JUDGMENT OF THE COURT (FIRST CHAMBER)
17 SEPTEMBER 1981 [1]

# Jean Leclercq
# v Commission of the European Communities

(Former official — Contracts for studies and surveys)

**Joined Cases 28 and 165/80**

*Officials — Applications to the Court — Act adversely affecting an official — Concept — Decision of an institution concerning the conclusion of contracts for studies and surveys with third parties — Exclusion*

*(Staff Regulations of Officials, Arts 90 and 91)*

A decision relating in general terms to the use of appropriations for the conclusion of contracts for studies and surveys with persons or companies not in the employment of an institution cannot be regarded as an act adversely affecting a former official within the meaning of Article 91 of the Staff Regulations.

In Joined Cases 28 and 165/80

JEAN LECLERCQ, a former official of the Commission of the European Communities, residing in Brussels, represented by Marcel Slusny of the Brussels Bar, with an address for service at the Chambers of E. Arendt, Advocate, 34B Rue Philippe-II, Luxembourg,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Raymond Baeyens, acting as Agent, assisted by J. C. Denoncin of the Brussels Bar, with an address for service in Luxembourg at the office of Mario Cervino, Jean Monnet Building, Kirchberg,

defendant,

1 — Language of the Case: French.

APPLICATIONS under Article 90 of the Staff Regulations and objections by the defendant that they are inadmissible,

THE COURT (First Chamber)

composed of: T. Koopmans, President of Chamber, A. O'Keeffe and G. Bosco, Judges,

Advocate General: S. Rozès
Registrar: A. Van Houtte

gives the following

## JUDGMENT

## Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

### I — Facts and procedure

1. Jean Leclercq entered the service of the Commission of the European Atomic Energy Community in 1958. In 1963 he was appointed head of division with effect from 1 January 1962. The last post he held, as from 1 April 1971, was that of Head of the Energy Policy Division of the Directorate-General for Energy.

At his request, made in accordance with Regulation No 2530/72, Mr Leclercq was allowed to terminate his service and was granted the allowances provided for in Article 3 (1) of Regulation No 2530/72 from 1 July 1973 to 31 January 1984.

2. In a letter of 13 July 1979 which was received by the Commission on 19 July 1979, Mr Leclercq informed Mr Pierre Baichère, Director-General for Personnel and Administration, that he had "participated in the establishment of a company of independent consultants called SCIENCE", as a member thereof, and that the company had been refused "a contract to carry out a study for which its name had been put forward by the department concerned, the Directorate-General for Energy". The "refusal which is due to the recommendation of the Advisory Committee on

Commissioned Studies . . . entails a direct loss for SCIENCE". To that letter was annexed a copy of a letter sent on 22 June 1979 to the Director-General for Budgets by Mr Léon Valette, Managing Director of SCIENCE Sprl.

In a letter of 19 October 1979 the Director-General for Personnel and Administration replied that "pursuant to a new decision adopted by the Commission in November last year, the Directorate-General for Budgets is no longer authorized to conclude contracts for studies and surveys with undertakings or associations in which former officials who still retain financial connections with the institution under the Staff Regulations have a direct or indirect interest. The measure concerned is thus one of general application which is therefore in no way specific to the company in question or to the former officials involved in it".

3. On 18 January 1980 Mr Leclerq lodged a complaint in accordance with Article 90 (2) of the Staff Regulations of Officials "against the decisions notified by Mr Baichère in his letter of 19 October 1979". His purpose was to "secure: (i) withdrawal of the general decision adopted in November 1978 with regard to the contracts for studies and surveys henceforth to be withheld from undertakings or associations involving former officials of the Commission; (ii) withdrawal of the decision not to grant a contract for a study on solar energy to SCIENCE Sprl of which the complainant is an active member" and also "in so far as necessary ... annulment of the said decisions".

By a letter dated 16 January 1980, registered at the Court on 18 January 1980, Mr Leclercq lodged Application 28/80.

Having received no specific reply to the complaint lodged on 18 January 1980, Mr Leclerq, by a letter dated 10 July 1980 and registered at the Court on 14 July 1980, lodged Application 165/80, which has the same subject-matter as Application 28/80.

In accordance with Article 91 (1) of the Rules of Procedure, the Commission applied to the Court for a decision on the admissibility of the two applications.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court (First Chamber) decided to open the oral procedure without any preparatory inquiry.

