JUDGMENT OF THE COURT (SECOND CHAMBER)
16 DECEMBER 1964[1]

Charles Muller
v The European Economic Community or alternatively The Commission of the European Economic Community

Joined Cases 109/63 and 13/64

Summary

1. *Officials — Grading which can no longer be contested — Publication by the administration of a table defining the duties of officials — Important new fact — Application for review of the decision on grading — Permissibility*

2. *Officials — Grading — No right to a particular post based on an internal administrative proposal for the improvement of the service*

3. *Officials — Appeal against a general measure for the organization of departments — Inadmissibility*
(Staff Regulation of Officials of the EEC, Article 91)

1. The publication of a table defining the duties and powers attaching to each post can be regarded as an important new fact enabling an official affected by it to request the administration to retract a decision which can no longer be contested.

2. An internal administrative document, intended to cause the budgetary authority to improve the organization of a department cannot by itself constitute legal recognition of the right of an official to a grading corresponding to a particular post.

3. The administration is alone responsible for general measures for the organization of departments; such measures cannot adversely affect officials ('faire grief') within the meaning of Article 91 of the Staff Regulations of officials and cannot therefore be the subject of an appeal.

In Joined Cases 109/63 and 13/64

CHARLES MULLER, an official of the Commission of the European Economic Community, represented and assisted by Marcel Slusny, advocate at the Cour d'Appel, Brussels, and assistant lecturer at the university of Brussels, with an address for service in Luxembourg at the chambers of E. Arendt, 6 rue Willy-Goergen,

applicant,

1—Language of the Case: French.

THE EUROPEAN ECONOMIC COMMUNITY OR, ALTERNATIVELY, THE COMMISSION OF THE EUROPEAN ECONOMIC COMMUNITY represented by its Legal Adviser, Louis de la Fontaine, with an address for service in Luxembourg at the offices of Henri Manzanarès, Secretary of the Legal Department of the European Executives, 2 place de Metz,

defendant,

Application for

1. The annulment:
   — of the implied decision of the Commission whereby it rejected a request by Mr Muller of 28 August 1963, to be graded in the corresponding career bracket A4/A5 with effect from 1 January 1962;
   — of the decision of the Commission whereby Mr Muller was classified in Grade B1, Step 6;
   — of the decision of Mr Van Gronsveld of 11 September 1963 to withdraw from Mr Muller his permission to deputize for Mr Blenkers, the Head of the Salary and Mission Expenses Division;
   — of the decision of the Commission of 29 July 1963 upon which the preceding decision was said to be based;

2. Payment of damages to Mr Muller,

THE COURT (Second Chamber)

composed of: A. M. Donner, President, R. Lecourt and R. Monaco, Judges,

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

gives the following

JUDGMENT

Issues of fact and of law

I—Facts

Mr Charles Muller was engaged by the Commission of the European Economic Community, on 1 December 1958, in a post corresponding at that time to the career bracket B7/B6, in the Salaries and Missions Division. The commencement of his duties in this post was recorded by a note from Mr Blenkers to the personnel department (a note put on Mr Muller's personal file), stating in

particular that 'when Mr Muller takes final charge of the missions section, he will at the same time become permanent deputy to the Head of this Division'.

Mr Muller was integrated on 12 December 1962 in Grade B1, Step 6 of the new Staff Regulations. He acknowledged receipt of his letter of appointment without any reservations whatsoever.

On 11 March 1963 the Director-General of Administration, Mr Smulders, completed a report on Mr Muller's ability and added the following phrase: 'Occupies with considerable ability a post in Grade B in the departments of the Commission — is capable of carrying out the duties of a higher grade'.

By a letter of 28 August 1963, Mr Muller requested that he be graded from 1 January 1962, as a Principal Administrator in career bracket A/4 — A/5. This letter contains the following passage:

'In the meantime I have been integrated as an official of the EEC in accordance with the provisions of Article 102 of the Staff Regulations 'subject to the application of any decisions which may be taken by agreement by the Councils of the European Economic Community and the European Atomic Energy Community for standardizing career brackets and the criteria to be used in grading' (cf. Article 102 (1) of the Staff Regulations).

