conduct of the Community administration has led him to entertain reasonable expectations.

3. An official may not plead a breach of the principle of the protection of legitimate expectations unless the administration has given him precise assurances. The administration's silence following an official's request for confirmation of his entitlement, however regrettable it may be, cannot amount to a confirmation of the official's entitlement, nor can it be considered to be a precise assurance given by the administration.

   Even if an official receives erroneous confirmation from the administration of the entitlement which he claims, such an undertaking cannot create a legitimate expectation, since no official of a Community institution can give a valid undertaking not to apply Community law and the communication of an incorrect interpretation of Community rules cannot give rise to liability on the part of the administration. Promises which do not take account of the provisions of the Staff Regulations cannot give rise to legitimate expectation on the part of the person concerned.

4. An institution is entitled, in compliance with the principle of protection of vested rights, to refuse to pay an expatriation allowance to an official who, during the period referred to in Article 4(1)(a) of Annex VII to the Staff Regulations, habitually carried on his occupation in the territory of his State of employment, as an employee of organizations which, as a result of the adoption of new criteria, were no longer treated at the time of that official's recruitment as international organizations for the purposes of the abovementioned provision, while at the same time continuing to grant that allowance to officials previously employed by the same organizations but recruited at a time when different criteria applied to the concept of 'international organization'.

5. The retroactive withdrawal of a legal measure which has conferred individual rights or similar benefits is contrary to the general principles of law.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
27 March 1990 *

In Case T-123/89

Jean-Louis Chomel, an official of the Commission of the European Communities, residing in Brussels, represented by Jean-Noël Louis, of the Brussels Bar, with an

* Language of the case: French.

address for service in Luxembourg at the offices of Fiduciaire Myson SARL, 6-8, rue Origer,

applicant,

v

Commission of the European Communities, represented by Sean van Raepenbusch, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of its Legal Department, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of the Commission's decision refusing to grant the applicant an expatriation allowance

THE COURT OF FIRST INSTANCE (Fourth Chamber)

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

Registrar: H. Jung

having regard to the written procedure and further to the hearing on 7 February 1990,

gives the following

Judgment

The factual background to the application

1 The applicant, Jean-Louis Chomel, a French national, was employed in Brussels by the Committee of Agricultural Organizations in the European Community (hereinafter referred to as 'COPA') from 1 January 1980 to 15 September 1981, by the legal firm of J. M. Didier and Associates from 16 September 1981 to 31 October 1983 and by the General Committee for Agricultural Cooperation in the EEC (hereinafter referred to as 'Cogeca') and then by COPA from 1 November 1983 to 30 September 1988.

2 On 1 September 1988, the Commission offered the applicant a post as administrator in Grade A 7 in Directorate-General VI, the Directorate-General for Agriculture. By a letter sent to the Commission on 4 September 1988, the applicant accepted that offer of employment while at the same time pointing out that he considered himself entitled, under the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations of Officials of the European Communities (hereinafter referred to as 'the Staff Regulations'), to 'an expatriation allowance' in view of the fact that his employment at that time constituted 'work done for an international organization'. In that letter, the applicant also requested the Commission to confirm in writing his entitlement to an expatriation allowance. The applicant entered the service on 3 October 1988 without having received any confirmation of his rights from the Commission, either orally or in writing. No expatriation allowance was paid to him with his first salary for October 1988.

3 At the time when the applicant entered the service, the officials of the Commission who had previously been employed by COPA and Cogeca received an expatriation allowance.

4 On 7 December 1988, the applicant submitted a complaint within the meaning of Article 90(2) of the Staff Regulations against the Commission's refusal, evidenced in his salary statement for October 1988, to recognize his entitlement to an expatriation allowance under Article 4 of Annex VII to the Staff Regulations.

Procedure

5 By an application lodged at the Registry of the Court of Justice on 10 July 1989, Mr Chomel brought an action under Article 91 of the Staff Regulations for the annulment of the Commission's decision refusing to grant him the expatriation allowance provided for in Article 4 of Annex VII to the Staff Regulations and the Commission's implied decision rejecting his complaint submitted on 7 December 1988.

6 By a letter of 11 July 1989, the Commission expressly rejected the applicant's complaint, claiming that, in view of the strict interpretation of the concept of 'international organization' adopted by the Heads of Administration on 28 May 1986, COPA and Cogeca were not international organizations within the meaning of Article 4 of Annex VII to the Staff Regulations.

