joint scheme depends on the existence in national law of a compulsory insurance scheme. In this way, his wife

was the victim of serious discrimination compared with the spouse ofanother official who, being gainfully employed in Italy, for example, is automatically a member of a statutory scheme in that State and therefore benefits simultaneously from both social insurance schemes.

46 The Commission, which reiterates that in order to benefit from insurance under the joint scheme Mrs Holtbecker should have joined one of the schemes provided for in Swiss law, states that if Mrs Holtbecker had worked in Italy she would also have had to join the sickness insurance scheme provided for in Italian law. In both cases Mrs Holtbecker would have been under no obligation under the national laws in force in those States to join the relevant scheme, since the Italian and Swiss schemes provide only an option, and not an obligation, for resident foreign nationals to join a sickness fund, so that there is no question of discrimination. On the other hand, there would be discrimination if a spouse in Mrs Holtbecker's position were not required to join a national sickness insurance scheme. In that case the spouse would be at an advantage in economic terms compared with, for example, a spouse of Italian nationality working in Italy. Such a spouse would be required by law to join the national sickness insurance scheme and to pay the relevant contributions.

Findings of the Court

47 The Court finds that the applicant's arguments in support of the second submission are based on the notion, which already forms the basis of the first submission, that the spouse of a Community official who is in work is covered by the joint sickness insurance scheme only if there is a compulsory insurance scheme at the place where he or she works. The Court held, in answer to the first submission, that where cover under the joint sickness insurance scheme is extended to a spouse who is gainfully employed it is not necessarily assumed that the spouse is a member of a compulsory scheme, but only that he or she is eligible, by virtue of legal provisions or regulations, to become a member of an insurance scheme providing sickness cover. It follows that the spouse of an official who is eligible to become a member of such a scheme is covered by both the insurance scheme provided for in national law and, in addition, by the joint scheme. Consequently, there is no question of manifest injustice constituting a breach of the principle of non-discrimination and this submission must be rejected.

The third submission, based on the breach of the principle of legitimate expectations

48 The applicant states, first, that up until the decision refusing reimbursement which forms the subject-matter of these proceedings the administration had reimbursed all the medical expenses incurred by his wife, and in doing so had been fully aware of the fact that she was gainfully employed, which was apparent from the annual declarations which he had made to the administration in that regard. That attitude of the administration encouraged him in his conviction that his wife was covered by the joint scheme, especially since all the previous reimbursements had been granted by way of primary insurance rather than supplementary insurance. Consequently, he was entitled to consider that the administration, when faced by the borderline case of his wife, had intended to apply the rule in Article 72 of the Staff Regulations, which, according to the applicant, provides that a spouse who cannot be covered by another compulsory scheme is to be covered by the joint scheme. The applicant states that in any event the administration should have advised him in good time of its attitude, in order to allow him to subscribe to private insurance and avoid the loss resulting from the refusal to reimburse the expenses incurred.

49 Secondly, the applicant relies on the certificate issued at his request by the head of the Administration and Personnel Division of the Joint Research Centre on 11 May 1988, certifying that his wife was covered by the joint scheme. That certificate was signed with full knowledge of the facts and without reservation by the head of administration, in such a way that the applicant could claim to have been convinced of its accuracy.

50 As regards the first argument, dealing with the reimbursement of medical expenses incurred prior to those forming the subject-matter of these proceedings, the defendant replies that they were wrongly made by the office responsible for settling claims, which assumed that Mrs Holtbecker was covered by a national sickness insurance scheme. It was only when the application for reimbursement related to greater sums that the administration thought it appropriate to require production of the supporting documents required by the Staff Regulations, and it was only then that it became aware that Mrs Holtbecker did not belong to any national insurance scheme.

51 The applicant denies that its attitude could have created an expectation on the part of the applicant. As an official of Grade A2, and the head of a unit of 350 persons, he should, according to the defendant, have had a certain knowledge of the provisions applicable in such matters.

52 As regards the second argument, relating to the certificate of the head of the Administration and Personnel unit of the Joint Research Centre, the defendant claims that that declaration has nothing to say about Mrs Holtbecker's actual situation. Consequently, it was for the applicant himself to show diligence and to ask the sickness fund for more detailed information and a more explicit declaration. Furthermore, the defendant observes that, according to the case-law of the Court of First Instance (see Case T-123/89 *Chomel* v *Commission* [1990] ECR II-131, paragraphs 26 to 30), even if that an official receives incorrect confirmation from the administration of the entitlement which he claims, such an undertaking cannot in itself create a legitimate expectation.

Findings of the Court

53 As regards the first argument, based on the reimbursement of the medical expenses incurred prior to those forming the subject-matter of these proceedings, it should be observed that, according to a consistent line of decisions (see in particular the judgment in *Chomel* v *Commission*), the right to rely on the principle of the protection of legitimate expectations extends to any individual who is in a situation in which it appears that the conduct of the Community administration has led him to entertain reasonable expectations. However, an official may not plead a breach of the principle of the protection of legitimate expectations unless the administration has given him precise assurances. In the present case the mere fact that in the past a number of medical expenses of a relatively modest amount were reimbursed without reservation cannot be regarded as having been sufficient to lead the applicant to be certain that his wife was actually covered by the joint sickness insurance scheme or as constituting a fault on the part of the administration.

54 As regards the second argument, relating to the certificate of the head of the Administration and Personal division of the Ispra Joint Research Centre of

11 May 1988, even supposing that that official was familiar with Mrs Holtbecker's precise situation when he drew up that certificate, it should be noted that even if the applicant received confirmation from the Commission of the entitlement which he claimed, such a undertaking could not have created a legitimate expectation, since no official of a Community institution can give a valid undertaking not to apply Community law. Promises which do not take account of the provisions of the Staff Regulations cannot give rise to a legitimate expectation on the part of the person concerned (see *Chomel* v *Commission*).

55 Consequently, the submission based on the breach of the principle of legitimate expectations cannot be upheld.

56 It follows that the pleas in law in support of the annulment of the Commission's decision of 10 July 1990 must be dismissed as unfounded.

The pleas in law of a pecuniary nature

57 Since the pleas in law for the annulment of the decision have been dismissed as unfounded, the claim for reimbursement of the expenses incurred by the applicant's wife must also be dismissed.

58 As the examination of the facts by the Court has shown that the Commission did not commit any fault, it follows that the alternative claim for reparation of the loss alleged by the applicant must also be dismissed.

Costs

59 Pursuant to Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have

been asked for in the successful party's pleadings. However, Article 88 of those Rules provides that institutions are to bear their own costs in proceedings brought by servants of the Communities.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. Dismisses the action.

2. Orders the parties to bear their own costs.

García-Valdecasas Schintgen Briët

Delivered in open court in Luxembourg on 17 December 1992.

H. Jung
Registrar

R. García-Valdecasas
President