JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
15 July 1994 *

In Joined Cases T-576/93 to T-582/93,

Martine Browet, resident in Brussels,

Odette Hubert-Michiels, resident in Hofstade (Belgium),

Christiane Deriu-Fossoul, resident in Auderghem (Belgium),

Helen Hartmann, resident in Brussels (Belgium),

Lucia Serra-Boschi, resident in Watermael-Boitsfort (Belgium),

Olivier Bordet, resident in Brussels,

* Language of the case: French.

Giovanni Lampitelli, resident in Tervuren (Belgium),

all officials of the Commission of the European Communities, represented by Lucas Vogel, of the Brussels Bar,

applicants,

v

Commission of the European Communities, represented by Gianluigi Valsesia, Senior Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, of the Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of the decisions of the Commission of 13 August 1993 dismissing the applicants' complaints against the decisions to make deductions from their pay because of their participation in the strikes which took place in June and October 1991,

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

composed of: R. García-Valdecasas, President, B. Vesterdorf and J. Biancarelli, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 30 June 1994,

gives the following

Judgment

Facts and relevant legal provisions

1 During 1991, the trade unions and staff associations (hereinafter 'TUSAs') called for a strike by the staff of the institutions to demonstrate against the delays which in their view had affected the Council's work on modifying Community salaries, which were under review at that time.

2 In Brussels, it was decided to stop work on 18, 19, 25 and 26 June and 2 and 3 October. During those work stoppages, the Commission decided, for safety reasons, to close the restaurants, crèche and garderie and to suspend operation of the computer systems.

3 On 25 October 1991 the Commission circulated a memorandum to staff indicating that, in accordance with its previous decision of 16 December 1970, a deduction would be made from salaries in accordance with arrangements decided in consultation with the other institutions.

4 To facilitate calculation of the days on which those strikes and work stoppages had occurred, forms — attached to the note of 25 October 1991 — were distributed to the staff, to be completed by officials and agents who had continued to work during the strike days, whether voluntarily or pursuant to a departmental order, or by those who had been absent for a reason unconnected with the strike. The form explicitly stated that failure to reply within the prescribed time-limit would be considered as 'indicating participation in all the work stoppages concerning the place of employment'.

5 On 15 November 1991 there was an initial exchange of views during a technical consultation meeting between the TUSAs and the Commission on the arrangements for resuming work and in particular on making deductions from pay on account of the strike days.

6 At the end of a political consultation meeting held on 25 November 1991, the Member of the Commission with responsibility for Personnel and Administration, Mr Cardosa E. Cunha, stated that 'discussion of this issue is not over.'

7 During the meeting of the board of Heads of Administration on 29 November 1991, they agreed to recommend to their respective appointing authorities that arrangements for resuming work be adopted, pursuant to which 75% of the strike days would be subject to:

— deductions from salaries as to 25%,

— compensation in the form of overtime without payment or time off in lieu as to the remaining 50%.

8 The arrangements set out above were the subject of further discussions at another political consultation meeting held on 22 May 1992, at the end of which the Commissioner, Mr Cardosa E. Cunha, took the following position: 'It is emphasized that this matter cannot continue unresolved. It is noted without prejudice that the procedure has not yet been completed and that this chapter cannot be closed until the end of the procedure. Follow-up consultations with the TUSAs are sought.'

9 A final meeting for consultation on matters of policy took place on 12 November 1992, during which the Commissioner stated, despite the reservations of the TUSAs, that 'the Commission endorses the solution adopted by the Council and the other institutions' and noted 'that the procedure had reached its conclusion.'

10 The arrangements for resuming work, in particular those relating to the deductions from pay, in accordance with the recommendations of the Heads of Administration formulated at their meeting of 29 November 1991 (see above, paragraph 7), were notified to the staff in the 'Administrative Notices' (hereinafter 'AN') of 18 November 1992. In that notice, it was stated: 'At a political consultation meeting with the trade unions and staff associations on 12 November 1992, the Member of the Commission with responsibility for Personnel and Administration noted that the concertation procedure on this issue was now closed and informed the staff

side that the Appointing Authority at the Commission had decided in favour of the approach already adopted at the Council. In the near future, therefore, the appropriate departments of DGIX will be making deductions from salary to cover 25% of the time lost.'

