JUDGMENT OF THE COURT
19 MARCH 1964[1]

Jean Maudet
v Commission of the European Economic Community

Joined Cases 20 and 21/63

Summary

1. *Officials — Establishment under the Staff Regulations — Grade of establishment*
(EEC Staff Regulations, Article 102 (1))

2. *Officials — Correspondence of grade to post — Obligation to consider this factor after establishment under the Staff Regulations*
(EEC Staff Regulations, Article 102, Annex I)

1. Within the meaning of Article 102 (1) of the Staff Regulations of the EEC, servants are to be established under those Regulations in the grade and at the step impliedly accorded them before the Regulations entered into force, without its being necessary during this first phase of the establishment of servants under the Staff Regulations to take into account possible differences between this grade and that which should correspond to the post in the light of the duties which it involves.

2. Any servant who, after establishment under the Staff Regulations, was maintained in an already existing post which, in the light of the duties which it involved, should correspond under the new Staff Regulations to a higher grade than that obtained in accordance with the procedure referred to in Article 102, is entitled to have his position regularized according to the principle of the correspondence between duties and grades drawn up in Annex I.

In Joined Cases 20 and 21/63

JEAN MAUDET, an official of the European Economic Community, represented by Louis Rousseau, Advocate, of the Conseil d'Etat and Cour de Cassation, Paris, with an address for service in Luxembourg at the Chambers of E. Arendt, Advocate, of the Court of Appeal, Luxembourg, 27 avenue Guillaume,

applicant,

1 — Language of the Case: French.

V

COMMISSION OF THE EUROPEAN ECONOMIC COMMUNITY, represented by its Legal Adviser, Louis de la Fontaine, acting as Agent, with an address for service in Luxembourg at the Office of Henry Manzanarès, Secretary of the Legal Department of the European Executives, 2 place de Metz,

defendant,

Application for annulment of:

1. The decision of the Commission of 14 December 1962 in that it established Mr Maudet in Grade A4 instead of Grade A3 (Case 20/63);

2. The Decision of the President of the Commission of 8 March 1963 in that it dismissed the complaint made by Mr Maudet and refused to place him in Grade A3 (Case 21/63);

THE COURT

composed of: A. M. Donner, President, A. Trabucchi (Rapporteur), President of Chamber, L. Delvaux, R. Rossi and R. Lecourt, Judges,

Advocate-General: M. Lagrange
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts

The facts may be summarized as follows:

By letter of 24 November 1958 the applicant was appointed as head of the Premises and Equipment Division in the Commission of the European Economic Community.
By a decision of the Commission of 14 December 1962 his post became governed by the new Staff Regulations of officials of the Communities pursuant to Article 102 of the Regulations and he was established in Grade A4, Step 6.
This decision is contested by Application 20/63 made on 2 April 1963.
A complaint by the applicant on 11 January 1963 that he should be established in Grade A3 rather than Grade A4 was rejected by the President of the Commission by letter of 8 March 1963.
This decision is contested by Application 21/63 made on 2 April 1963.

II — Conclusions of the parties

In Case 20/63 the *applicant* claims that

the Court should:

'annul the contested decision to the extent only that it established him in Grade A4 instead of Grade A3 to which he was entitled, with all the consequences that such annulment entails in law.'

The *defendant* contends that the Court should:

'declare the application to be unfounded and make the appropriate order as to costs.'

In *Case 21/63 the applicant* claims that the Court should:

'annul the express decision of the President of the Commission of the EEC of 8 March 1963 in that it rejected the applicant's request and refused to establish him in Grade A3, with all the consequences that such annulment entails in law.'

The *defendant* contends that the Court should:

'declare that application to be inadmissible or unfounded and make the appropriate order as to costs.'

III — Submissions and arguments of the parties

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

A — *On admissibility*

In Case 20/63 the defendant raises no objection as to the admissibility of the application.

The *defendant* maintains, however, that in *Case 21/63* the application is inadmissible in that, as the administrative status of the applicant was unchanged by the decision of the Commission of 14 December 1962, no new legal situation was created by the reply given by the President of the Commission.

As that decision forms the basis of an application the admissibility of which cannot be contested, a second application against the rejection of the complaint would be devoid of substance and the applicant would have no legal interest in bringing it.

The *applicant* alleges that the decision of the Commission of 14 December 1962 concerning his establishment and the decision of the President of the Commission of 8 March 1963 rejecting his complaint are two separate and distinct decisions and that he is adversely affected by each.

The applicant is more adversely affected by the decision contested in Application 21/63 than by that contested in Application 20/63, since the former not only confirms the decision of the Commission but also rejects all the submissions made by the applicant in his complaint to show the unlawful nature of the first decision and to obtain its annulment. Moreover, this application will be justified and will not lack legal interest as long as the Court has not ruled on the admissibility of Application 20/63.