This standardizing of career brackets and the criteria to be used in grading laid down in Article 5 (4) of the Staff Regulations and based on the table showing the basic posts and corresponding career bracket in Annex I of the Staff Regulations was agreed by a unanimous report dated 28 June 1962 of the provisional Staff Regulations Committee.

This report which was finally approved by the Commission at its 238th meeting on 29 July 1963 provides for the grading of the heads of a section of a division and of assistants to a Head of a Division in career bracket A/4 — A/5 for Principal Administrators.

As I have carried out these two duties permanently since I took up my appointment — as is attested by the many documents both in my personal file kept by the administration and also in the records of the Directorate-General of Administration and the Staff Directorate, not forgetting the thousands of accounting documents which I myself sanctioned or dealt with and which were approved by the various administrative authorities concerned — I apply to be classified as a Principal Administrator in career bracket A/4 — A/5, with retroactive effect from 1 January 1962, on the basis of the provisions of the Staff Regulations as well as the general regulations implementing the said provisions referred to in this application.

Although this grading is one which in law follows necessarily the application of these provisions I nevertheless venture to point out, so that my application is not opposed because there are no posts available, in the career bracket referred to, that since 1 January 1962 many vacant posts in A/4 and A/5 have been officially notified, some of which were in the Directorate-General of Administration. My appointment in career bracket A/4 — A/5 should not therefore meet with any difficulty on this point.'

By letter of 18 September 1963 the President of the Commission replied that this request would be 'examined in detail' and that he would give his answer as soon as possible...

Having heard nothing from the administration Mr Muller on 23 December 1963 lodged an appeal No 109/63 against the implied decision rejecting his request.

On the other hand, in a note of 11 September 1963, Mr Van Gronsveld, acting Director-General of Administra-

tion, notified Mr Muller that 'pursuant to the decision of the Commission of 29 July 1963 Mr Zeilmaker, Head of the Organization Division, will deputize for Mr Blenkers, Head of the Salaries and Mission Expenses Division, during his leave'.

Mr Van Gronsveld in answer to the two requests from Mr Muller informed him that '. . . the Commission, at its meeting on 29 July 1963, decided that in the divisions or departments where there is only one post in category A, the deputy for the person occupying this post shall, under the provisions of the Staff Regulations and under the internal regulations, be a person occupying a post in Category A in another division or department'.

By letter of 16 December 1963 Mr Muller made a complaint against the decision of Mr Van Gronsveld of 11 September 1963, and so far as necessary, against the decision of the Commission of 29 July 1963.

On 15 April 1964 the applicant lodged his application 13/64 against the implied decision of refusal of his request of 16 December 1963 arising out of the silence of the administration in connexion therewith for a period of two months.

On 16 April 1964 the President of the Commission answered this request by a letter of which the relevant extract is as follows:

> 'I have to inform you that the Commission is not in a position to grant your request.
>
> You cannot dispute the measures which prevent you from deputizing for your immediate superior by referring to your permanent duties. The post which you occupy does not include among its duties that of deputizing for the Head of Division IX-A-4 if he is prevented from performing his duties. The note describing you as "ständiger Stellvertreter des Abteilungsleiters" (permanent deputy to the head of division) which was not issued by the appointing authority could not itself confer on you this appointment. You cannot either, when you challenge the measures which have been taken, argue that you are the most senior official in your category and carry the highest grade. In fact although Article 26 of the internal regulations provides that in the normal course of events such an official shall deputize for a senior official who is prevented from performing his duties, this is so only provided that the Commission has not taken a contrary decision. Moreover the measures which you dispute constitute the application of a decision which the Commission duly adopted on 29 July 1963 in exercise of the powers conferred upon it by Article 76 of the internal regulations. On the other hand the Commission was under no obligation to give reasons for or to publish this decision.'