11 When backpay due for 1992 was paid at the end of December 1992, the authorities at the same time made deductions in respect of the absences due to the strike, calculated by means of the staff replies to the abovementioned form of 25 October 1991. The reasons for making those deductions were stated in the pay slips.

12 On 17 March 1993 (Case T-576/93), 19 March 1993 (Case T-577/93), 23 March 1993 (Case T-578/93), 22 March 1993 (Case T-579/93), 2 April 1993 (Case T-580/93) and 18 March 1993 (Cases T-581/93 and T-582/93), each applicant submitted a complaint under Article 90(2) of the Staff Regulations against the abovementioned decision of the Commission to make a deduction from his pay. These different complaints were drafted in identical terms.

13 The complaints were rejected by explicit decisions, also drafted in identical terms, dated 23 July 1993 and notified by memorandum of 13 August 1993 which reached the parties concerned between 13 and 27 September 1993.

Procedure and forms of order sought

14 Those are the circumstances in which, by applications lodged at the Registry of the Court of First Instance on 15 December 1993, the applicants brought these actions, couched in identical terms; on 17 February 1994 the Commission lodged seven

defences, also drafted in practically identical terms. Since there was no reply, the written procedure concluded on that date.

15 Each applicant claims that the Court should:

(i) annul the explicit decision of 13 August 1993 rejecting the applicant's complaint against the Commission's decision to make deductions from the applicant's backpay for 1991 because of the strikes in June and October 1991;

(ii) order the defendant to pay the costs of the proceedings in accordance with Article 87(2) of the Rules of Procedure and the expenses necessarily incurred for the purpose of the proceedings, in particular the cost of having an address for service, travel and subsistence expenses and lawyers' fees in accordance with Article 91(b) of those Rules.

16 In each action, with the exception of Case T-577/93, the Commission contends that the Court should:

(i) dismiss the application as unfounded;

(ii) make an appropriate order as to costs.

17 In Case T-577/93, *Hubert-Michiels* v *Commission*, the Commission contends that the Court should:

(i) dismiss the application as inadmissible and in any event as unfounded;

(ii) make an appropriate order as to costs.

18 By order of 14 June 1994, the President of the Third Chamber ordered that Cases T-576/93, T-577/93, T-578/93, T-579/93, T-580/93, T-581/93 and T-582/93 be joined.

19 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Third Chamber) decided to open the oral procedure without any preparatory inquiry. The parties' advisers and agents presented oral argument and answered questions put to them by the Court at the open hearing on 30 June 1994.

Admissibility

20 With regard to the admissibility of the applications, the Commission raises no objection except in connection with Case T-577/93. In that case, the Commission notes that the applicant submitted her complaint on 16 April 1993, which is more than three months after the measure alleged to have adversely affected her, and that her application must accordingly be considered to be out of time. The Commission considers that that application should therefore be dismissed as inadmissible.

21 At the hearing, the applicants' counsel submitted that the Commission was not able even to establish precisely the date on which the applicant in Case T-577/93 received her payslip for December 1992.

22 The Court considers in any event that in the circumstances of this matter it is appropriate forthwith to examine the substance of the cases.

Substance

The applicants have put forward two pleas in law in support of their applications:

— first, breach of the Agreement of 20 September 1974 on Relations between the Commission and the Trade Unions and Staff Associations (hereinafter 'the Agreement');

— secondly, infringement of the second paragraph of Article 25 and of Article 62 of the Staff Regulations.

Breach of paragraph 12 of the Agreement and paragraph 10 of the annex to the Agreement

23 Paragraph 12, contained in Chapter II of the Agreement, provides: 'At the end of the discussions a draft agreement or minutes recording the various points of view shall be drawn up, on which the Commission shall take a decision.' Paragraph 10 of the annex to the Agreement, 'Provisions Concerning Strikes', provides: 'The

Commission and the trades unions and staff associations involved in the dispute shall together decide on the conditions for resuming work.'

