an agreement implementing the unification or merger of the provident and pension funds for the whole of the Communities will it be possible to recognize the right of the High Authority to safeguard the interests of the common fund.

5. A delay in the performance by the administration of one of its obligations does not, in the absence of any legal provision for default interest (intérêts moratoires) in Community law permit the payment of such interest to an official.

In Cases 27/59 and 39/59

ALBERTO CAMPOLONGO, an official of the European Investment Bank in Brussels, assisted by Federico Pecoraro, Advocate of Florence, with an address for service in Luxembourg at the Chambers of Fernand Probst, 103 rue Ermesinde,

applicant,

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by its Agent, Professor Giulio Pasetti, Legal Adviser to the High Authority, assisted by Alberto Trabucchi, Professor of the University of Padua, Advocate of the Corte di Cassazione, with an address for service in Luxembourg at its offices, 2 place de Metz,

defendant,

Application, *in Case 27/59,* for the annulment of the decision contained in the letter from the President of the High Authority of 7 March 1959 informing the applicant that the resignation which he had tendered could not be accepted;

Application, *in Case 39/59,* for the annulment of the decision of 2 July 1959 from the President of the High Authority in so far as it concerns the effects of the resignation of the applicant, accepted by that decision, and in so far as it determines the allowances on termination of service,

THE COURT (Second Chamber)

composed of: R. Rossi, President, A. M. Donner and Ch. L. Hammes (Rapporteur), Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Summary of the facts

The facts giving rise to the present cases may be summarized as follows:

1. Alberto Campolongo entered the service of the High Authority (Economic Division) on 11 February 1954 and was appointed a permanent member of the staff on 15 October 1956 with effect from 1 July 1956.

2. He tendered his resignation by letter dated 18 March 1958.

3. Informed by Mr Campolongo of his employment by the European Investment Bank, the High Authority advised him by a memorandum of 24 April 1958 that in agreement with that institution it had decided to treat officials transferring to the employment of the European Investment Bank as being provisionally on leave on personal grounds until the establishment of staff regulations applying to officials of all the institutions of the European Communities. Consequently, the applicant was requested to submit to the High Authority a request for leave on personal grounds.

4. By a letter of 25 April 1958 the applicant informed the High Authority that, on the one hand, he had no grounds for changing his intention of resigning contained in his letter of 18 March 1958 but that, on the other hand, he would agree to certain interim measures (mesures conservatoires) and consequently was prepared to accept being placed on leave on personal grounds.

5. By decision of 2 May 1958 the High Authority 'in view of the application' of the applicant 'granted' him leave on personal grounds.

6. On 11 February 1959 the applicant again tendered his resignation to the President of the High Authority.

7. By a letter of 7 March 1959 the Director of the Personnel and Administration Division, acting on behalf of the President of the High Authority, informed the applicant that his resignation could not be accepted and that the High Authority had suggested a compromise solution to the European Investment Bank.

8. On 8 May 1959 Mr Campolongo introduced an action (registered under No 27/59) against the decision contained in the letter of 7 March 1959.

9. By letter of 2 July 1959 the President of the High Authority informed the applicant that he had decided to finalize his resignation as the European Investment Bank had not accepted the proposal made to it for finding a compromise solution to the situation. This letter also determined the applicant's rights in respect of the various grants and allowances (resettlement allowance, removal expenses, severance grant) on the basis of the directives adopted by the High Authority in respect of the allowances payable to officials who are enabled by leave on personal grounds to enter the service of an institution of the new European Communities.

10. In a second application lodged on 31 July 1959 (registered under No 39/59) Mr Campolongo sought the annulment of the decision contained in the letter of the President of the High Authority of 2 July 1959 in so far as it ruled as to the effects of his resignation and determined his allowances on termination of service.

II — Conclusions of the parties

1. *Case 27/59*

In his initiating application the *applicant* seeks the annulment of the decision contained in the letter of 7 March 1959 of the President of the High Authority refusing to accept his resignation and to have the High Authority ordered to pay the costs.

In his reply he contends that the action should be declared admissible and, in so far as is necessary, joined to Application No 39/59 which had been introduced subsequently.

The *defendant* contends principally that the action should be declared to be inadmissible and, in the alternative, as to the substance of the case that the Court should rule that the application no longer served any purpose and that the applicant's request for the costs to be borne by the defendant should be rejected.

In its rejoinder the defendant states that it is in agreement with the joining of Cases 27/59 and 39/59.

2. *Case 39/59*

In his initiating application the *applicant* seeks the annulment, with all the legal consequences in particular as regards the costs, of the decision of the President of the High Authority dated 2 July 1959 in so far as it concerns the effects of his resignation and determines his allowances on termination of service.