By order of 26 March 1981 the Court (First Chamber) decided to join Cases 28/80 and 165/80 for the purposes of the procedure and judgment.

## II — Conclusions of the parties

In both cases the *applicant* claims at the present stage of the proceedings that the Court should:

— Dismiss the objection of inadmissibility as unfounded;

— Fix a time-limit for the defendant to lodge a defence;

— Reserve costs.

The *Commission* contends that the Court should:

In Case 28/80:

— Dismiss the application as inadmissible;

— Direct that the applicant bear the costs which he has incurred;

in Case 165/80:

— Dismiss the application as inadmissible;

— Order the applicant to bear all the costs.

## III — Submissions and arguments of the parties

The *Commission* states by way of introduction that SCIENCE (Société de Consultants Indépendants et Neutres de la Communauté Européenne) Sprl, which has its registered office in Brussels, was constituted on 6 September 1973. All three founder members are former officials of the Commission who terminated their service in accordance with Regulation No 2530/72 of the Council of 4 December 1972.

In both cases it maintains that the applications are inadmissible on the ground that the applicant has no *locus standi* or that there was no act adversely affecting him. In fact, it is maintained, there is no individual, specific or direct connection in the present case between the applicant and the decisions of a general nature adopted by the Commission with regard to the use of appropriations for studies, decisions which have been applied in this case to SCIENCE Sprl, which is a legal person distinct from the applicant. The Commission points out that the decisions of a general nature were taken on 26 June 1974 (and not in 1978) and that they are worded as follows: "Otherwise than in exceptional cases and by express derogation decided upon by the Commission, contracts for studies and surveys should not be concluded with former officials who retain financial links with the Commission."

The Commission maintains that the application in Case 28/80 is also inadmissible owing to the absence of a prior complaint through official channels rejected by an express or implied decision.

In Case 165/80 the Commission observes that the applicant prepared a number of brochures or articles at the request of Directorate-General IX, C (Coordination and preparation of publications Division) and Directorate-General X (Spokesman's Group and Directorate-General for Information). The costs, which amounted in the various cases to BFR 5 000, BFR 15 000, BFR 35 000 and BFR 55 000, were charged to Items 2720 (dissemination of information) and 2730 (dissemination of information to young people) of the general budget, Section III: Commission, Title 2, Chapter 27 (expenditure on publishing and information).

As regards the facts, the *applicant* states in reply that there is no difference between the contract entered into with SCIENCE Sprl before 26 June 1974, namely on 19 December 1973 (Contract 084-73-12 EC 1-B) and the contracts entered into with SCIENCE Sprl subsequently (contracts of 19 January 1977 and of 18 June 1978). In particular there is no difference between contracts to carry out studies, orders commissioning studies and specific research contracts.

Moreover, there are undertakings which at present benefit from contracts for studies notwithstanding the participation of former officials.

The applicant denies that the two applications 28/80 and 165/80 are inadmissible on the ground of his lack of

*locus standi* or the lack of any act adversely affecting him.

The *locus standi* is different in each individual case and is dependent on the connection between the applicant and the contested measure. The unpublished general measure and its application to SCIENCE Sprl affect the applicant, whose entitlement to dividends from the company is dependent upon the company's profits. The applicant is likewise prevented from working under the auspices of the company.

As far as Case 28/80 is concerned, the applicant maintains that the letter which he sent to Mr Baichère on 13 July 1979 must be regarded as a complaint within the meaning of Article 90 (2) of the Staff Regulations.

### IV — Oral procedure

The parties presented oral argument at the sitting on 4 June 1981.

The Advocate General delivered her opinion at the sitting on 9 July 1981.

## Decision

1 By applications lodged at the Court Registry on 18 January and 14 July 1980, Jean Leclercq, a former official of the Commission of the European Communities, brought two actions based on the provisions of the Staff Regulations of Officials, seeking annulment of the decision notified to him by letter of 19 October 1979 by P. Baichère, Director-General for Personnel and Administration of the Commission, and of the decision of the Commission of November 1978 to which the said letter referred.