In its rejoinder the *defendant* continues to maintain that the applicant had no legal interest in bringing this application, but leaves this question to the wisdom of the Court.

B — *On the substance of the case*

The *applicant* maintains that, as is shown by the letter of employment and all official documents concerning him drawn up before or since the entry into force of the Staff Regulations, he was always known as head of division; his director, Mr Merpillat, stated in his general assessment that Mr Maudet was responsible for an extremely difficult division and his duties, both administratively and in human terms, could be very disagreeable; finally the President of the Commission of the EEC expressly stated that he was capable of performing the duties attaching to his post. Since Annex I to the Staff Regulations states that the duties of head of division correspond to Grade A3, the Commission of the EEC was bound by Article 102 of

the Staff Regulations, which expressly refers to standardizing practice in regard to career brackets and to the criteria to be used in grading, to apply Annex I which had been adopted by mutual agreement by the Councils of the Communities and, therefore, to establish Mr Maudet, who holds a post as head of division, in Grade A3.

The *defendant* contends that the table of basic posts and corresponding career brackets drawn up in Annex I to the Staff Regulations did not apply to situations existing before the entry into force of the Regulations. The classification of any servant employed as such when those Regulations came into force was governed by the transitional provision in Article 102 which provides that servants who are occupying permanent posts may be established in the grade and at the step expressly or impliedly accorded them before the Staff Regulations were applied to them.

By adopting Annex I to the Staff Regulations the Councils did not take any decision concerning standardizing practice in regard to career brackets and the criteria to be used in grading as referred to in Article 102. According to this provision, any measures of standardization could only be introduced once each institution had defined, on the basis of the table in Annex I, the powers and duties attaching to each post. This being so, servants employed as such on the entry into force of the Staff Regulations could only be classified in the grade accorded before their establishment.

In his reply the *applicant* maintains that the restrictive interpretation given by the defendant is inconsistent with the terms of Article 102. It is clear from this provision that where the grade expressly accorded is inconsistent with that attaching to the post actually held —which may be shown by a comparison with the grades conferred on the holders of similar posts — then only the latter grade should be taken into account on establishment. This is the meaning of the alternative in Article 102 which refers to the grade and step which had been 'expressly or impliedly' accorded to the servant concerned.

The applicant maintains that he is not requesting the table of basic posts and corresponding career brackets in Annex I to be applied retroactively to the situation existing before the entry into force of the Staff Regulations. He is merely asking that it be applied to the situation existing on 1 January 1962 at which date he still held a post as head of division.

The transitional provision in Article 102 to which the defendant refers can only be applied in the context of the general provisions of the Staff Regulations, that is, of those provisions governing corresponding categories and posts. The grade and step of the scale of remuneration at which establishment is made must, therefore, be determined 'in terms of the categories provided for by the Staff Regulations, their definitions and their correspondence to specific posts'. Any decision standardizing practice in regard to career brackets which may later be taken by the institutions must, as regards basic posts, be strictly in accordance with the table in Annex I. This confirms that classification at the time of establishment must take into account the correspondence between basic posts and career brackets laid down in this Annex.

Moreover, the Commission of the EEC cannot use its own failure to define the duties and powers attaching to each post as a defence against one of its servants, since under Article 5 (4) of the Staff Regulations it is obliged to draw up this definition.

Finally, as the nature of the applicant's duties is not in doubt, the contested decision infringes not only the Staff Regulations but also the rights acquired by him.

The *defendant* contends that the performance of certain duties can in no way imply the holding of any grade other

than that expressly fixed by contract and confirmed by subsequent uncontested decisions. The fact that during the period before the introduction of the Staff Regulations, Mr Maudet was classified in Grade A4 while performing the duties of head of division, whilst other officials performing comparable duties were classified in Grade A3, is explained by the provisional nature of the organization of departments and system of grades made in the light of immediate needs and in terms of the available positions according to the budget.

On the entry into force of the Staff Regulations, although the applicant's abilities and merit were unquestionable and had always been recognized by the Commission, he could not be classified in Grade A3 since there was no position available in that grade which could be allocated to the post of head of the division under his control. The sixth general report on the work of the Commission shows that its request for additional A3 positions to be provided by means of a supplementary budget for 1962 in order to provide for the re-organization of its departments made necessary by the introduction of the Staff Regulations was refused by the Council.

