JUDGMENT OF THE COURT (SECOND CHAMBER)
14 JULY 1965[1]

# Ralph Loebisch, Tommaso Valerio, Guillaume Battin, Wouter van Royen and Heinz Noack v Councils of the EEC, EAEC and ECSC

**Joined Cases 50, 51, 53, 54 and 57/64**

Summary

1. *Officials — Administrative proceedings — Rejection confirming a previous decision — No act adversely affecting the official*
   *(Staff Regulations of officials of the EEC, EAEC and ECSC, Articles 90 and 91)*

2. *Procedure — Judgment granting annulment — Legal effects — Limited to the parties and to the persons directly concerned by the measure annulled — Judgment constituting a new factor — Concept*

1. The rejection of a complaint by way of a communication confirming a previous decision is not an act adversely affecting an official ('faisant grief') within the meaning of Article 91 of the Staff Regulations of officials.
2. (a) Cf. summary in Case 46/64.

   (b) A refusal of one of the parties to take the measures necessary in order to comply with a judgment of the Court does not constitute a decision adversely affecting the other party unless the judgment at issue was delivered as between the same parties.

In Joined Cases:

50/64

RALPH LOEBISCH, a Head of Section in the Translation Department of the General Secretariat of the Councils,

51/64

TOMMASO VALERIO, a Head of Section in the Translation Department of the General Secretariat of the Councils,

53/64

GUILLAUME BATTIN, a Head of Section in the Translation Department of the General Secretariat of the Councils,

1 — Language of the Case: French.

54/64

WOUTER VAN ROYEN, a Head of Section in the Translation Department of the General Secretariat of the Councils,

57/64

HEINZ NOACK, Head of the Translation Department of the General Secretariat of the Councils, represented and assisted by Fernand Probst, Advocate of the Luxembourg Bar, with an address for service in Luxembourg at his Chambers at 26, avenue de la Liberté,

applicants,

v

COUNCILS OF THE EEC, EAEC AND ECSC, represented by Hans Jürgen Lambers, Legal Adviser to the General Secretariat of the Councils, with an address for service in Luxembourg at the offices of Jacques Leclerc, an official of the General Secretariat of the Councils, 3 rue Auguste-Lumière,

defendant,

Application to be classified in a particular step of a grade;

THE COURT (Second Chamber)

composed of: A. M. Donner, President, W. Strauß and R. Monaco (Rapporteur), Judges,

Advocate-General: J. Gand
Registrar: A. Van Houtte

gives the following

## JUDGMENT

### Issues of fact and of law

I — Facts

The facts may be summarized as follows:

Between 22 July and 12 August 1964 the applicants submitted a complaint to the Secretary-General of the Councils against the grading given to them on 28 March 1963. In this complaint, each applicant asked for his grading to be

reassessed and backdated for remuneration purposes to 1 January 1962 (the date when the Staff Regulations of officials came into force) on the basis of the principles laid down by the Court in Case 70/63 (*Collotti* v *Court of Justice*). Since no reply was given to the said complaint within two months from the date on which it was submitted, the applicants lodged the present appeals between 21 November and 9 December 1964.

On 11 May 1965, the applicant in Case 57/64 made an application to the Court for a decision on a procedural issue within the meaning of Article 91 of the Rules of Procedure, and in it he requested the Court to take a decision on the admissibility of his application prior to all arguments as to substance. On 24 May 1965 the defendants signified their agreement with this procedure and requested the Court to declare the application inadmissible. On the same day they raised the objection of inadmissibility in Cases 50, 51, 53 and 54/64 on the basis of the said Article 91, and they proposed that these cases be joined to Case 57/64. On 4 June 1965, the applicants submitted a statement to the Court that they did not agree that the pursuit of the procedural issue or the joinder of the cases would be either suitable or useful, but that they left these matters to the discretion of the Court.

By order dated 17 June 1965 the Second Chamber of the Court ordered that the cases be joined.