He also requests that this application be joined with Case 27/59.

In his reply the applicant made the following additional conclusions:

that the High Authority be ordered to produce his personal file;

that it be declared that his resignation of 11 February 1959 took effect according to the relevant legal provisions on 12 March 1959 or, at the latest, on 11 May 1959;

that the High Authority should be obliged to grant to him pursuant to his resignation and because of the position under the Staff Regulations:

(a) A resettlement allowance equal to 4 times his last monthly salary;

(b) Reimbursement of travelling expenses from Luxembourg to Brussels for himself and his family;

(c) The capitalized amount of the sum to his credit with the Provident Fund;

(d) The capitalized amount of the sums deducted from his salary in respect of pension contributions;

(e) A severance grant amounting to one and a half times his last monthly salary in respect of one year and six month's service;

(f) Compensation for the eight-thirtieths of his annual leave which had not been taken by 1 May 1958 and reimbursement for travelling expenses in respect of such leave;

(g) 5% interest, or such amount as the Court deems fit, on the amounts payable in respect of the various obligations as from 12 March 1959, or, at the latest, from 11 May 1959.

The *defendant* contends that the demands made in the application should be rejected and that the application should be joined to Case 27/59.

III — Submissions and arguments of the parties

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

A — *Case 27/59*

1. Admissibility of the application

The *defendant* objects that the application is inadmissible on the ground that it was introduced more than one month after notification of the contested decision.

The Rules of Procedure of 21 February 1957 for disputes between the Community and its servants provided a period of two months for servants to lodge applications; this special regulation was abrogated by the new General Rules of Procedure of 3 March 1959 (Article 110 (d)) which contain no pro-

vision as to the periods for lodging applications. The High Authority therefore believes that the period of one month laid down by the ECSC Treaty (Article 33) for applications to the Court is of general application.

As the contested decision was dated 7 March 1959 and reached the applicant on 9 March, the application which was introduced on 8 May is therefore belated and inadmissible.

The *applicant* claims that the objection of admissibility raised by the High Authority is without foundation for two reasons:

First, from a general point of view the applicant is of the opinion that the period imposed by Article 33 of the ECSC Treaty cannot be extended by analogy to applications the object of which is completely different. The abrogation of the period of two months can have only one effect, that of removing the provision of a period for actions by servants of the Communities and re-establishing the system which existed before the publication of the special Rules of 21 February 1957, where no periods were provided. In this connexion he refers to the case-law of the Court of Justice of the ECSC (Case 10/55, *Mirossevich* v *High Authority,* Rec. 1955-1956, p. 365).

Furthermore, the applicant points out that the Rules of Procedure of 3 March 1959 were only published in the Journal Officiel and only entered into force on 21 March; therefore it was only on that date that the special Rules of 21 February 1957 were abrogated (by Article 110 of the new Rules). Consequently the period of two months from the notification of the decision had already started to run. It is an accepted principle concerning the temporal effects of Rules of Procedure that periods for initiating proceedings which are running when new rules enter into force continue to be governed by the earlier rules.

2. The object of the application

In its defence submissions the *defendant* maintains that the application has lost its purpose following the decision of 2 July 1959 which finalized the resignation of the applicant which had previously been refused and, in practice, annulled the contested decision.

As the applicant has in the meantime also contested this decision the High Authority no longer relies on this argument in its rejoinder.

The *applicant* does not take any formal position in respect of the argument of the High Authority relating to the object of the application; the fact that the decision of 2 July 1959 only gives him partial satisfaction proves nevertheless that he does not believe that the application has lost its purpose; his request to have the two cases joined confirms this.

3. The substance of the case

The *applicant* maintains that, in adopting the decision of 7 March 1959 refusing his resignation, the High Authority was acting *ultra vires* in infringing and misapplying Article 41 of the Staff Regulations and in infringing the general principles of law relating to the duration and termination of contracts of employment.

(a) Infringement and misapplication of Article 41 of the Staff Regulations

The applicant takes the view that a contract of employment of servants of the ECSC, as governed by the Staff Regulations of 28 January 1956, is a contract of indeterminate duration. In such a contract each party has, at any time, the right to terminate the legal link by a unilateral expression of intention; the expression of intention of the other party is not required and has no legal effect.

Article 41 (A) of the Staff Regulations provides that the expression of intention of the servant shall be followed by an expression of the intention of the appointing authority 'confirming the resignation'. However, this does not mean that the authority's decision affects the validity of the termination of the contractual bond but merely its effects, which the decision suspends or delays in

the interest of the service over a period which is expressly limited by the Staff Regulations. Once this period has expired the resignation takes effect automatically.