II—Conclusions of the parties

The *applicant* claims in his application No 109/63 that the Court should:

1. annul the implied decision of refusal of his request of 28 August 1963;
2. annul his appointment to the extent that it classified him in Grade B1 at Step 6;
3. declare that the Commission must reclassify the applicant in Grade A5, and at the step which he is entitled with effect from 1 January 1962;
4. order the Commission to pay the applicant by way of arrears of salary the sum of one franc subject to the right to amend this sum as he may deem necessary during the course of the proceedings;
5. order the Commission to pay the applicant by way of damages and interest thereon for non-material damage the sum of one franc subject to the right to amend the sum as he may deem necessary in the

course of the proceedings;

6. order the Commission to bear the costs;'

The applicant in his reply repeats in their essentials the foregoing conclusions which he particularizes by submitting that the Court should:

'3 and 4. declare that the Commission must reclassify the applicant in Grade A 5 at the step to which he is entitled with effect from 1 January 1962 or at least from 28 August 1963 with all legal consequences, in particular with reference to arrears of salary;

as a subsidiary point, order the defendant to produce the following documents:

— payment order of 18 September 1959 in accordance with which the amount of the installation allowance calculated is for a servant in Grade B 6 step 3;

— instructions given to the applicant from 1959 to 1963 by Mr Blenkers in the event of his being absent;

— the stencilled request of 1 May 1960 (reference 1X/2150/60-F) made by Mr Marizon and approved by the Director-General of Administration for an authorization for the Director of Personnel to grant the right to sign on his behalf documents relating to the administration of budgetary credits, the applicant being referred to as "stellvertretender Abteilungsleiter" in such request which also states on page 2 that the authorization under 5 and 6 also applies so as to enable the deputy to pay other expenses which Division 1X/A/14 is empowered to discharge;

— general authority of 18 August 1961 delegated to the Salaries and Mission Expenses Division to pay expenses up to 50000 F "in Vertretung des abwesenden oder verhinderten Leiters der Abteilung" ("on behalf of the Head of Division when absent or prevented from attending to his duties");

— authority of 3 May 1960 granted to the other heads of section Messrs Brand, Brus and Schumacher and to the Head of Division Mr Blenkers, from which it is clear that the authorities given to the applicant placed him in order of seniority directly after his head of divison and before the other heads of section;

— report on the ability, efficiency and conduct of the applicant made for the purpose of integrating him;

— job allocation plan of 5 March 1959 for the Mission Expenses Office;

— report on the work in the Mission Expenses Section of 12 September 1959, addressed to Mr Blenkers and in particular page 3B-a) setting out the new tasks;

— reply to the enquiry into the definition of duties and tasks of 7 January 1961 (called the "Ortoli enquiry") bearing the reference 1X/79/61-F;

— note of 20 June 1961 from Mr Blenkers to Mr Von Göler headed "Supplementary particulars of the volume of work in Division 1X/A/4"; ("Ergänzende Angaben zum Arbeitsanfall in die Abteilung 1X/A/4");

— note of 3 March 1962 from Mr Blenkers to Mr Von Göler headed "Report on the work of Division 1X/A/4"; ("Tätigkeitsbericht der Abteilung 1X/A/4");

— report of Mr Blenkers of 1 October 1962 headed "Description of the work and the scope of the duties of officials in Categories A and B — in Division 1X/A/4"; ("Beschreibung der Tätigkeit und des Aufgabenbereichs der A- und B Beamten der Abteilung 1X/A/4");

— description of the tasks of the staff in the missions section, made on 28 November 1962 specifying the tasks performed by the applicant;

— the proposal of Mr Blenkers put forward by the Director of Personnel on each occasion when the annual and supplementary budgets were drawn up in 1960, 1961, 1962, 1963 and 1964 requesting either the creation of a post in Grade A 4 or even A 5, or the upgrading of post B to a post in Grade A 6 or A 5, because his duties as assistant to a head of division entitled him to such a grade.

As a further subsidiary point, to authorize the applicant to adduce evidence by witnesses proving:

1. that Mr Smulders, Director-General of Administration, assured him when he suggested that he should sign his letter of appointment without any reservations, that the correct grading would follow in due course and that he could therefore accept his appointment without reservation;
2. that Mr Von Göler, Director of Personnel, told him in June 1961, following the meeting on 23 and 24 June at Aachen between President Hallstein and the Director-General of Administration, that the applicant was number 1 on the list of officials who should be placed in Category A and whose grading would be regularized when the new staff regulations entered into force.'