2 Mr Baichère's letter, to which reference is made in both actions, was the answer to a letter from the applicant dated 13 July 1979 in which the applicant explained that, shortly after terminating his service with the Commission in July 1973, he had participated in the formation of a company of independent consultants called SCIENCE, the shares of which had been allotted to former officials of the Commission and other persons of various nationalities. Although not an active member, he had been kept informed of the company's activities; the company had been denied a contract to carry out a study for which its name had been put forward by the department concerned, the Directorate-General for Energy; according to information

received by SCIENCE over the telephone, the refusal was based on the fact that the company employed former officials who maintained financial links with the Commission. The applicant stated in his letter that he found this reason "surprising", and he asked Mr Baichère to intervene so as to avoid a dispute, since the refusal entailed a direct loss for SCIENCE.

3 In his reply dated 19 October 1979 Mr Baichère expressed his regret that he was unable to give a favourable response. He stated that "pursuant to a new decision adopted by the Commission in November last year, the Directorate-General for Budgets is no longer authorized to conclude contracts for studies and surveys with undertakings or associations in which former officials who still retain financial connections with the institution under the Staff Regulations have a direct or indirect interest".

4 In the course of the proceedings the parties acknowledged that the "new decision" referred to in Mr Baichère's letter was in fact a decision adopted by the Commission on 26 June 1974. The Court takes the actions to be directed against that decision, and against its application to the company SCIENCE, as indicated in Mr Baichère's letter.

5 By two separate documents, lodged on 14 March and 29 September 1980, the Commission raised objections of inadmissibility and applied to the Court for a decision thereon.

## Admissibility

6 It appears from the information provided by the Commission, which has not been contested by the applicant, that the Commission's decision of 26 June 1974 related to the use of appropriations for studies and was worded as follows: "Otherwise than in exceptional cases and by express derogation decided upon by the Commission, contracts for studies and surveys should not be concluded with former officials who retain financial links with the Commission."

7 A decision of this kind, which relates in general terms to the use of appropriations for the conclusion of contracts for studies and surveys with persons or companies outside the Commission, cannot be regarded as an act adversely affecting a former official within the meaning of Article 91 of the Staff Regulations.

8 In so far as Mr Baichère's letter of 14 October 1979 is to be regarded not as mere information, given by an official of the Commission to a former colleague, but as embodying a decision to withhold a contract for a study by virtue of the Commission's decision of 26 June 1974, the refusal to grant the contract was addressed to the company SCIENCE and not to the applicant; therefore it concerned the applicant neither directly nor individually.

9 The two applications must therefore be dismissed as inadmissible, without the need for an examination of the Commission's argument that the application in Case 28/80 is inadmissible on the ground that there was no prior complaint through official channels.

Costs

10 Pursuant to Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. However, pursuant to Article 70 of the Rules of Procedure, costs incurred by institutions in actions brought by servants of the Communities are to be borne by the institutions.

On those grounds,

THE COURT (First Chamber)

hereby:

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

**2. Orders the parties to bear their own costs.**

Koopmans O'Keeffe Bosco

Delivered in open court in Luxembourg on 17 September 1981.

J. A. Pompe
Deputy Registrar

T. Koopmans
President of the First Chamber

# OPINION OF MRS ADVOCATE GENERAL ROZÈS DELIVERED ON 9 JULY 1981 [1]

*Mr President,*
*Members of the Court,*

This action is brought against the Commission by one of its former officials, Jean Leclercq.

I — Mr Leclercq entered the service of the Commission of the European Atomic Energy Community on 15 March 1958. From 1962 he served as a head of division in that Commission and then in the single Commission of the European Communities. In 1973 he applied for the definitive termination of his service in accordance with the first subparagraph of Article 2 (3) of Regulation No 2530/72 of the Council of 4 December 1972 introducing special and temporary measures applicable to the recruitment of officials of the European Communities in consequence of the accession of new Member States, and for the termination of service of officials of those Communities. His request was granted.

As the Court knows, Article 3 (1) of that regulation provides for substantial monthly allowances to be paid to officials in such a situation. Those allowances continue until the retirement of the officials concerned, that is to say in the case of Mr Leclercq until 31 January 1984.

On 6 September 1973 three officials of the Commission who had terminated their service in accordance with Regulation No 2530/72, Mr Brinck, Mr Siebker and Mr Valette, founded a consultancy company called "SCIENCE" (Société de Consultants Indépendants et Neutres de la Communauté Européenne) which carries

1 — Translated from the French.