## II — Conclusions of the parties

In their applications the *applicants* claim that the Court should annul in part and vary the decision rejecting their complaints and the decisions of 28 March 1963 assigning them to a grade, in so far as they were maintained in or given a step which is not in accordance with the provisions of the Staff Regulations of officials.

The *defendants* contend that the Court should declare the applications inadmissible or, alternatively, unfounded and order the applicants to bear the costs in so far as they do not fall on the defendants, in accordance with Articles 70 and 95 of the Rules of Procedure.

## III — Submissions and arguments of the parties

In their application the *applicants* advanced the following arguments in support of the admissibility of their appeals:

### A — *In the first place*

Article 90 of the Staff Regulations enables every official to submit a complaint to the appointing authority. No time-limit is laid down for so doing. Since the Secretary-General did not reply within two months of the complaint submitted by each applicant, the implied decision rejecting these complaints occurred two months after they were submitted. The present appeals were lodged two months after this rejection and have thus been brought within the prescribed period.

### B — *Secondarily*

Taking into account the judgment of the Court in Joined Cases 42 and 49/59, the judgment in Case 70/63 should be considered as a 'new factor' requiring the Secretary-General to reconsider his position on the meaning and the application of the various Articles of the Staff Regulations.

The refusal of the Secretary-General to allow the complaints made by the applicants, far from simply confirming his earlier decisions of 28 March 1963 (appointing the applicants to given grades and steps), thus contains the im-

plied decision that the judgment in Case 70/63 did not require him to take another view. Therefore this was a new decision which could be contested.

C — *Other points*

The fact that the applicants allowed the period laid down in Article 91 of the Staff Regulations to expire before bringing their applications against the decisions of 28 March 1963 concerning their grading is entirely due to their good faith.

However the judgment in Case 70/63 constitutes a new factor reviving their rights of action. The Secretary-General himself seems to admit this in his decision rejecting the complaints submitted by the applicants because he excludes the possibility of relying on the Judgment in Case 70/63, his reasoning being that this judgment 'was delivered in a particular case, on the basis of a different situation' from the situation of each applicant. This indeed seems to imply that if the contrary were the case the administration would have allowed these complaints.

Moreover it is a general rule both in national administrations and in those of the Communities that when a decision is taken by the Court on a question of interpretation of the Staff Regulations in favour of an official, this decision inures for the benefit of all the others who are in the same position. The administrative practice is based on a natural desire for fairness and on the need to avoid an unnecessary accumulation of disputes.

The *defendants* maintain that the applications are inadmissible because they are out of time, and in support of this objection they submit the following arguments:

A — *As to the principal allegations*

The applicants have indeed brought their appeals within the period laid down in Article 91 (2) of the Staff Regulations, but nevertheless these applications are out of time. In fact the implied decisions rejecting their complaint did no more than confirm the decisions of 28 March 1963 which had classified the applicants in a less favourable step than the one to which they now claim to be entitled. Therefore it is against these decisions that they should have brought their appeals within the period laid down in the first indent to Article 91 (2) of the Staff Regulations.

B — *As to the secondary allegations*

The Court has already decided that a measure which does no more than confirm an earlier measure cannot give the parties concerned the right to reopen the period for appealing against the measure confirmed. Thus the implied negative decision which confirmed the decisions of 28 March 1963 cannot reopen the period for appealing against these latter decisions.

It is true that in its judgment in Joined Cases 42 and 49/59 the Court made an exception to this principle where there is a 'new factor' of a nature such as to change the basic circumstances and conditions governing the earlier measure. But in doing so the Court did not intend to lay down a criterion of a general nature: it reached its conclusions in the light of circumstances which were exclusively peculiar to the case before it and which have not recurred in the present case. The facts are:

— that Joined Cases 32 and 33/58, on the one hand, and Joined Cases 42 and 49/59, on the other, arose between the same parties (*SNUPAT* v *High Authority*). Furthermore the issue in these latter cases was mainly whether the institution had understood all the consequences of the judgment in the preceding cases as regards a party who had taken part in both sets of proceedings;

— and that all these cases were about the financial scheme governing the

equalization of ferrous scrap which, of its nature, is of common interest to associated undertakings. This is because the scheme was organized in such a way that the increase or decrease in the contribution of one undertaking had an *automatic* repercussion on the position of all the others. The *individual* situation of each undertaking subject to the scheme in those cases therefore depended very closely on the situations of the others. Such a state of affairs is certainly not found as between the parties to the present case.