The *defendant* contends in its statement of defence that the Court should:

'— dismiss Mr Muller's application as being inadmissible;
— declare the appeal to be unfounded;
— order the applicant to bear the costs in accordance with the relevant provisions.'

The defendant amplifies in its rejoinder the first head of its foregoing conclusions and submits that the Court should:

'declare that the appeal is inadmissible to the extent that it challenges the appointment of Mr Muller as an official in Grade B 1.'

The *applicant* claims (in Case 13/64) that the Court should:

'1. annul the decision of Mr Van Gronsveld of 11 September 1963 to withdraw from him his permission to deputize for Mr Blenkers, Head of the Salaries and Mission Expenses Division;
2. annul the said decision if it is held to be based on the decision of the Commission of 29 July 1963;
3. declare that the Commission owes the applicant the sum of 1 BF for non-material damage;
4. order the Commission to bear the costs.'

The *defendant* submits that the Court should:

'— dismiss the appeal as being inadmissible and in all respects unfounded;
— make an appropriate order as to costs;'

III — Submissions and arguments of the parties

CASE 109/63

The applicant has named as defendants the European Economic Community or alternatively the Commission of the European Economic Community. During the oral procedure he discontinued his application against the European Economic Community.

The first head of the conclusions (annulment of the implied refusal or the request for classification or reclassification of 28 August 1963).

1. *Infringement of Article 102 (1) of the Staff Regulations*

Both before and after the entry into force of the Staff Regulations and, in any case, when the Regulations were applied to him the applicant had by implication been accorded Grade A 5, since he performed duties corresponding

to those in career bracket A4/A5. The applicant relies over and above this argument on the last sentence of Article 102 (1).

The defendant replies that Mr Muller was never accorded by implication Grade A5, since Article 102 refers only to decisions taken by the appointing authority based on the integration procedure. The applicant was appointed to Grade B1, Step 6, which corresponds to his grade before the entry into force of the Staff Regulations.

The defendant replies to the argument based on the last sentence of Article 102 (1) that the integration of Mr Muller in Grade B1 could only be changed by a joint decision of the Councils of the EEC and EAEC concerning the standardizing of career brackets and of the criteria to be used in grading. Such a decision however has not yet been made.

2. *Infringement of the last sentence of Article 5, of Annex I to the Staff Regulations and of the decisions of 29 July 1963 relating to the definition of duties and powers*

In reliance on the judgment of 19 March 1964 (Cases 20 and 21/63, Maudet) the applicant maintains that he only has to show that the duties of his post before the entry into force of the Staff Regulations and afterwards, are those which, according to Annex I to the Staff Regulations and the definition of duties and powers provided by the last sentence of Article 5 of the Staff Regulations (drawn up on 29 July 1963), correspond to Grade A4/A5. He claims that he fulfils not just one of the qualifications in the definition of duties but three of them and even all four.

The defendant replies that the duties of Mr Muller as Head of the Mission Expenses Section are those of a Principal Administrative Assistant in Grade B1. The fact that he was 'Assistant Head of Division' and that he was appointed by the Head of Division as his deputy cannot entitle him to a grade corresponding to that of an Assistant-Head of Division. Even if the applicant's designation of his duties is correct, the detailed list of posts of the Salaries and Mission Expenses Division, does not include a post in Grade A5.

The applicant replies by calling attention to the fact that there is a sufficiently large number of posts allowed for in Grade A5. In any case since 1 January 1962 a considerable number of A5 posts have been vacant. In any event according to the case-law of the Court an official has a legal right to be correctly classified. The applicant adds that he is not asking for promotion but for his classification pursuant to Article 102.

Finally the defendant objects that transfer from one category to another can only take place after a competition.