Consequently, in the present case the President of the High Authority exceeded his authority in refusing the applicant's resignation. On the contrary, he should have accepted it and given the applicant notice of the fact by fixing a date on which the resignation would take effect. The fact that the applicant was on leave on personal grounds until 30 April 1960 denied even the High Authority the opportunity of relying on the requirements of the service as a reason for delaying the date on which the resignation took effect within the period provided by the Staff Regulations.

(b) Infringement of the general principles of law relating to the duration and termination of the contract of employment

The applicant states that it is universally accepted that a contract of employment cannot be of indeterminate duration binding the employee for the whole of his lifetime.

A contract of employment of indeterminate duration, the effects of which depend on the consent of the employer alone, constitutes a contract for perpetual work by the employee, the determination of which is dependent on the goodwill of the employer; such a contract is void.

By rejecting the resignation of the applicant the contested decision infringes this general principle of law and is therefore void. It would even be void if the refusal had been given in application of a rule of the Staff Regulations which would in this respect be illegal.

Furthermore the applicant maintains that in matters relating to contracts of employment under public law the acceptance by the authority of the resignation of the employee can only be refused or delayed for serious reasons related to the service.

The contested decision states no valid ground justifying the refusal to accept the resignation as the ground therein set out bears no relation to the reasons of the service but only to reasons unconnected with the service and the contract of employment itself.

The *defendant* does not challenge the substantive arguments relied on by the applicant.

It merely maintains that in his letter of 25 April 1958 the applicant agreed to be placed on leave on personal grounds for two years and only to submit his final resignation when the consequences of his transfer to another institution had been regularized. In view of this agreement his offer of resignation of 11 February 1959, which was contrary to the provisional situation reached by common agreement, had to be regarded as a proposal which the High Authority was at liberty to accept or refuse; the refusal of the resignation at a time when agreement with the Bank still seemed possible was therefore proper and legitimate.

The *applicant* denies that there existed any agreement between himself and the High Authority which might justify refusal of his resignation and he states that the contested decision does not refer to any such agreement.

B — *Case 39/59*

1. Infringement of the second and third subparagraphs of Article 41 (A) of the Staff Regulations

The *applicant's* first objection relates to the fact that the contested decision confirming his resignation was only taken on 2 July 1959 and that it does not determine the date on which the resignation takes effect.

He therefore takes the view that the High Authority thereby accepted his resignation with effect either from the date of the letter in question (that is to say, on 2 July 1959) or on the date that he received the letter (that is to say, on 7 July 1959).

The provisions of the second and third sub-

paragraphs of Article 41 (A) of the Staff Regulations of the ECSC state that the decision of the appointing authority confirming the resignation must be taken within one month from the letter of resignation; the resignation takes effect from the date specified by the authority but cannot be more than three months after the submission of the letter of resignation for officials in Category A (of which the applicant is one).

As the applicant submitted his resignation on 11 February 1959 the decision of the President of the High Authority should have been taken by 12 March 1959 at the latest and the resignation should have taken effect either on that date or on 11 May 1959 at the latest. For the latter date the maximum period of three months for the effectiveness of the resignation must be justified by the requirements of the service but in the present case this is not possible as, at the time of his resignation, the applicant was on leave on personal grounds, which excludes any activity and therefore any requirements of the service.

The *defendant* replies that although the contested decision does not fix the date on which the applicant's resignation takes effect, which is equivalent to fixing the date as 2 July 1959, that is, the date on which the decision was taken, this is the direct consequence of the letter of 25 April 1958 whereby the applicant accepted being placed on leave on personal grounds. This agreement implies the renunciation of the immediate benefit of the allowances payable on normal termination of a contract of employment. It was superimposed on the usual position under the Staff Regulations. Any modification of the position which had thus been agreed proposed unilaterally by the applicant in his letter of resignation of 11 February 1959 could only take effect with the agreement of the High Authority.

The *applicant* replies that leave on personal grounds as governed by the Staff Regulations (Article 33) does not imply that the official has, even tacitly, renounced his right to tender his resignation.

In addition he states that he agreeed to his leave on personal grounds subject to certain reservations, that the High Authority unilaterally determined his leave at two years and finally that acceptance of the leave was subject to the condition, which has not been fulfilled, of an arrangement between the High Authority and the Bank. His offer of resignation can therefore not be described as a unilateral modification of an agreement between the parties, the effects of which were subject to agreement by the High Authority. On the contrary the High Authority is obliged to comply with the time-limits and procedure set out in Article 41 of the Staff Regulations.

The *defendant* also raises the objection to the first argument that the applicant has no legal interest; the applicant was on leave on personal grounds and the termination of this situation produces certain necessary consequences.