— Arguments of the parties

24 The applicants submit that the Agreement is in nature legal and binding and that accordingly the Commission's 'unilateral and authoritarian' decision to make deductions from pay, without pursuing and concluding a consultation with the TUSAs, could not be lawful.

25 The applicants submit that that decision was announced at the beginning of the consultation meeting of 12 November 1992, although, at the end of the previous meeting of 22 May 1992, the Commission's representative had stated that the procedure had not then been closed and since then no meeting had been held with the TUSAs. Compliance with the terms of the Agreement would have required, according to them, that at the end of the negotiations a draft agreement be prepared or, if there were still disagreement, minutes be drawn up, summarizing the different positions of the parties. According to the applicants, the Commission could have taken the contested decisions only after such minutes had been drawn up.

26 Furthermore, the Commission did not even follow its own decision, announced at the meeting of 12 November 1992, to the effect that it would consult with the other institutions in order to work out the detailed arrangements for resuming work. Although the Council also decided to made deductions from salaries because of the strike actions, that decision was the result of a properly conducted consultation with the TUSAs and was quite specific to the Council.

27 The Commission, which notes that the consultation did indeed take place, being effected through numerous meetings between November 1991 and November 1992, submits that the lack of minutes summarizing the positions taken by the parties at the consultation meeting is not a procedural defect. The records of the sessions enabled the respective points of view of the parties present to be set out.

28 According to the Commission, the objective of a consultation procedure is to allow the parties to state their point of view and to evaluate the matter as fully as possible. Although it seeks to align the parties' respective positions, the 'dialectic of consultation' does not necessarily mean that only a consultation culminating in an agreement complies with the rules laid down by the Agreement.

29 The Commission dismisses any suggestion that there is a conflict between the words of its representative on 22 May 1992 to the effect that the procedure had not yet been closed and its decision on 12 November 1992 to declare the consultation phase at an end, although no other consultations had taken place between those two dates. It points out that the consultation had continued for a year and that the contacts with the TUSAs had been numerous.

30 According to the Commission, the fact that minutes recording the points of view expressed during the consultation were not formally drawn up cannot in itself constitute a sufficient ground for invalidating a procedure in which the positions taken by both sides were already perfectly clear from records of the sessions.

31 Moreover, the arrangements for applying the principle of deductions from salary in the event of a strike, decided in 1970, has been the subject of numerous discus-

sions with the other institutions, as is demonstrated by the records of the meetings of the board of Heads of Administration and the fact that all the institutions applied the same principles.

32 Finally, the Commission considers that, even on the assumption — which, as it stated at the hearing, it considered unwarranted — that an official may directly invoke an alleged disregard of the Agreement, it has demonstrated to the requisite legal standard that it cannot be accused of having in any way breached the Agreement.

— Findings of the Court

33 The Court considers that the applicants' submissions raise above all the question whether an official, acting in his individual capacity, may validly invoke, in support of contentious proceedings brought against decisions of the type at issue, the breach of an agreement between the Commission and the TUSAs, such as the Agreement.

34 The Commission has given a negative answer to that question in its replies to the seven complaints of the applicants. In its defences, without expressly stating that the plea is ineffective, it simply submits that 'without needing to repeat the doubt expressed at the stage of replying to the complaint as to the direct effects which may accrue to the benefit of a complainant, considered individually, in relation to the specific instrument governing the relations between the Commission and the recognized TUSAs, the defendant considers that it has in any event been able sufficiently to prove that no breach of the agreement of 20 September has been committed ...' Finally, in reply to a question put by the Court at the hearing, the Commission stated that an official, acting in his individual capacity, cannot validly invoke breach of an agreement between the Commission and the TUSAs.

35 The Court considers in any event that in relation to a plea concerned with the scope of the law's application it is for the Court to consider of its own motion that plea, which concerns a matter of public policy.

36 The Court notes first that in principle Community officials are subject to the Staff Regulations and other regulations, from which contractual terms agreed between the Community institutions and the TUSAs may not derogate.