The second head of the conclusions (annulment of appointment to Grade B1)

The applicant supports this head of his conclusions with the same grounds and with the additional argument that the principle of good faith applicable to time-limits and delays (judgment in Case 18/63 of 19 March 1964, Wollast, née Schmitz) does not allow the Commission to raise the plea that his right to bring any proceedings against it is barred, because it is the Commission itself which, by belatedly embarking on the definition of powers and duties, left him completely unaware of his legal rights.

As the Court has admitted that integration can be distinguished from classification, the applicant claims that he is fully entitled to ask to be classified after his integration. As the Commission refused by implication a non-contentious application for this purpose by the applicant, it opened the way to the present proceedings. In any case the acceptance by the applicant of his appointment does not preclude the exercise of his rights in the future.

The defendant contends that this application is out of time, since his appoint-

ment was communicated to Mr Muller on 18 December 1962. In any case his appointment was in accordance with the provisions of Article 102 of the Staff Regulations as explained by the Court in the Maudet Judgment.

The third and fourth heads of the conclusions (for a declaration that the Commission must classify the applicant in Grade A/5 and at the step to which he is entitled with effect from 1 January 1962 or at least from 28 August 1963)

The applicant rejects the charge that he is asking the Court to exceed its jurisdiction. He only asks for a decision on the principle involved.

The defendant objects that in the context of the present proceedings the Court can only annul a measure and leave it to the Commission on its own responsibility and having regard to the reasons upon which the annulment is based to deal with the consequences thereof.

The fifth head of the conclusions (payment of 1 Belgian franc by way of damages for non-material damage)

The defendant alleges that the applicant has not stated the grounds upon which his application is based (Article 38 (1) of the Rules of Procedure).

The applicant states that the failure to act which he asks the Court to penalize consists in the failure of the Commission to grade him as it is obliged to do under Article 102 of the Staff Regulations.

This failure has caused him to suffer non-material damage for which he claims one Belgian franc by way of damages unless the Court holds that its judgment on the other heads of his conclusions constitutes a satisfactory remedy for the applicant.

The defendant replies that the applicant does not even attempt to prove that the failure to act, for which the Commission is alleged to be responsible, is a wrongful failure for which the Community is liable. The applicant is correctly classified in the grade corresponding to the duties which he normally performs.

CASE 13/64

Admissibility

1. *Nature and purpose of the contested decisions* (decision of Mr Van Gronsveld of 11 September 1963 and decision of the Commission of 29 July 1963)

The applicant is of the view that in practice the legal status of officials is not only determined by the formalities of the Staff Regulations. The question is whether Article 26 of the internal regulations of the Commission can create rights or benefits which can only be extinguished by a special procedure.

According to the defendant the contested decisions, having regard to their nature and purpose, cannot be the subject of an appeal under Article 91 of the Staff Regulations. They were not based on the Staff Regulations but only on Article 26 of the internal regulations of the Commission, which only relate to the organization of the departments of the Commission. No official is entitled to challenge the decisions taken under Article 26, unless they are plainly intended to prejudice the career of certain officials.

2. *The right of the applicant to bring proceedings against the decisions in question and his legal interest in such proceedings*

According to the defendant the applicant has no right to bring proceedings against the decisions by which his post as deputy to his Head of Division was withdrawn and no legal interest in such proceedings. Article 26 of the internal regulations of the Commission does not give an official the right to deputize for his superior, if he is prevented from performing his duties, since it provides that the Commission shall have the right to designate at its discretion the official who is to deputize.

So far as Article 7 (2) of the Staff Regulations provides for the possibility that an

official may be called upon to occupy temporarily a post in a career bracket in his category or grade which is higher than his substantive career bracket, it does not confer a right upon the official but places him under an obligation.

Even if the applicant had the right to be the permanent deputy of his superior, the Staff Regulations would in no way entitle him to dispute the legality of a decision having the indirect result of depriving him of this right, unless this decision were vexatious or a concealed punishment and was not justified by the needs of the service. Only the allocation to the applicant of duties of less importance than those corresponding to his grade would be unlawful. Article 7 (1) in no way prevents the increase, modification or decrease by the appointing authority at its discretion of those duties for reasons based on the interests of the service. Deputizing for a superior who is prevented from attending to his duties could not be regarded as one of the inherent duties of the post occupied by any subordinate official.