Application of the table of basic posts and corresponding career brackets in Annex I immediately after the entry into force of the Staff Regulations merely signifies that all posts vacant at that time must be classified according to this table. If, as the applicant contends, the classification referred to in Article 102 must always be made according to the table in Annex I, it is difficult to explain why the Staff Regulations made a reservation with regard to any decisions standardizing practice in regard to career brackets. This reservation was deliberately inserted to cover the possibility that in certain cases classification in a grade corresponding to that accorded earlier might conflict with the table in Annex I. The transitional provision of Article 102 is thus an exception to the rules governing the recruitment of officials after the entry into force of the Staff Regulations.

IV — Procedure

The procedure followed the normal course.

Since the subjects of Applications 20/63 and 21/63 are interrelated, the First Chamber of the Court, upon hearing the opinion of the Advocate-General and considering that the parties had no objections, joined the cases by an Order of 11 June 1963 for the purposes of procedure and judgment.

Upon hearing the preliminary report of the Judge-Rapporteur and the opinion of the Advocate-General, the First Chamber decided at the hearing on 17 October 1963 not to make any preparatory inquiry.

The oral procedure took place before the First Chamber on 6 November 1963.

By order of 28 November 1963 the First Chamber of the Court, acting under Article 95 (2) of the Rules of Procedure, referred both cases to the Court.

The oral procedure took place before the Court on 14 January 1964.

The Advocate-General presented his opinion on 21 January 1964.

Grounds of judgment

On admissibility

The two applications have been made in due form and within the prescribed time-limits.

The defendant has raised no objection as to the admissibility of Application 20/63 and no grounds exist for the Court to raise the matter of its own motion.

On the other hand, the defendant has questioned the admissibility of Application 21/63 on the ground that the contested decision created no new legal situation for the applicant.

If, independently of the decision establishing the applicant, the Commission were to have classified him by means of a separate decision in a grade other than that obtained by him under the establishment procedure, then the refusal of the Commission to uphold his request for reclassification, which is contested in Application 21/63, would certainly be capable of affecting him adversely.

This question is a matter relating to the consideration of the substance of the case.

In these circumstances Application 21/63 must also be declared admissible.

On the substance of the case

Having regard both to the office of head of division for which he was recruited by the Commission and the duties he is performing at present, the applicant maintains that he is entitled to classification in Grade A3 under the establishment procedure referred to in Article 102 and pursuant to Annex I to the Staff Regulations of officials of the EEC.

The defendant contends that Article 102 prevents a contractual servant who was expressly accorded a particular grade before the entry into force of the Staff Regulations — as is the case of the applicant who is classified in Grade A4 — from obtaining a different grade on establishment.

Moreover, Annex I can only be applied in the context of the possible measures of standardization referred to in Article 102, after the definition of the duties and powers attaching to each post had been adopted by each institution.

Article 102, the first four paragraphs of which have been wholly incorporated into Annex X to the new Staff Regulations of officials of the ECSC, was intended to provide uniform criteria to govern not only servants recruited on the basis of the so-called 'Brussels' contract but also, in certain cases,

established and non-established servants recruited under the former Staff Regulations of the ECSC.

One of the common criteria ensures that except in the particular case referred to in paragraph (2) of that Article, all servants of the European Communities on being granted establishment maintain the positions which they held before the entry into force of the Staff Regulations; this is effected by means of a quasi-automatic reclassification within the table provided in Article 66 of the Staff Regulations of the grade and step expressly or impliedly accorded earlier.

Before the entry into force of these Staff Regulations, servants recruited under the so-called 'Brussels' scheme had no Staff Regulations to govern their position and could only obtain a particular grade and step by analogy with the system in force in the ECSC.

Therefore, it should be remembered that the position of these servants is covered by the provision in Article 102 which refers to the grade and step 'impliedly' accorded, that is, those impliedly accorded by analogy with the system in force in the ECSC.

In fact, in questions of establishment, the above provision only refers to the grade and step accorded earlier.

When acting in the context of the establishment procedure referred to in Article 102, the administration need not, during this first phase of the establishment of servants under the Staff Regulations, take into account possible differences between the grade thus accorded to each servant and that which, under Annex I to the Staff Regulations and the definition referred to in the last subparagraph of Article 5, should correspond to the post in the light of the duties which it involves.

The decision to establish the applicant cannot therefore, be challenged on the ground that it established him at the same grade and step which he had impliedly been accorded before the entry into force of the Staff Regulations.

Therefore, Application 20/63 which seeks the annulment of the decision concerning establishment on this ground should be dismissed.

However, any servant who, after establishment under the Staff Regulations, was maintained in an already existing post which, in the light of the duties which it involved, should correspond under the new Staff Regulations to a higher grade than that obtained in accordance with the procedure referred

to in Article 102, is entitled to have his position regularized according to the principle of the correspondence between duties and grades drawn up in Annex I.