In reply the *applicant* justifies his interest, on the one hand, by the fact that in Case 27/59 it was possible that his action would be excluded for failure to have Application No 39/59 relate to the problem of the time when his resignation took effect and, on the other hand, by the fact that the interest payable in the case of belated payment of the allowances provided for on the termination of a contract of employment runs from the moment when the contract terminates.

The *defendant* replies that in any event the date of resignation has no effect on the interest payable in case of belated settlement; in fact as regards the severance grant the payment of interest until the termination of the contract of employment is provided by Article 62 of the General Staff Regulations of the ECSC (hereinafter referred to as the 'General Regulations'). For the subsequent period there exists the acknowledgement of the High Authority in the contested letter.

As to the other allowances claimed by the applicant, the High Authority observes that right to interest only exists as from the date of giving notice which only occurred in the reply in Case 39/59.

2. The other arguments of the application

Against the applicant's other arguments, namely the infringement of certain articles of the General Regulations and of the general principles of labour law, the *High Authority* raises the central concept of the fundamental unity of the European Communities.

It believes that the rules provided for officials who finally leave the Community may not, because of this unity, be applied to officials who merely transfer to another institution of the Communities.

The Staff Regulations and the General Regulations were established at a time when there existed only one European Community and where transfer to another had not been envisaged. The only hypothesis possible at that time was the transfer from one institution to another within the ECSC. The fact that the rules relating to the termination of a contract of employment are not applicable to such a case appears to the High Authority to be evident.

The absence of a general regulation governing relations between the three Communities, in particular with regard to their officials, cannot in the opinion of the High Authority justify the extension of the rules provided for resignation to cases of the transfer of an official within one general organization on a European level which is in essence a single unit although it is composed of separate legal entities.

The *applicant,* on the other hand, maintains that the High Authority is mistaken in believing that it can justify its refusal to apply the provisions of the General Regulations on the basis of the argument that they only apply to officials who definitively leave the ECSC, to the exclusion of those transferring to the service of another European institution.

In fact the General Regulations make provision for the latter case. Article 61 runs as follows:

'An official who leaves the service of the Community in order to enter the service of a national, international or supranational administration or organization which has concluded an agreement with the Community shall be entitled to have the actuarial equivalent of his retirement pension rights in the Community transferred to the pension fund of that administration or organization'.

Therefore, the alleged absence of provision does not exist and the General Regulations must be applied to the present case.

The applicant contests that the hypothesis of the transfer of an official to the service of another European Community was not foreseeable at the time when the Staff Regulations and the General Regulations were drafted.

He states that the Bank, which is a separate legal entity, is not an institution of the new European Communities.

The *defendant* replies that Article 61 does not bear the meaning attributed to it by the applicant since, having regard to the time of its adoption, it only concerns organizations which are completely different from the Community of the Six (Organization for European Economic Cooperation, Council of Europe etc.).

On the other hand it states that the Investment Bank, which was established by the EEC Treaty and falls within the jurisdiction of the Court, is, in respect of its functioning, linked to the European Economic Community.

(a) Infringement of Articles 12, 13, 15 and 62 of the General Staff Regulations of the Community

The *applicant* takes the view that the provisions of the General Regulations which govern the resettlement allowance (Article 12 (a)), travelling expenses (Article 13 (a)(2)), removal expenses (Article 15 (b)) and the severance grant (Article 62) make no distinction between officials who simply terminate their duties and those who terminate them in order to transfer to the service

of another institution with or without the 'benefit' (faveur) of leave on personal grounds. They are equally applicable to both.

The contested decision therefore infringes these provisions by refusing their application to the applicant.

In his reply the applicant adds that in complying with his request to annul the passage of the contested decision relating to financial benefits the Court should determine to what pecuniary benefits he is entitled. He sets out therein the benefits which he claims; repatriation allowance amounting to four months' salary, reimbursement of travelling expenses between Luxembourg and Brussels, payment of the amount to his credit in the Provident Fund. He states that he does not seek the reimbursement of removal expenses.

The *defendant* argues that compliance with the applicant's demands would involve sanctioning a misuse of a right; in the present case the applicant seeks the benefit of provisions which were laid down for a completely different eventuality.

On proceeding to examine these demands, the High Authority points out that the payment of the resettlement allowance and travelling expenses and removal expenses does not take account of reality and could even result in double payment which is certainly not acceptable; moreover, the resettlement allowance is subject to the requirement of a minimum period of service.

In respect of the severance grant sought by the applicant, the High Authority takes the view that the possibility of immediately and successively liquidating the capital accumulated for the purposes of the Provident Scheme is also not admissible as being contrary to the pension scheme.

In the opinion of the *applicant* there can be no question in the present case of a misuse of a right which in his view presupposes damage caused by the use of a right created for this purpose. On the contrary, he maintains that he is exercising an existing right in furtherance of a legitimate interest.