37 Secondly, as the Court of Justice held in Joined Cases C-193 and 194/87 *Maurissen and European Public Service Union* v *Court of Auditors* [1990] ECR I-95, concerning the principle of equal treatment for officials, with regard to the treatment accorded to trade union officials for the distribution of trade union communications: 'Whilst it is true that certain other Community institutions and bodies provide facilities for that purpose, albeit under differing conditions, to trade unions or staff associations and their representatives, those facilities are, in the absence of any legal obligation laid down by the Staff Regulations, granted voluntarily in the exercise of powers relating to internal organization or by virtue of special agreements entered into between the institution or body and the representatives of its staff. Such measures adopted on the initiative of the institutions or bodies themselves cannot be relied on in support of the allegation of infringement of the principle of equal treatment' (paragraphs 26 and 27).

38 Moreover, in the same judgment the Court of Justice held that 'the duty to safeguard the interests of officials relates to the individual relationship between the appointing authority and the officials and servants subordinate to it; it cannot be invoked to resolve problems concerning collective relations between Community institutions and bodies and trade unions or staff associations' (paragraph 23).

39 Thirdly, the Court considers it relevant to refer to the settled case-law relating to internal directives in order to assess whether, in the circumstances of this case, an official acting in his individual capacity can validly invoke an alleged breach of the terms of the Agreement. According to that case-law, a directive 'sets forth a rule of conduct indicating the practice to be followed, from which the administration may not depart without giving the reasons which have led it to do so, since otherwise the principle of equality of treatment would be infringed' (see the judgments of the Court of Justice in Case 148/73 *Louwage* v *Commission* [1974] ECR 81, Case 282/81 *Ragusa* v *Commission* [1983] ECR 1245 and Joined Cases 181 to 184/86 *Del Plato* v *Commission* [1987] ECR 4991). The Court considers that that case-law is applicable only when an internal directive gives rise to rights for officials considered individually or constitutes an element of legal certainty in their favour.

40 Moreover, if the internal regulations of the institutions are considered and even on the unwarranted assumption that the Agreement forms part of the internal regulations of the Commission, the Court considers that among the provisions of an institution's internal regulations a distinction must be drawn between those the breach of which cannot be invoked by natural and legal persons, because they concern only details of the institution's internal operational arrangements which are not liable to affect their legal situation, and those the breach of which may, on the contrary, be invoked, since they give rise to rights or constitute an element of legal certainty in favour of those persons.

41 In the light of all the above considerations, the Court considers that it is necessary to review the provisions of the Agreement and its annex with a view to ascertaining whether their object is to govern individual or collective labour relations.

42 Chapter I of the Agreement, which deals with recognition of TUSAs, is drafted in very general terms. Chapter II sets out in more detail the consultation procedure,

which is to take place on technical points and on matters of policy. Paragraph 10 in that chapter provides: 'Discussions on technical points shall take place with the Director-General for Personnel and Administration, who may be assisted, where necessary, by other Directors-General concerned.' Paragraph 11 provides: 'Discussions on matters of policy shall take place with the Member or Members of the Commission responsible therefor.' Finally, as indicated above, paragraph 12 provides: 'At the end of the discussions a draft agreement or minutes recording the various points of view shall be drawn up, on which the Commission shall take a decision.' Chapter III of the Agreement sets out in paragraphs 13 to 17, in very general terms, the procedure for the exercise of trade union functions, in particular the conditions for the grant of leave for trade union purposes and certain facilities which may be granted to TUSA representatives. Chapter IV of the Agreement, in paragraphs 18 and 19, concerns the division of responsibilities between the Staff Committee and its local sections and the TUSAs. Finally, Chapter V, in paragraphs 20 to 22, deals with the facilities available to the Staff Committee and the Liaison Committee of TUSAs.

43 In addition, the annex to the Agreement contains provisions concerning work stoppages. Paragraphs 1 to 5 lay down the procedure for giving notice in the event of concerted withdrawal of labour; paragraph 6 specifies that, once notice of intention to strike is given, there is to be consultation between the Commission and the TUSAs with a view to drawing up a list of posts whose holders may be 'required to remain at work' in accordance with paragraph 7; paragraph 8 provides: 'Members of the staff who choose to take part in the strike shall be free to do so without let or hindrance'; finally, according to paragraph 10 of the annex, the breach of which is invoked, 'The Commission and the trade unions and staff associations involved in the dispute shall together decide on the conditions for resuming work.'