The applicant replies that the argument centres precisely on ascertaining the scope of the exception in Article 26 of the internal regulations ('unless the Commission shall take a contrary decision'). In order to know whether acting as a deputy is a right inherent in the post or merely an obligation, the substance of the application (and also the substance of Case 109/63) must be examined in order to ascertain whether the applicant was engaged as deputy to the Head of Division and whether he continued to perform these duties until the contested decisions were taken. If the answer is in the affirmative he is deputy to the Head of Division, must be placed in Category A, and thus fulfil the requirements of Article 26 of the internal regulations.

The applicant puts forward an additional argument on the question whether he has any legal interest in requesting the application of Article 26 of the internal regulations. If he can only be classified in Grade A5 following a competition or promotion, the periods when he acted as a deputy should be taken into account (Opinion of Advocate-General Roemer in the Raponi Case, 26/63; cf. also the De Pascale Case, 97/63).

According to the defendant, even if the applicant were entitled to Grade A4 and had been deputy to the Head of Division, he could not assert a legal interest so as to prevent the Commission for reasons based on the interests of the service, which it determined in its discretion, from exercising the power conferred upon it by Article 26 to designate 'as it thinks fit' the official who is to act as deputy to the superior who is prevented from attending to his duties.

The substance

First submission: Lack of authority (Mr Van Gronsveld, acting Director General of Administration, not authorized to take the decision notified to the applicant on 11 September 1963)

According to the applicant no decision taken pursuant to item VC3 of the minutes of the 238th meeting of the Commission of 29 and 30 July 1963 has been produced by the defendant. Although Article 27 of the internal regulations provides that the Commission may authorize its members and officials to take some or all of the measures arising out of the preparation and implementation of its resolutions, the defendant again does not produce evidence of the resolution to authorize the Director General of Administration (or his deputy) to designate the officials mentioned in the decision of 29 July 1963.

The defendant replies that it was not a decision of Mr Van Gronsveld but the decision taken by the Commission at its 238th meeting of 29 July 1963 which meant that the applicant (classified in Category B) could no longer act as

deputy for the Head of the Salaries and Mission Expenses Division. The defendant maintains that by the measure taken Mr Van Gronsveld simply informed the applicant of the designation, pursuant to the decision of the Commission of 29 July 1963, of Mr Zeilmaker as deputy to Mr Blenkers. The Director General of Administration undoubtedly had authority to notify the applicant in this way. The Commission was certainly under no obligation to depart from the decision of 29 July 1963 and to take a contrary decision with the object of keeping on the applicant as a deputy, although he was not in Grade A.

Second submission: Infringement of an essential procedural requirement (EEC Treaty, Article 162 (2)) and infringement of Article 26 of the internal regulations of the Commission

The applicant, while admitting that the decision of 29 July 1963 is a general decision, submits that it should have been taken in the same form as in the internal regulations, because it departed from the provisions of Article 26 of the internal regulations. If the authors of the Treaty intended that the Commission should publish its internal regulations the purpose was to prevent the amendment of them by unpublished decisions.

The defendant replies that, although of general application, the decision of 29 July 1963 is not a departure from Article 26 of the internal regulations. It neither amends nor adds to it. It did not therefore have to be published in the Official Journal.

Third and fourth submissions: infringement of vested rights and misuse of powers

The applicant refers to his arguments in Case 109/63. The contested decision fails to acknowledge his right to retain his duties and powers. This factor adversely affects him as his grade, in accordance with Article 102 and the last sentence of Article 5 of the Staff Regulations, depends upon the duties which he actually performs. The defendant replies that the applicant was never employed in order to discharge the duties of a permanent deputy to the Head of the Salaries and Mission Expenses Division, and that the documents which the applicant puts forward to prove that he did perform these duties do not originate from the appointing authority and are not of themselves sufficient to confer upon him the position to which he lays claim. The applicant replies that before the entry into force of the Staff Regulations there was no appointing authority. He continued to act as assistant to the Head of Division with the full knowledge of the most senior officials of the Commission and therefore with their consent.