The *defendant* replies that the applicant is confusing the idea of misuse of a right with that of an act committed with the sole intention of causing harm; a misuse of a right does exist in the present case as the applicant claims to rely on the letter of a regulation in order to obtain benefits which were provided for a completely different purpose.

(b) Infringement of the general principles of law relating to the termination of contracts of employment and payment of the corresponding allowances

The *applicant* maintains that in the case of contracts for an indeterminate duration severance grants are payable independently of the allowances which the worker may receive in respect of his new post and that the refusal of the allowance provided for in Article 12 and the reimbursement provided for in Article 15 of the Regulations for the reason that the applicant would receive comparable allowances in his new post is without legal foundation.

The *defendant*, relying on the arguments set out under (a) *supra*, argues that the applicant's contention is without foundation in particular because a basic precondition, the termination of the contract of employment, is absent.

The *applicant* maintains that, on the contrary, the letter of 2 July 1959 contains a simple acceptance of his resignation leaving aside the proposed settlement of financial problems. Furthermore, the High Authority produced the letter in Case 27/59 in order to show that that case had no purpose, as the letter in practice annulled the previous decision of refusal and thus recognized that the contract of employment had been terminated.

(c) Infringement of Articles 29 and 14 of the General Regulations

The *applicant* finally criticizes the fact that the contested decision fails to provide for compensation for annual leave which he had not taken (8/30ths of his monthly emoluments) and for reimbursement of the travelling expenses for his annual leave.

The *defendant* replies that the contested decision in no way refused payment of these amounts.

The *applicant* takes notice of the High Authority's acceptance to pay these amounts.

Grounds of judgment

I — The procedure

1. The interests of a good administration of justice will be served by joining the cases registered under Nos 27/59 and 39/59 in the Register of the Court and by giving a decision on them in a single judgment.

The parties sought this step and in his opinion the Advocate-General did not oppose it. Thus the provisions of Article 43 of the Rules of Procedure have been satisfied.

2. No objection as to the form of either of the two actions has been raised by the parties or by the Advocate-General. They are also open to no objection by the Court of its own motion.

II — The application for the annulment of the decision contained in the letter of 7 March 1959 from the President of the High Authority (Case 27/59)

1. *Admissibility*

The applicant maintains that the President of the High Authority was mistaken in refusing the applicant's resignation submitted on 11 February 1959 by its decision of 7 March 1959.

It must at this point be stated that subsequently the resignation was confirmed by the decision of the President of the High Authority dated 2 July 1959.

As the latter decision was taken before the High Authority lodged its statement of defence (13 July 1959), the High Authority merely objects that the applicant's request is inadmissible arguing, on the one hand, that it is out of time and, on the other, that it is without purpose.

(a) The objection that the application is out of time

It is evident from the documents in the case that the contested decision was dated 7 March 1959 and was notified to the applicant on 9 March.

The Rules of Procedure of the Court of 21 February 1957 for disputes referred to in Article 58 of the Staff Regulations provided a period of two months for officials to bring actions against the ECSC.

As the application was lodged by the applicant on 8 May 1959 it complied with the period prescribed by this provision as, by virtue of a universally accepted principle of law, the period only starts to run from the time of the notification of the contested decision.

Nevertheless, as the above-mentioned rules were abrogated by new Rules of Procedure of 3 March 1959 which contain no provision relating to periods for the introduction of actions concerning disputes between officials and institutions, the High Authority maintains that as the action seeks the annulment of a measure the period applicable is one month by virtue of the general law relating to annulment which in its view is based on Article 33 of the ECSC Treaty.

In rejecting this view it is not here necessary to follow the principal argument of the applicant maintaining that in the absence of any relevant provision no time-limit can exist in this case.

In fact, the Rules of Procedure of 3 March 1959, Article 110 of which abrogates the rules of 1957, were only published in the Journal Officiel on 21 March.

Quite apart from the extension of time-limits on account of distance the rules could not take effect before this date which is the only way of complying with the presumption that persons subject to the law have knowledge of it.

Therefore the applicant's right of action, at the moment which it arose, was governed by the rules of 1957.

As the new rules contained no provision as to time-limits they cannot retroactively have the effect of tacitly substituting a general text for previous provisions governing actions by officials which the rules of 1957 deliberately distinguished from those referred to in Article 33 of the Treaty by providing a particular period for them. The action was therefore introduced in good time.

(b) The purpose of the action

In the course of the proceedings the High Authority gave satisfaction to the applicant by confirming the resignation which he had sought on 2 July. It does not necessarily follow that there is no purpose to be served by examining the foundation of the prior refusal. In any case an examination of the admissibility of the action may influence the decision to be taken as to costs.