44 The Court considers that it is clear from a reading of those provisions as a whole that the Agreement and its annex are intended only to govern collective labour relations between the Commission and the TUSAs and that they do not give rise,

for each official taken individually, to any obligation or to any right. In fact, they do not fall within the sphere of individual working relations between the employer and the official, but in the wider context of relations between an institution and the TUSAs. It must therefore be held that in any event an official cannot validly invoke an alleged breach of the provisions of the Agreement or of its annex in order to challenge in contentious proceedings a decision, relating to him individually, to make deductions from pay following a strike (see the judgment of the Court of First Instance in Joined Cases T-97 and 111/92 *Rijnoudt and Hocken* v *Commission* [1994] ECR-SC II-511, paragraphs 82 and 86).

45 Moreover and in any event, even on the unwarranted assumption that an official acting in his individual capacity could invoke such a breach of the provisions of the Agreement or its annex, the Court considers that in this case there would not be any substantive defect such as to affect the legality of the disputed decisions. On 25 October 1991 the Commission sent out a memorandum to staff which made it clear beyond doubt that there would be a deduction from salaries in accordance with its previous decision of 16 December 1970. Subsequently, numerous technical and political consultation meetings were held, on 15 November 1991, 25 November 1991, 22 May 1992 and, finally, 12 November 1992, at the end of which the Commissioner with responsibility for Personnel and Administration stated, despite the reservations of the TUSAs, that 'the Commission endorses the solution adopted by the Council and the other institutions' and that 'the procedure had reached its conclusion.'

46 Against that background, the Court considers that, while accepting that paragraph 12 of the Agreement was not complied with to the letter, since the fact of continuing disagreement meant that minutes should have been drawn up recording the various points of view, it is clear that, after such numerous consultation meetings and given that the disagreements were perfectly known to all, as is clear from the minutes of the meetings produced to the Court, that fact is not such as to constitute in itself a substantive defect which can validly be invoked by officials

individually challenging a deduction from their pay. Furthermore, since those officials were fully informed of the state and outcome of the negotiations, they cannot claim that their legitimate expectations have been disappointed or their legal certainty affected in circumstances they could not have foreseen.

47 Finally, even on the assumption that that argument were of some consequence, it is clear from the documents before the Court that, contrary to the applicants' claims, the Commission did in fact consult with the other institutions before defining its position with respect to the conditions for resuming work.

48 It follows from all the above considerations that the applicants' first plea must be rejected as of no consequence and in any event as unfounded.

Infringement of the second paragraph of Article 25 and of Article 62 of the Staff Regulations

— Arguments of the parties

49 The applicants, who accept that the right to remuneration is suspended in the event of voluntary interruption of work due to a strike, consider that, in order to make a deduction from an official's salary, the Commission must show that the interruption of his work is due solely to his initiative and assumes that the official voluntarily participated in strike action. The burden of proof is on the Commission, which should monitor the progress of the strike and give specific reasons for each decision to make deductions from pay. The Commission has not adduced evidence to that effect and accordingly has infringed the official's right to receive the remuneration pertaining to his grade. Moreover, by reason of that lack of evidence

the Commission has failed to give reasons for its decision to make deductions from the applicants' pay.

50 In this case, the applicants submit that *force majeure* supervened, in that it was the Commission itself which decided to interrupt the work of its officials and which 'wholly prevented them from carrying out their duties as normal.' At the time of the strikes in question, the Commission decided to suspend the operation of all its infrastructures, to close access to the buildings and the garages and to close the crèche, to bring to a halt all its social infrastructures and to disconnect all the computer systems. It thereby prevented its officials from reaching their offices. This is accordingly not a matter of a dispute with the employer, but of action taken in accordance with a decision by the employer, precluding any deduction from pay.

51 The Commission notes at the outset that, 'according to a principle recognized in the labour law of the Member States, wages and other benefits pertaining to days on strike are not due to persons who have taken part in that strike. This principle may be applied to relations between the institutions of the Communities and their officials ...' (judgment of the Court of Justice in Joined Cases 44, 46 and 49/74 *Acton and Others* v *Commission* [1975] ECR 383).