The defendant's answer to this is that it was only force of circumstances which caused the applicant to deputize for a specific period for his superior whenever he was absent (cf. Case 109/63).

The applicant is of the opinion that there has been an infringement of rights vested in him. Although it was intended that officials of the European Communities should be subject to regulations, the principles to be applied nevertheless in part remain the same. To hold that the right to a particular grade carries with it the right to advantages attaching to that grade and in particular the right to deputize for a superior does not constitute an unreasonable application of the principle of vested rights.

The defendant replies that, even if the applicant had undertaken to deputize for his superior as part of his permanent duties he could not assert any vested right to continue to act as deputy. Since the entry into force of the Staff Regulations the conditions of service of officials have been governed entirely by them.

IV—Procedure

The procedure followed the normal course.

There was no preparatory inquiry in this case. The Advocate-General submitted at the hearing of 16 November 1964 that applications 109/63 and 13/64 should be dismissed, since in his opinion the requests in the applications are in part inadmissible and in part unfounded.

Grounds of judgment

The naming of the defendants as parties

The applicant brought application 109/63 against the European Econnomic Community or alternatively the Commission of the EEC.

During the oral procedure he expressly discontinued the applications in so far as they were directed against the Community as such.

Joined Cases 109/63 and 13/64 must therefore be regarded as applications against the Commission of the European Economic Community alone.

Application to annul the decision of the Commission of 12 June 1962 classifying Mr Muller in Grade B1, Step 6

The applicant first asks the Court to 'declare that his appointment is null and void in so far as he was classified in Grade B1, at Step 6'.

This application therefore only asks for the annulment of that part of the decision taken by the Commission on 12 June 1962, notified to the applicant on 18 December 1962, which, after integrating him, classified him in Grade B1, at Step 6.

However Mr Muller's complaint to the administration was made by a letter of 28 August 1963. The resulting application to the Court was lodged on 23 December 1963. According to the provisions of Article 91 of the Staff Regulations appeals shall be filed within three months from the date of notification of the decision to the person concerned. In this case the period had therefore expired. As the applicant is therefore barred from appealing against the decision of 12 June 1962, this part of this application is therefore inadmissible.

Application for annulment of the implied decision of refusal to re-grade him and the request for a declaration that the Commission is under an obligation to classify Mr Muller in a particular grade

The applicant in addition asks the Court to 'declare that the Commission

must reclassify him in Grade A5 and at the step to which he is entitled, with effect from 1 January 1962, or at least from 28 August 1963 . . .'.

In addition, in his letter of 18 August 1963 he had requested 'to be classified as Principal Administrator in career bracket A4–A5, with retroactive effect from 1 January 1962'. The failure by the Commission to make a decision as to this request by the expiration of the period laid down by Article 91 of the Staff Regulations constitutes an implied decision to refuse the request.

The Commission was not required, unless important new facts arose, to reconsider a decision which could no longer be contested. In this case the applicant regards as a new fact of such a nature the decision of the Commission of 29 July 1963 drawing up the table which defines the duties and powers attaching to each post and which was notified to the staff in the Staff Information Bulletin of the Commission of the EEC No 54 of 2 October 1963. In support of his application the applicant quotes the definition in this table of the duties of Principal Administrator which he considers applies to his post and therefore justifies a revision of his gradings.

The publication of this table could in fact be regarded as a sufficiently important new fact to enable the applicant to request the Commission to grade him in accordance with the new provisions. This part of his application which seeks, on the grounds above-mentioned, the annulment of the implied decision of the Commission to refuse his request of 28 August 1963 for a declaration that it was under an obligation to reclassify him is therefore admissible.

As regards the substance of this part of his case, the applicant claims that according to the said definition of posts his post is that of either an assistant to a head of division or a head of one particular sector of activity in a division, as an official engaged in planning duties as a head of a specialized department. He holds that the Commission has infringed the last sentence of Article 5 and Annex I to the Staff Regulations and the decision of 29 July 1963 by its refusal to assign him to the grade corresponding to that post.

