4. Orders the applicant to pay the costs incurred from the lodgment of the reply, including those incurred by the defendant.

Donner Monaco Mertens de Wilmars

Delivered in open court in Luxembourg on 12 December 1967.

A. Van Houtte
Registrar

A. M. Donner
President of the First Chamber

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 21 NOVEMBER 1967[1]

Mr President,
Members of the Court,

The applicant in the proceedings on which I have to give an opinion today is an official of the European Coal and Steel Community. At the time when the proceedings were brought he was employed as a Principal Administrator by the High Authority which was then still in being. He has brought the present proceedings against the High Authority after having established that his name did not appear in the list of candidates to be considered for promotion, which was issued on 7 December 1966. His application is not however for annulment of this list of candidates or for annulment of the decisions on promotion, but for communication to him of the relevant reports on himself. Before making the application he addressed a letter to the President of the High Authority on 13 February 1967 in which he asked that, having regard to the second paragraph of Article 43 of the Staff Regulations, he might 'acquaint himself with the report' Einsicht in die Beurteilung') leading to his exclusion from the list of candidates to be considered for promotion. The President of the High Authority replied in a note of 3 March 1967 that there is no right to promotion, promotions being made rather by selection in accordance with Article 45 of the Staff Regulations. According to the case-law of the Court reasons do not have to be given for promotion decisions relating to candidates who have been passed over; there are therefore still fewer grounds for giving reasons for omission from the list of candidates to be considered for promotion.

Mr Bauer was not satisfied with this answer. Accordingly he brought his application before the Court claiming that it should annul the refusal of the President of High Authority to agree that his reports, in particular that of 11 May 1966, should be communicated to him.

It seems that the officials of the High Authority did not grasp with what the applicant was concerned until the application was lodged. In any event he was then summoned to the Director of Personnel, who handed him a photocopy of the report of 11 May 1966 (there were no other reports). In addition at the request of the applicant a further copy was sent with a letter of 29 May 1967 to his Counsel.

1 — Translated from the German.

At this stage the High Authority considered that the proceedings had become devoid of purpose and so informed him by letter. However, to meet a demand made by the applicant's Counsel on 31 May 1967, it lodged a statement with the Court, expressing a willingness to bear the costs incurred by the applicant up to that time in accordance with Counsel's demand.

Since however the High Authority's statement contained the observation that the admissibility of the application might be in doubt because the conclusions contained therein differed from those contained in the request of 13 February 1967 addressed to the President (which explains his reaction), the applicant for his part put in a further reply. In this he expressed the view that the proceedings would have become devoid of purpose only if the High Authority had decided unreservedly in his favour, that is to say without any reservation as to the admissibility of his first request and the existence of a legal interest in lodging it. He accordingly claimed a declaration that communication to him of the report of 11 May 1966 coupled with the offer of the High Authority to bear the costs incurred by him up to the time when the statement of defence was lodged amounted to a full acceptance of the admissibility and validity of his original request.

The question therefore arises what declarations by the Court are appropriate in proceedings which are really of little significance.

Legal consideration

Where a case does not proceed to judgment the Court so declares and rules on costs in its discretion in accordance with Article 69 (5) of the Rules of Procedure. The issues of law raised in the proceedings are essentially no longer under consideration; in any event they can be summarily considered for the purpose of the decision on costs.

The question whether the case should no longer proceed to judgment can be decided by looking at the conclusions contained in the application in the light of the events; in the view of one of the parties the events show that it should not.

This approach gives rise to no difficulties in the present case as regards the conclusion that the High Authority should be ordered to communicate to the applicant the relevant reports on him. This was done to the full even to the extent of communicating the report to the applicant's Counsel, something which was not in fact required, and clearly under Rules of Procedure this issue cannot proceed to judgment.

Thus the only remaining question is whether further declarations by the Court are called for on the admissibility and validity of the request submitted to the President of the High Authority. I see no grounds for this as regards the decision on costs, because the High Authority has unreservedly declared its willingness to bear the costs incurred by the applicant up to the time when the reply was lodged.

Again I see no grounds for it, because the applicant has no legal interest in obtaining the declaration for which he asks. He could have such an interest in a case like the present only if the parties were in *dispute* over the interpretation of Article 43 of the Staff Regulations and the rights of officials arising out of it. This is however obviously not the case here. The refusal of the President of the High Authority to grant the request of 13 February 1967 is explained simply by the fact that he believed that the applicant wished to pursue complaints about his not being promoted and was asking to be informed of the grounds upon which he was passed over.

Accordingly the applicant's conclusion contained in the reply must be dismissed as inadmissible.

To sum up my opinion is as follows:

— The Court must declare that there is no case for proceeding to judgment on the principal head of the applicant's conclusions;

— The conclusion contained in the reply must be dismissed as inadmissible for want of a legal interest;

— The Commission must bear the costs incurred up to the time when the reply was lodged. Costs subsequently incurred fall on the applicant in accordance with the second part of Article 70.