52 The Commission also notes that, in the words of the Director-General for Personnel and Administration, it 'took no position in respect of the strike, simply respecting the right to strike of its staff.' Thus access to the buildings was not prevented, so that staff required to remain at work and those who did not take part in the strike were able to carry out their activities as normal, in accordance with paragraph 9 of the annex to the Agreement. The Commission considers that the applicants have adduced no evidence to call that statement in question. While it is true

that, for obvious safety reasons, it decided to close access to the garages, to close the crèche, the restaurants or the garderie, or to disconnect certain computer systems, those precautionary measures did not in any way prevent access to the buildings or the possibility for any official or agent to reach his office and there carry out his duties.

53 The applicants' failure to reply to the request for information about work stoppages, made on 25 October 1991, proves that they joined in the strike, since if they did not participate in the work stoppages the applicants should have made the appropriate declaration, which they did not do. The Commission was therefore entitled to make deductions from the applicants' pay, as a 'legitimate consequence of a finding that duties were not carried out', that principle being clearly set out in its previous decision of 16 December 1970.

54 The Commission contends that, according to settled case-law, the question whether reasons for a measure have been given must be determined on the basis of not only 'the document giving notice of [the] decision but also the circumstances in which it was taken and brought to the knowledge of the official concerned as well as the departmental memoranda and other communications underlying it which have clearly given the applicant information as to the grounds and the basis of the said decision' (see the judgments of the Court of Justice in Joined Cases 33 and 75/79 *Kuhner* v *Commission* [1980] ECR 1677 and Joined Cases C-116 and 149/88 *Hecq* v *Commission* [1990] ECR I-599).

55 The Commission argues, finally, that its position, which was to make deductions from pay on the ground of participation in the work stoppages, was well known to the staff as from the abovementioned notice of 25 October 1991. Moreover, the AN of 18 November 1992 were perfectly clear on that point. Accordingly, it considers that there can be no complaint that it did not sufficiently state its reasons in the disputed decisions.

— Findings of the Court

56 The second paragraph of Article 25 of the Staff Regulations provides: 'Any decision relating to a specific individual which is taken under these Staff Regulations shall at once be communicated in writing to the official concerned. Any decision adversely affecting an official shall state the grounds on which it is based.' Moreover, according to Article 62 of the Staff Regulations 'an official who is duly appointed shall be entitled to the remuneration carried by his grade and step. An official may not waive his entitlement to remuneration. Remuneration shall comprise basic salary, family allowances and other allowances.'

57 The Court notes at the outset that the applicants do not dispute the applicability in this case of the judgment of the Court of Justice in *Acton and Others* v *Commission*, cited above, in which it was held that 'according to a principle recognized in the labour law of the Member States, wages and other benefits pertaining to days on strike are not due to persons who have taken part in that strike. This principle may be applied to relations between the institutions of the Communities and their officials, as the Commission has already stated on a previous occasion, in its decision of 16 December 1970, according to which "it stands to reason that there can be no payment for days on strike".'

58 The Court considers that the applicants' plea consists of two limbs: first, that since the Commission has not adduced evidence of the applicants' individual participation in the strike it has acted in breach of Article 62, cited above, of the Staff Regulations; secondly, in not sufficiently stating the grounds on which it based its decisions to make deductions from the applicants' pay, the Commission has infringed Article 25, cited above, of the Staff Regulations. The Court will consider each limb of that plea in turn.

59 With regard to the first limb of the plea, to the extent that the applicants' arguments are to the effect that the Commission has not adduced evidence of their

individual participation in the strike because *force majeure* supervened, since it was the Commission itself which decided to interrupt the work of its officials and prevented them from carrying out their duties as normal, in particular denying them access to their offices during the strike days, the Court considers that it is in principle for the party seeking to invoke *force majeure* to adduce sufficient proof of his assertions to enable the Court to judge whether they are well founded.