In the first place the appointing authority did not allocate to Mr Muller the duties of assistant to a head of division. Further, the documents in the case do not indicate that the applicant helped, assisted or deputized for the Head of Division on a permanent basis.

The applicant does not, moreover, appear to have occupied the post of one particular sector of activity in a division or to have been engaged in planning duties. Although it is important to ascertain the duties assigned to him by

examining the services he rendered, he does not on this basis appear to have been put in charge of an administrative unit which, having regard to the nature of the work, was equivalent to a 'sector' within the definition of posts. He was designated by the integration report as 'Principal Administrative Assistant' for questions relating to mission expenses. His activities consisted of drawing up statements of account of mission expenses, which, however complicated they might have been, do not involve any special initiative or responsibilities nor do they amount to planning duties.

The applicant does not appear to have been head of a specialized department, as the sector to which he is assigned carries out duties which are purely administrative and not technical.

Finally, the applicant has had produced a document in which the Commission, in order to justify an application to the Council of Ministers for a budget appropriation for 1964, expressed its intention to regard the applicant's duties as falling within category A.

Such an internal administrative document, however, intended to cause the budgetary authority to improve the organization of a department, cannot by itself constitute legal recognition of the right of the applicant to the post referred to.

It emerges from all these facts that the Commission has not infringed any provision by refusing by implication the request of the applicant for reclassification and that the Commission was under no obligation to classify him in Grade A5.

The application is therefore unfounded.

The claim for payment of arrears of salary and for damages and interest thereon

The applicant claims payment of arrears of salary and damages and interest thereon.

As the principal claims have proved to be inadmissible or unfounded, this claim cannot be upheld.

The application for the annulment of the decision of Mr Van Gronsveld withdrawing from Mr Muller the right to deputize for the Head of the Salaries and Missions Division

By a note of 11 September 1963 Mr Van Gronsveld, acting Director-

General of Administration, notified Mr Muller that pursuant to the decision of the Commission of 29 July 1963 (P.V. p. 238), the task of deputizing for Mr Blenkers, the Head of the Salaries and Mission Expenses Division, would be carried out during his leave by Mr Zeilmaker, Head of the Organization Division. The applicant submits that the decision contained in this note is null and void.

However, the note of Mr Van Gronsveld to Mr Muller is merely the application to Mr Muller of the decision of the Commission. As there is no complaint against this notification as such, independently of the decision which it merely implements, this claim must be dismissed.

The application to annul the decision of the Commission of 29 July 1963

The applicant pleads the invalidity of the decision by which the Commission decided on 29 July 1963, that in divisions and departments where provision is made for a single post in category A, the task of deputizing for the person occupying this post would be carried out under the Staff Regulations and the internal regulations, by the person occupying a post in Grade A in another division or department.

However, the decision in question is a general measure for the organization of departments for which the Commission alone is responsible. Such measures cannot have an adverse effect within the sense of Article 91 of the Staff Regulations and therefore cannot be the subject of this application.

This application is therefore inadmissible

The claim for payment of one Belgian franc for non-material damage

The claim for payment of one Belgian franc for non-material damage therefore appears to be itself inadmissible.

Costs

The applicant has failed on all the heads of his conclusions and must therefore be ordered to bear the costs, with the exception of the costs of the Commission, in accordance with Article 70 of the Rules of Procedure.

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 Treaty establishing the European Economic Community;
Having regard to the Staff Regulations of the European Communities, especially Articles 5, 91, 102 and Annex I;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Article 69,

THE COURT (Second Chamber)

hereby:

1. **dismisses Joined Applications 109/63 and 13/64 as being inadmissible or unfounded;**

2. **orders the applicant to bear the costs, with the exception of the costs of the Commission.**

Delivered in open court in Luxembourg on 16 December 1964.

Donner Lecourt Monaco

A. Van Houtte
Registrar

A. M. Donner
President of the Second Chamber

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 18 NOVEMBER 1964[1]

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1—Translated from the German.