In these circumstances there can be no justification for a general application of the principle derived from the judgment in Joined Cases 42 and 49/59. It would be incompatible with the necessity for certainty in legal relationships which the mandatory provisions on limitation of actions are designed to ensure and would contravene the general principles of law accepted in the Member States (although the situation in this respect is not absolutely identical in all the Member States).

For all these reasons it would be mistaken and unjustified to consider the judgment in Case 70/63 as a 'new factor' enabling time to start to run afresh for the purpose of an appeal in the present cases.

C — *As to the other allegations*

Respect for the good faith of the applicants can in no case frustrate the consequences which follow from the expiry of the period for lodging an appeal.

Furthermore it is incorrect to suppose that, both in the national administrations of Member States and in Community administrations, a decision of the Court on a question of interpretation of the Staff Regulations in favour of one official inures for the benefit of all the others who are in the same position. On the one hand, the Court of Justice did not lay down any such general principle in the judgment in Joined Cases 42 and 49/59, but confined itself to stating the consequences which followed from a very special situation. Furthermore, the internal law of the Member States has not by any means adopted this principle. Finally, the desire for fairness and for avoiding multiplicity of actions referred to by the applicants should not let it be forgotten how important strict enforcement of the time-limits is for legal certainty.

The *applicants* in Cases 50, 51, 53 and 54/64—who have already lodged their reply—answer this argument as follows:

It is doubtless true that any judgment applies only to the case with which it deals, but they have never claimed that the Court had elaborated a principle according to which a judgment given as regards one official must automatically apply to all those who might find themselves in the same situation or in an analogous one. All they said was that in the past—and should this be denied they are ready to prove it—decisions given in favour of one official have always inured for the advantage of others who were in such institutions, because of the current administrative practice.

Moreover it is also true that every judgment is a source of law in so far as it makes some interpretation of the texts applicable. Thus the judgment in Joined Cases 42 and 49/59 not only decided that a judgment of the Court could constitute a new factor in the actual circumstances of that case. It also expressed a principle of a general nature which goes beyond the said case. This principle is that a judgment of the Court constitutes a new factor if it requires the administration to reconsider the basis of its earlier decision.

However the grounds of the judgment in Case 70/63 laid down a general principle concerning the reassessment of posts which is absolutely contrary to the practice followed by all the institutions. Therefore the complaints made

by the applicants, based on this judgment, should have led the administration to reconsider the basis of its earlier decisions, and then to decide either to apply the principle stated in the judgment in Case 70/63 to each case that was identical or analogous to the one dealt with in that judgment, or to depart from the said principle. The latter alternative was applicable in the present cases, and it cannot be denied that in these circumstances the decision taken by the administration was not a mere confirmation of the decisions of 28 March 1963. But in fact whichever alternative is adopted there is still a new decision in accordance with the case-law laid down in the judgment in Joined Cases 42 and 49/59.

Finally, as regards ensuring legal certainty, a matter to which the defendants refer, it must not be forgotten that the rigorous application of this principle is given flexibility in internal administrative systems of law by means of exceptions. Such exceptions are all the more justified in legal systems which are in the course of formation or are new, such as Community law. The development of this law is in fact largely brought about through the judgments of the Court, which for this reason are often intended to constitute a 'new factor'. Under such a system the upholding of a decision contrary to principles of law contained in a judgment of the Court cannot therefore be considered as a mere confirmation of an earlier position, but must be considered as the taking up of a new one.

### IV — Procedure

The procedure followed the normal course.