Finally, having argued in its statement of defence that the case had lost its purpose the defendant no longer raises this objection in its rejoinder.

2. *The substance of the case*

The applicant argues that Article 41 of the Staff Regulations which is applicable to him was infringed and misapplied by alleging that his relationship with the High Authority constituted a contract of employment of indeterminate duration which he had a right to terminate by a unilateral declaration of intention.

In this respect it can be stated that the legal situation of the applicant, an official of the High Authority subject to the provisions of the Staff Regulations, is not derived from a contract concluded between two parties but was governed by statute and regulation and to his benefit and his detriment is governed by the general and impersonal provisions of the Staff Regulations. Only an infringement of a provision of the Staff Regulations of the Community, in this case Article 41, may give him a right of action.

With respect to this article the applicant had certainly in his letter of 11 February 1959 'stated his unequivocal intention to terminate any activity in the institution' and this resignation would in normal circumstances give rise to the effects provided for by Article 41.

The placing of an official on leave on personal grounds does not, in principle, deprive him of the right, during that period, to resign when he wishes according to the rules laid down in the abovementioned Article 41.

The High Authority, however, denies that the applicant in this case had that right on the grounds that, by accepting his leave on personal grounds, he had renounced the right to resign when he wished and accepted his being maintained on leave on personal grounds until the conclusion by the High Authority and the other institutions of the European Communities or dependent institutions of an agreement governing the situation applicable to officials transferring from one to the other, or until the final breakdown of the relevant negotiations.

In this respect it must however be pointed out that none of the documents submitted in the present case clearly and expressly establishes or proves this statement. In particular the High Authority, which had the last word in the correspondence between the parties, in its letter of 2 May 1958 simply fixed the length of the leave granted to the applicant at two years in accordance with the general law in such matters, as Article 33 of the Staff Regulations governing such a measure had always been cited without any reservation and without the slightest mention of the interpretation of the facts advocated by the High Authority today.

Placing the applicant on leave on personal grounds by itself has not deprived the applicant of his right to present his resignation at any time. In the present case the High Authority was only able to apply the general law as, in the decision contained in its letter of 2 May 1958 granting the applicant leave on personal grounds, it failed to provide a term before the expiry of which, by reason of its negotiations with the European Investment Bank, the applicant was unable to resign and, in addition, in the absence of the applicant's consent, in his letter of 25 April 1958 accepting the leave, to such a term affecting the rights assigned to him by the Staff Regulations.

In addition the party relying on derogation from the general law must bear the burden of proving its existence. The High Authority has failed to satisfy this burden of proof. Consequently the applicant was correct in seeking the annulment of the decision of the President of the High Authority dated 7 March 1959 refusing to confirm the resignation submitted in a letter of 11 February 1959. The applicant's conclusions should therefore be accepted and the costs should be borne by the High Authority.

III — The application for the annulment of the decision contained in the letter of 2 July 1959 of the President of the High Authority (Case 39/59)

1. *The scope of the application and its admissibility*

In his initiating application dated 30 July 1959 contesting the decision of 2 July 1959, the applicant seeks the annulment of this decision only 'in so far as it concerns the effects of this resignation and determines the allowances on termination of service with all the legal consequences ...'. The exact scope is only specified in the body of the application by reference to the decision of the High Authority contained in the letter of 2 July 1959 in so far as it fails to determine the date on which the resignation takes effect and that it determines the allowances on termination of service.

In respect of the allowances the application relates in general terms to:

(a) The resettlement allowance, the reimbursement of travelling expenses on the occasion of termination of service and the reimbursement of removal expenses (Articles 12, 13 and 15 of the General Regulations);

(b) The reimbursement of the amount to the credit of the applicant in the Provident Fund, reimbursement of the amount deducted from his salary in respect of his pension and the severance grant (Article 62 of the General Regulations).

However, in his reply the applicant amplified his demand. He formally

requests the Court to determine the date on which his resignation submitted on 11 February 1959 takes effect as the High Authority did not determine this date in its contested decision. In addition he formally asks the Court to rule that the High Authority is obliged to grant to him:

(a) A resettlement allowance equal to four times his last monthly salary;

(b) Reimbursement of the travelling expenses from Luxembourg to Brussels for himself and his family;

(c) The capitalized amount of the sum to his credit in the Provident Fund;

(d) The capitalized amount of the sums deducted from his salary in respect of his pension contributions;

(e) A severance grant amounting to one and a half times his last monthly salary in respect of one year and six months' service;

(f) Compensation for the eight-thirtieths of his annual leave which he had not taken by 1 May 1958 and reimbursement of travelling expenses in respect of such leave;

(g) 5% interest, or such amount as the Court deems fit, on the amounts payable in respect of the various obligations set out above as from 12 March 1959 or, at the latest, from 11 May 1959.