In the complaint made on 11 January 1963 against his establishment in Grade A4 the applicant requested not only annulment of the decision concerning establishment but, independently of this, his reclassification in Grade A3 as from 1 January 1962.

Moreover, the fact that the defendant was also aware of the distinction thus made between establishment and classification in a grade corresponding to the duties involved is shown by the letter, contested in Application 21/63, by which the Commission rejected the applicant's complaint.

It is clear that in this case the applicant was recruited in 1958 to perform the duties of head of the Premises, Equipment and Conferences Division at the Commission of the EEC.

On recruitment he had been given a position corresponding to Grade A4 by reference to the system laid down in the Staff Regulations of officials of the ECSC.

According to the table of grades and corresponding duties applying to servants of the High Authority before the entry into force of the new Staff Regulations, this grade was the starting point of the career bracket of principal administrator which included Grades A4 and A3.

The definition given in this table of the duties of a principal administrator ('responsible for one of the principal sections of a division') correspond to the duties performed by the applicant.

In the new Staff Regulations of officials of the three Communities these duties correspond to the career bracket of head of division, which now occurs only in Grade A3.

Moreover, the Premises, Equipment and Conferences Department in which the applicant has always been employed was referred to as a 'Division' in the actual document, dated 14 December 1962, granting him establishment.

The applicant was responsible for the direction of this department both before and after his establishment under the Staff Regulations.

The fact that the Commission did not draw up the definition of posts laid

down in Article 5 of the Staff Regulations within the required time could not prevent the applicant's being accorded Grade A3, since Annex I in which the Council gave directions for the formulation of this definition provided that, from the entry into force of the Staff Regulations, heads of division should be classified in this grade.

Moreover, the definition of posts drawn up by the Commission on 29 July confirms that the duties performed by the applicant correspond to the post of head of division within the meaning of Annex I.

Therefore, from the date of their entry into force, the Staff Regulations under which the applicant was established gave him the right to be classified in Grade A3 which corresponds to his post.

Costs

Although Application 20/63 must be dismissed the applicant has been successful in his claims.

In pursuance of Article 69(2) of the Rules of Procedure the defendant must be ordered to pay the costs.

On those grounds,

Upon reading the pleadings;
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 annexed to the Treaty establishing the European Economic Community;
Having regard to Articles 5, 91 and 102 of the Staff Regulations of officials of the European Economic Community and Annex I to those Regulations;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT

hereby:

1. Dismisses Application 20/63;

2. Annuls the decision contested in Application 21/63;

3. Orders the defendant to pay the costs.

Donner Trabucchi
Delvaux Rossi Lecourt

Delivered in open court in Luxembourg on 19 March 1964.

H. J. Eversen
Assistant Registrar
For the Registrar

A. M. Donner
President

OPINION OF MR ADVOCATE-GENERAL LAGRANGE DELIVERED ON 21 JANUARY 1964[1]

Mr President,
Members of the Court,

Mr Maudet, a special-category administrative officer at the French Treasury, entered the service of the European Economic Community under the so-called system of 'Brussels' contracts (with which you are acquainted) following a letter of appointment of 24 November 1958. This document, signed by the Director-General of Administration, indicated that during its meeting of 19 November 1958 the Commission had appointed the applicant 'to perform the duties of head of the Premises and Equipment Division at the Directorate-General of Administration'.

By letter of 25 February 1959 the applicant was informed that the Commission had 'accorded him Grade A4, Step 2 (at a basic salary of 26750 BF)'. A decision of 4 May 1960 accorded him the fifth step of the same grade with effect from 1 March 1960 and on 20 December 1960 he was accorded an additional step, still at Grade A4, with effect from 1 December 1960. This was the situation on 1 January 1962 on the entry into force of the Staff Regulations. A decision of 14 December 1962 applying Article 102 of the Staff Regulations established the applicant in Grade A4, Step 6, of the new table, and declared that he was 'assigned to a post in the Directorate-General of Administration, in the Premises, Equipment and Conferences Division of the Internal Affairs Directorate'. The decision also stated that 'this appointment shall take effect from 1 January 1962'.

This decision is contested by Application 20/63 in that it established the applicant in Grade A4 and not Grade A3 to which he claims he was entitled.

A second Application, 21/63, contests the decision of the President of the Commission rejecting the complaint made by the applicant against the decision establishing him in Grade A4.

The defendant contends that, as the subject-matter of both actions is the same, the second application is inadmissible.

I shall deal with the question of admissibility after considering the first application. In fact, contrary to the views apparently held by the parties, it is not absolutely certain *a priori* that the subject of both applications is the same; in my opinion this depends in part on the result of the first application, which I shall now consider.

1 — Translated from the French.