60 The Court notes, first, that it is clear from the applicants' own arguments that they were not at their work-place during the strike days in question and that accordingly it is not necessary to consider the legal effect of the form which the Commission sent to each official, annexed to the abovementioned memorandum of 25 October 1991.

61 The Court notes, secondly, that, although the applicants claim that the Commission 'wholly prevented them from carrying out their duties as normal', by interrupting the operation of all its infrastructures, closing access to the buildings and garages and disconnecting computer systems, in their applications they do no more than make very general assertions, in support of which they have adduced absolutely no element or offer of proof. Moreover, the applicants failed to produce a reply in response to the Commission's categorical denial of the facts so stated.

62 Finally, at the hearing the applicants' counsel stated that he was unable to specify either in which Commission buildings in Brussels the applicants worked or whether access to those buildings had actually been closed during the strike days. In fact he simply submitted that the 'general infrastructure' of the Commission had come to a halt, which prevented the applicants from working, without being

able to adduce any evidence thereof or even to show that the applicants did actually try to work during the strike days. Furthermore, the applicants' counsel did not dispute the statements of the agent for the Commission to the effect that out of approximately 15 000 Commission officials 73% went on strike, 10% carried out their duties, and the others were absent for reasons which were duly substantiated. Finally, he was unable to specify the reasons for which the applicants did not return the form annexed to the memorandum of 25 October 1991, mentioned above, but did not dispute that the applicants had in fact received it.

63 The first limb of the plea must accordingly be rejected.

64 With regard to the second limb of the plea, to the extent that the applicants' submissions seek to maintain that in general the individual decisions taken to make deductions from their pay do not sufficiently state the grounds on which they are based, the Court considers that, in accordance with settled case-law, the purpose of the duty to state the grounds for decisions adversely affecting officials laid down in Article 25 of the Staff Regulations is to enable the Community judicature to review the legality of the decision and to give sufficient information to the party concerned so that he may know whether the decision is valid or whether it is defective so that he may challenge its legality. That requirement is satisfied when the measure against which an action is brought has been adopted in circumstances which are known to the official concerned and which enable him to apprehend the scope of a measure concerning him personally (see, as to this, the judgment of the Court of Justice in Case C-169/88 *Prelle* v *Commission* [1989] ECR I-4335 and the judgment of the Court of First Instance in Case T-80/92 *Turner* v *Commission* [1993] ECR II-1465).

65 In this case, the Court considers that it is clear that those conditions are satisfied, given the previous decision of the Commission of 16 December 1970, the abovementioned memorandum sent by that institution to its staff on 25 October 1991, the notification made to the staff by the AN of 18 November 1992, receipt of

which is not denied by any of the seven applicants, and, finally, by the reasons given for the deductions from pay, which were clearly mentioned on the applicants' payslips.

66 The second limb of the plea must accordingly also be rejected.

67 It is clear from the above, first, that the applicants accept that they did not work during the strike days in question although they do not allege that their absence was due to any reason other than the fact of the strike; secondly, that their argument based on an alleged case of *force majeure* has no basis; thirdly and finally, that the Commission, by sufficiently reasoned decisions, rightly made deductions from their pay because of their participation in those strike actions.

68 It follows from all the above considerations that the applications must be dismissed, without its being necessary to rule on the plea of inadmissibility raised by the Commission in Case T-577/93.

Costs

69 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Article 88 of the same Rules provides that in proceedings between the Communities and their servants the institutions are to bear their own costs. However, the second subparagraph of Article 87(3) of the same Rules provides: 'The Court of First Instance may order a party, even if successful, to pay costs which it considers that party to have unreasonably or vexatiously caused the opposite party to bear.'

70 In this case, given the course of the procedure and the pleas and arguments adduced by the applicants, the Court considers that they unreasonably and vexatiously caused the Commission to incur costs within the meaning of the abovementioned provision of the Rules of Procedure. In those circumstances, the applicants must be ordered to bear all the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. Dismisses the applications;

2. Orders the applicants to bear all the costs.

García-Valdecasas Vesterdorf Biancarelli

Delivered in open court in Luxembourg on 15 July 1994.

H. Jung R. García-Valdecasas

Registrar President