In respect of this amplification of the demand, it must be examined whether it does not go beyond the conclusions in the application to an extent which is contrary to the provisions of the first paragraph of Article 38 of the Rules of Procedure and of Article 22 of the Statute of the Court of Justice.

In this respect the Court accepts that by referring in the application to 'the allowances on termination of service with all the legal consequences' the applicant sought an examination of all the pecuniary consequences of his resignation which were specified and explained in the reply. They must therefore be examined separately.

2. *The effects of the resignation in respect of the various headings of the application for allowances and grants*

A – Before all else:

(a) Official notice should be given to the applicant that the High Authority has stated its agreement to pay him the compensation for the annual leave which he

had not taken in accordance with Article 29 (b) of the General Regulations of the Community and also reimbursement of travelling expenses for annual leave in accordance with Article 14 (a) of the same rules. This offer must be regarded as giving him satisfaction.

(b) Official notice must be given to the High Authority that in his reply the applicant, contrary to the claim set out in his application, no longer requests the travelling expenses to Brussels from his place of origin, namely Florence, but from the place of his employment, namely Luxembourg, and that he no longer seeks reimbursement of his removal expenses to Brussels as, finally, this amount was paid to him by the European Investment Bank. It must therefore be recognized that the applicant no longer maintains these parts of his application.

B — Examination of the remainder of the application leads the Court to the following considerations and decisions:

(a) The applicant requests that the Court order a resettlement allowance in accordance with Article 12 (a) of the General Regulations to be paid to him. In the terms of the abovementioned provision this allowance shall be paid to an official after the termination of his service on production of evidence of resettlement.

These provisions must be interpreted in the light of the operational unity of the European Communities and associated institutions and this concept renders inadmissible the aggregation of a severance grant from one with an allowance on entry into service from another.

It is true that these allowances are flat-rate amounts. However, they do not represent a supplement to the remuneration payable to an official but fix by means of an advance estimate the equivalent of the costs of a single operation, namely the transfer of the residence of an official from one place to another.

As this transfer was only carried out on a single occasion, payment in respect of such a move by the High Authority is unnecessary in view of the payment made for the same reason by the European Investment Bank. This head of the application cannot therefore be accepted.

(b) With regard to the severance grant sought by the applicant on the basis of Article 62 (c) of the General Regulations, analogous reasoning must be applied. The 'severance' referred to in the first subparagraph of this article must reasonably be understood as meaning severance from the Community service and the allowance attached to this severance must logically be regarded as being compensation for the loss of earnings of the servant during the time normally required to find a new post. This interpretation of the intention inspiring the adoption of this provision is corroborated by the first subparagraph which excludes from this allowance all

those who are in no position to obtain another post. This part of the application is therefore not justified and must be dismissed.

(c) The applicant further seeks reimbursement of travelling expenses for his family from Luxembourg to Brussels as only the cost of his own transport was paid by the European Investment Bank. In this respect Article 13 (a) (2) of the General Regulations provides that on the termination of his service an official is entitled to reimbursement of his travel expenses from the place where he was employed to his place of origin which, under subparagraph (f) of that article, is determined when the official takes up his appointment, account being taken of the place from which the person concerned comes or the centre of his interests. The General Regulations therefore only provide for the reimbursement of the travelling expenses for the return of the official from the place of employment to his place of origin, that is in the present case, from Luxembourg to Florence. The applicant sought this reimbursement in the application but renounced this claim in his reply and now merely seeks reimbursement of travelling expenses from Luxembourg to Brussels. Accordingly it can be ruled that this part of the application has no legal justification.

(d) As regards the capitalized sum to the credit of the applicant's account under the Providence Scheme, that is to say, the payments of the institution and the capitalized amount of the sums deducted from his salary, thus the sums paid by the person concerned in respect of his pension contributions, it can be stated that Article 62 (a) and (b) of the General Regulations provides for the reimbursement of these sums which constitute a fund for the social security of officials on the termination of service.

In entering the service of the European Investment Bank the applicant enters a new social security scheme, the organization of which either does not oblige him to make an initial payment to take account of his years of service with the High Authority, or does oblige him to pay the appropriate sum to the Bank's own funds.

In either case the High Authority cannot refuse payment of the reserve fund established for the benefit of the applicant.

Either the Bank is generous for reasons which are not comprehensible and benevolently covers, without payment of arrears to the fund, the years prior to its appointment of the applicant or else the applicant is obliged to pay the amount and for this purpose needs the sums which he claims.

In any event, in each case the transaction is *res inter alios acta* in respect of the High Authority.