By order dated 17 June 1965 the Second Chamber of the Court ordered that the present cases be joined for the purposes of a judgment on the question of admissibility.

At the hearing on 30 June 1965 the parties were heard as to the substance of the objection of inadmissibility raised by the defendants and as to the request for a decision on a procedural issue brought by the applicant in Case 57/64.

During the course of this hearing the applicants declared that their appeals were directed against the Councils of the EEC, the EAEC and the ECSC, and not against the Secretariat-General as appeared from their written pleadings.

The Advocate-General was heard at the hearing on 30 June 1965 and advised that the appeals were inadmissible and that the applicants should bear the costs in accordance with Articles 70 and 95 of the Rules of Procedure of the Court.

## Grounds of judgment

### Admissibility

The defendants plead that the appeals are inadmissible on the ground that the applications were lodged after the legal time-limits had expired.

The present appeals are directed against the rejection by the Secretary-General of the Councils of complaints made by the applicants with a view to obtaining a higher step than the one accorded to them by the decisions of 28 March 1963. An analysis of these rejections shows that in each of these

cases they were in fact confirmations of the said decisions of 28 March 1963 whereby the applicants were allotted their grades. It is admitted on all sides that these decisions gave the applicants a lower step than the one to which they claim to be entitled. Therefore, since the applicants' complaints originate in the decisions of 28 March 1963, it is against these decisions that they should have lodged their appeals within the time-limits laid down by Article 91 of the Staff Regulations of officials. However both the present appeals and the said complaints were lodged outside the abovementioned legal time-limits.

Nevertheless the applicants assert that the judgment delivered by the Court on 7 July 1964 in Case 70/63 constitutes a new factor calculated to change the essential circumstances and conditions which led to the disputed grading, and that this enabled the period for lodging an appeal to start to run afresh. In support of this argument they refer to the judgment of 22 March 1961 in Joined Cases 42 and 49/59, and conclude that the refusal of the Councils to revoke the decisions of 28 March 1963 constitutes a new decision which can be contested.

As regards the said judgment in Case 70/63, apart from the actual parties in proceedings before the Court, the only persons concerned by the legal effects of a judgment of the Court annulling a measure are the persons directly affected by the measure which is annulled. Such a judgment can only constitute a new factor as regards those persons.

It is undisputed that the judgment in Case 70/63 annulled a decision of the Court of Justice in so far as it fixed the step in which the person concerned was to be classified. This decision only dealt with the individual position of the person concerned and cannot be of direct concern to third parties such as the applicants. In these circumstances, therefore, as regards the applicants the abovementioned judgment does not constitute a new factor enabling the period for lodging an appeal, which in this case has expired, to start to run afresh.

In arguing against this bar no support can be found in the judgment in Joined Cases 42 and 49/59, which were brought between the same parties as those whose dispute was the subject of the judgment in Joined Cases 32 and 33/58, and the reason for bringing which was the refusal of one of the parties to take certain measures which were necessary in order to comply with the previous judgment delivered as between those parties. In the present case the facts are not the same.

For the reasons stated, and without its being necessary to examine the submission concerning good faith which was raised as a very minor point, the

conclusion to be drawn is that the present applications were lodged out of time and that they are consequently inadmissible.

## Costs

The applicants have failed in their applications.

Under Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs. However Article 70 of the said Rules provides that, in proceedings commenced by servants of the Communities, institutions shall bear their own 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 of the European Coal and Steel Community, the European Economic Community and the European Atomic Energy Community;
Having regard to the Staff Regulations of officials of the European Coal and Steel Community, the European Economic Community and the European Atomic Energy Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Articles 69, 70, 91 and 95,

THE COURT (Second Chamber)

hereby:

1. **Dismisses the present applications as inadmissible;**
2. **Orders the applicants to bear the costs, except those incurred by the defendant.**

Donner Strauß Monaco

Delivered in open court in Luxembourg on 14 July 1965.

A. Van Houtte
Registrar

A. M. Donner
President of the Second Chamber