7 The applicant claimed that the Court should:

(1) declare the present application admissible and well founded;

(2) annul:

(i) the Commission's decision refusing to grant him an expatriation allowance in accordance with Article 4 of Annex VII to the Staff Regulations, of which he did not become aware until he received his first salary statement in October 1988;

(ii) in so far as is necessary, the Commission's implied decision rejecting the complaint submitted by the applicant on 7 December 1988 under Article 90(2) of the Staff Regulations;

(3) order the defendant to pay the costs of the proceedings, in accordance with either Article 69(2) or the second subparagraph of Article 69(3) of the Rules of Procedure, together with the expenses necessarily incurred for the purpose of the proceedings, particularly the cost of an address for service, and the travel and subsistence expenses and remuneration of lawyers, in accordance with Article 73(b) of those rules.

8 The defendant contended that the Court should:

(1) declare the application to be unfounded;

(2) make an appropriate order as to costs.

9 The written procedure took place entirely before the Court of Justice. It followed the normal course, although the applicant waived his right to submit a Reply.

10 By order of 15 November 1989, the Court of Justice (Fourth Chamber) referred the case to the Court of First Instance pursuant to Article 3(1) of the Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities.

11 Upon hearing the report of the Judge-Rapporteur, the Court (Fourth Chamber) decided to open the oral procedure without any preparatory inquiry.

12 The representatives of the parties submitted their oral arguments and their answers to the questions put by the Court at the hearing on 7 February 1990.

Substance

13 Under Article 4(1)(a) of Annex VII to the Staff Regulations, an expatriation allowance is paid to officials:

(i) who are not and never have been nationals of the State in whose territory the place where they are employed is situated, and

(ii) who 'during the five years ending six months before they entered the service did not habitually reside or carry on their main occupation within the European territory of that State', it being specified that 'circumstances arising

from work done for another State or for an international organization shall not be taken into account'.

14 It must be pointed out that the Court of Justice has consistently held (see the judgments of 2 May 1985 in Case 246/83 *De Angelis* v *Commission* [1985] ECR 1253, of 13 November 1986 in Case 330/85 *Richter* v *Commission* [1986] ECR 3439, and of 23 March 1988 in Case 105/87 *Morabito* v *Parliament* [1988] ECR 1707) that the object of the expatriation allowance is to compensate officials for the extra expense and inconvenience of taking up employment with the Communities and being thereby obliged to change their residence, move to the country of employment and become integrated into a new environment.

15 At their meeting on 26 and 27 June 1975, the Heads of Administration adopted a conclusion concerning the expatriation allowance and proposed that, for the purposes of the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations, international organizations should be considered to be organizations meeting the following criteria:

'(a) they must be international in composition; that is to say, they must have members from different countries and be open to similar participation from various nations;

(b) they must carry on an international activity of general interest in, *inter alia*, the political, economic, social, humanitarian, scientific or cultural spheres;

(c) they must be permanent in nature and have an organized structure under which the members periodically have the right to appoint the persons in charge of the organization (permanent headquarters, secretariat, etc.);

(d) they must be non-profit-making.'

Pursuant to that conclusion, COPA and Cogeca were to be treated as 'international organizations' within the meaning of the aforementioned provision of the Staff Regulations.

16 Subsequently, on 28 May 1986, the Heads of Administration adopted a new conclusion, and proposed that, for the purposes of Article 4 of Annex VII to the Staff Regulations, international organizations should be considered to be organizations meeting the following single criterion:

'they must be established by States or by an organization itself established by States'.

That conclusion was applicable with effect from 1 June 1986; it also specified that officials who had been awarded an expatriation allowance on the basis of the conclusion of 26 and 27 June 1975 would continue to receive that allowance throughout their career, in accordance with the principle of the protection of vested rights.

Pursuant to that conclusion, COPA and Cogeca were no longer considered to be international organizations within the meaning of Article 4 of Annex VII to the Staff Regulations.

17 Neither the conclusion adopted on 26 and 27 June 1975 nor the conclusion of 28 May 1986 was published.

18 When employed by COPA and Cogeca, the applicant resided and carried on his occupation in Brussels — that is to say, in the territory of the State of his employment as an official of the Commission — during the eight years before he entered the service as an official.

19 The defendant refused to grant the applicant an expatriation allowance on the ground that, on the basis of the conclusion adopted by the Heads of Administration at the meeting on 28 May 1986, COPA and Cogeca were to be treated as ordinary agricultural organizations grouped together at a Community level, and not as international organizations within the meaning of Article 4 of Annex VII to the Staff Regulations.

20 The applicant has not contested the legality of the new interpretation given to the term 'international organization' by the Heads of Administration for the purposes of Article 4 of Annex VII to the Staff Regulations.

21 It is therefore sufficient to consider whether the Commission's decision was lawful in the light of the circumstances in which it was adopted.