It is only in the hypothetical case of an agreement unifying or merging provident

and pension funds for all the Communities that it will be possible to recognize the right of the High Authority to safeguard the interests of such a common fund, although it may be asked why it must be the High Authority which should take the initiative.

Apart from the absence of any haste on the part of the institutions to harmonize their organizations, there does not appear to be sufficient legal foundation for the necessity or utility of the undertaking which the High Authority seeks from the applicant as a pre-condition for handing over the fund.

In fact, if in the future the High Authority becomes a member of a common social security fund of the Communities, it will always be able to make the admission of the applicant or the extent of his pension rights dependent on payment to the common fund of an adequate amount under the conditions which it has envisaged.

This part of the applicant's demand is therefore well founded.

(e) As to the payment of interest from 12 March or from 12 May which the applicant claims on the sums sought by him the following distinction should be drawn:

If the applicant seeks interest in respect of the delay in settlement this in principle constitutes a legal evaluation and determination of the loss suffered by reason of the delay in complying with an obligation subject to the pre-condition of prior notice having been given.

In the present case, even in the absence of any other action on the part of the applicant, the initiating application can be regarded as notification but as Community law makes no provision for legal determination of interest in respect of delay in settlement the application must be rejected.

As for compensatory interest, it arises, it is true, as damages for failure to fulfil an obligation without prior notice being given. Nevertheless, its imposition is dependent on damage which, in the present case, the applicant has failed to establish or even allege or offer to prove.

This part of the application must therefore be dismissed as being without foundation.

3. The consequences of the resignation and the date of its taking effect

In the light of the abovementioned considerations the question of the date on which the resignation offered by the applicant on 11 February 1959 takes effect

is not of real and immediate importance as it has no effect on the heads of the application in respect of which judgment has been given in favour of the applicant.

This part of the application must therefore be set aside as inadmissible.

IV — Costs

Pursuant to Article 70 of the Rules of Procedure of the Court of Justice, the costs incurred by the High Authority shall be borne by it.

As regards the costs incurred by the applicant, in view of the fact that the applicant was successful in Case 27/59, the High Authority must be ordered to pay the costs incurred by him in accordance with Article 69 (2) of the Rules of Procedure.

In Case 39/59, as the parties each were unsuccessful in respect of certain of their arguments costs shall be apportioned in application of Article 69 (3) of the Rules of Procedure.

On those grounds,

Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community;
Having regard to the Staff Regulations of the European Coal and Steel Community, in particular Articles 2, 33, 41 and 58;
Having regard to the General Staff Regulations of the European Coal and Steel Community, especially Articles 12, 13, 14, 15, 29, 47, 61, 62 and 91;
Having regard to the Rules of Procedure of the Court of Justice of the European Coal and Steel Community of 21 February 1957 for disputes referred to in Article 58 of the Staff Regulations of the European Coal and Steel Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT (Second Chamber)

hereby:

1. **Joins the actions introduced by Alberto Campolongo under Nos 27/59 and 39/59 for the purposes of the present judgment;**

2. Annuls the decision contained in the letter of 7 March 1959 of the President of the High Authority informing Alberto Campolongo that his resignation could not be accepted;

3. Gives the applicant formal notice that the High Authority has stated in the course of the proceedings that it is prepared to pay to him in accordance with Article 29 (e) of the General Staff Regulations of the Community, as compensation for annual leave which was not taken at the time of termination of his service, an amount equal to eight-thirtieths of his emoluments at the time of the termination of his service.

4. Gives the applicant formal notice that the High Authority has stated that it is prepared to reimburse to him, in application of Article 14 (a) of the General Staff Regulations of the Community, travelling expenses for annual leave for himself and his family from Luxembourg to Florence;

5. Gives the High Authority formal notice that in the course of the proceedings the applicant has renounced his claim to travelling expenses from Luxembourg to Florence for himself and his family on the basis of Article 13 (a) (2) of the General Staff Regulations of the Community;

6. Gives the High Authority formal notice that the applicant has renounced his claim to reimbursement of removal expenses from Luxembourg to Brussels;

7. Dismisses the applicant's application for payment of a resettlement allowance in accordance with Article 12 (a) of the General Staff Regulations of the Community;

8. Dismisses the applicant's application for a severance grant in accordance with Article 62 (c) of the General Staff Regulations of the Community;

9. Dismisses the applicant's application for reimbursement of travelling expenses for himself and his family from Luxembourg to Brussels;

10. Orders the High Authority to pay to the applicant the amount which, at the time of termination of his service, was standing to his credit in the Provident Fund of staff of the European Coal and Steel Community plus compound interest at the rate set out in Article 91 of the General Staff Regulations of the European Coal and Steel Community;

11. Orders the High Authority to pay to the applicant the amount of the

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.