22 In that regard, the applicant relies on a single submission based on a breach of the principles of the protection of legitimate expectations, bona fides and proper administration and of the duty to have regard for the interests of officials.

23 The applicant claims that he was unaware when he accepted his appointment of the existence of the conclusion adopted by the Heads of Administration at their meeting on 28 May 1986 and that he considered himself entitled to an expatriation allowance on the same grounds as his former colleagues from COPA who had since been appointed officials. The applicant considers that, by failing to reply to his letter of 4 September 1988, the Commission failed to inform him fairly of the precise terms of the employment offered to him, of the precise extent of his entitlements and of the interpretation to be given to the relevant provisions of the Staff Regulations and other measures. In the applicant's submission, the Commission was guilty of wrongful conduct or, at least, answerable for a culpable omission, the effect of which was to place the applicant in a position in which he could not respond to the offer of employment in full knowledge of the facts.

24 The Commission considers that those circumstances, taken together, cannot be regarded as constituting a breach of the principles to which the applicant refers.

25 The Court of Justice has held that 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 (judgment of 19 May 1983 in Case 289/81 *Mavridis* v *Parliament* [1983] ECR 1731).

26 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 (Opinion of Mr Advocate General Capotorti in the judgment of 1 October 1981 in Case 268/80 *Guglielmi* v *Parliament* [1981] ECR 2295, at p. 2307; Opinion of Mr

Advocate General Warner in the judgment of 28 October 1980 in Case 2/80 *Dautzenberg* v *Court of Justice* [1980] ECR 3107, at p. 3121).

27 In the present case, the Commission's silence following the applicant's request for confirmation of his entitlement, however regrettable it may be, cannot amount to a confirmation of the applicant's entitlement, nor can it be considered to be a precise assurance given by the administration.

28 Even if the applicant had received confirmation from the Commission of the entitlement which he claimed, such an 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 (judgment of 16 November 1983 in Case 188/82 *Thyssen AG* v *Commission* [1983] ECR 3721).

29 As the Court of Justice has consistently held, moreover, the communication of an incorrect interpretation of Community rules could not have given rise to liability on the part of the administration (judgments of 28 May 1970 in Joined Cases 19/69, 20/69, 25/69 and 30/69 *Richez-Parise and Others* v *Commission* [1970] ECR 325, of 9 July 1970 in Case 23/69 *Fiehn* v *Commission* [1970] ECR 547, and of 11 July 1980 in Case 137/79 *Kohll* v *Commission* [1980] ECR 2601).

30 Finally, as the Court of Justice has pointed out, 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 6 February 1986 in Case 162/84 *Vlachou* v *Court of Auditors* [1986] ECR 481).

31 The applicant was, moreover, free to postpone his decision on whether to accept or decline the offer of employment made to him until a decision confirming or rejecting his claim to entitlement had been adopted by the Commission.

32 With regard to the alleged breach of the principle of proper administration and of the duty to have regard for officials' interests, it must be pointed out that the protection of the rights and interests of officials must always be subject to compliance with the legal rules currently in force; a mere request, made on acceptance of an offer of employment, for a right to be granted can never give rise to the granting of that right, contrary to the Staff Regulations, merely on the ground that the administration did not respond to the request before the official entered the service. It follows that the claim that the Commission failed to consider all the relevant facts and to take account of either the interests of the service or those of the official concerned cannot be accepted.

33 At the hearing, the applicant amplified his sole submission by maintaining that the Commission had infringed the principle of equal treatment because, despite the change in the interpretation of the term 'international organization', it still grants an expatriation allowance to former employees of COPA and Cogeca, thus undeniably creating a situation in which there is discrimination between officials.

34 In that regard, it must be pointed out that, by ensuring respect for rights already acquired by officials previously employed by organizations which met the criteria applied until 31 May 1986 in defining the concept of an international organization, the Commission has merely applied correctly the principle of the protection of vested rights. As the Court of Justice has held, the retroactive withdrawal of a legal measure which has conferred individual rights or similar benefits is contrary to the general principles of law (judgment of 22 September 1983 in Case 159/82 *Verli-Wallace* v *Commission* [1983] ECR 2711).

35 The submission based on a breach of the abovementioned principles cannot, therefore, be accepted.

36 It follows from all of the foregoing considerations that the application must be dismissed as unfounded.

Costs

37 Under Article 69(2) of the Rules of Procedure of the Court of Justice, applicable *mutatis mutandis* to the Court of First Instance under Article 11 of the Council Decision of 24 October 1988, cited above, 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 70 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 application;

(2) Orders the parties to bear their own costs.

Edward Schintgen García-Valdecasas

Delivered in open court in Luxembourg on 27 March 1990.

H. Jung
Registrar

D. A. O. Edward
President