3. The mere fact of the existence of a single secretariat cannot establish the legal unity of the Councils of Ministers of the European Communities, as each of these Communities has a separate legal personality and as the Treaties did not establish the Councils as a common institution.

4. As the definitions of the duties and powers attaching to each post are capable of constituting an important new fact in respect of previous decisions of classification, it is permissible for the person concerned to rely on the said definitions when asking that these decisions should be revised.

5. A request or complaint provided for in Article 90 of the Staff Regulations, although capable of being submitted at any time, cannot nevertheless extend the period for lodging an appeal to the Court unless it is made within the period laid down for the latter.

6. A premature appeal against a decision not yet arrived at may be validated by a decision adopting the attitude in dispute.

7. Conclusions clarifying the scope of previous conclusions do not have the character of a substantial modification.

In Case 28/64

RICHARD MÜLLER, an official of the Secretariat-General of the Councils of the European Communities, represented and assisted by Manfred Schwall of the Karlsruhe Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 6 rue Willy-Goergen,

applicant,

v

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

defendants,

Application concerning the implied refusal by the Secretary-General of the Councils of the request of the applicant to be classified in Category A as from 1 January 1962,

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 — Summary of the facts

The facts may be summarized as follows:

Mr Richard Müller was engaged on 31 August 1959 as a contractual official in the Secretariat of the Councils of the European Communities. He was integrated in Grade B 2 as from 1 January 1962 under Article 102 (1) of the Staff Regulations. He was then promoted to Grade B 1, first as from 1 October 1962 and subsequently as from 1 January 1962.

On 9 April 1964 the applicant sent a request to the Secretary-General of the Councils for his classification in one of the grades of career bracket A 5-A 4 as from 1 January 1962.

Having received no reply by 9 June 1964, the applicant made the present application on 2 July 1964. By a letter of the same day, the Secretary-General dealt with the question raised by the applicant by rejecting his request of 9 April 1964.

II — Conclusions of the parties

The *applicant* claims in his application that the Court should:

'1. Annul the decision of the Secretary-General of the Councils of the European Communities which follows by implication from the expiration on 9 June 1964 of the time-limit laid down in the second indent of Article 91 (2) of the Staff Regulations of the European Economic Community and of the European Atomic Energy Community rejecting the request of the applicant concerning his classification, as from 1 January 1962, in one of the grades of career bracket A 4 - A 5 of Category A;

2. Order the Secretary-General of the Councils of the European Communities to pay the costs.'

In reply he modifies his conclusions in the following manner:

'1. Order the defendant to take a decision that the applicant shall be classified in Grade A 3 as from 1 January 1962;

2. Order the defendant to pay the costs. The conclusions of the application are maintained in the alternative.'

The *defendant* contends that the Court should:

'Declare the application inadmissible or, alternatively, unfounded and order the costs to be paid by the applicant to the extent to which they are not payable by the defendant under the provisions of Articles 70 and 95 (1) of the Rules of Procedure.'

III — Submissions and arguments of the parties

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

The naming of the defendant as a party

The *defendant* first draws the attention of the Court to the fact that the application was directed against the Secretary-General of the Councils, whereas it should have been brought against the Councils of the EEC and the EAEC.

The *applicant* raises the objection that the argument that officials of the Secretariat of the Councils, who are officials of the EEC and the EAEC, should make their applications against the Councils of those Communities, and the officials of the said Secretariat, who are at the same time officials of the

ECSC, against the Special Councils of Ministers, is hardly reasonable and, in addition, raises problems with regard to the execution of a judgment of the Court given against the Councils of the EEC and the EAEC, or against the Council of the ECSC, taking into account the fact that the Councils of the three Communities are, from the financial point of view, a 'common institution'.

Futhermore, since under the terms of Article 90 of the Staff Regulations, a complaint is addressed to the appointing authority, the appeal provided for in the following Article should, in the absence of special provision to the contrary, also be brought against that authority.

The applicant refers lastly to the judgments of the Court in Joined Cases 79 and 82/63.

The *defendant* points out that, although it is correct that Article 90 of the Regulations describes the appointing authority as the party against which any complaints should be made, and that the Secretary-General exercises the functions of that authority in respect of the majority of the officials of the Secretariat, it is also undeniable, on the one hand, that in deciding to establish the applicant, the Secretary-General acted on behalf of the Councils and, on the other hand, that only the institutions can have the capacity to be defendants before the Court in proceedings brought by their officials.

The reference made to the judgments of the Court in Joined Cases 79 and 82/63 is not relevant in the present case, and attention ought to be turned rather to Cases 78/63 and 80/63, in which the Commission was regarded as the defendant, despite the fact that it was not in those cases the appointing authority.

No difficulty can arise on the execution of a judgment from the fact that the Councils themselves are the defendants, and not their Secretaries-General. The Councils, as well as the common institutions, are in fact obliged to fulfil their obligations, even if these arise not from the three Communities at the same time, but only from certain of them.

The *defendant* states finally that the incorrect naming of the defendant need not necessarily be regarded as a circumstance resulting in the inadmissibility of the application, and it submits to the wisdom of the Court to deal with the inferences which may be drawn from the situation.

Admissibility

The *defendant* disputes the admissibility of the application, on the ground that it was made out of time.

The defendant explains that during the course of 1963 there was a series of decisions concerning the applicant in which it was impossible for him to find acts adversely affecting him. By a decision of *17 January 1963*, he was integrated under the Staff Regulations in Grade B 2; by a decision of *28 March 1963*, he was promoted to Grade B 1 as from 1 October 1962. According to the objections made at the time, the applicant complained, in the first case, of not having been classified in Grade B 1 and, in the second case, of having been promoted to that Grade only as from 1 October 1962 and not as from 1 January 1962. The latter complaint was remedied by a decision of *21 June 1963*. During the three months following this last decision, the applicant did not show that he was opposed to his situation under the Staff Regulations which had thus been fixed, because he did not bring an appeal or lodge a complaint.

Even if it is admitted that the applicant could not have realized the adverse effect which the decision of 21 June 1963 implied for him until after the decisions of the Councils adopting the definition of duties and powers within the meaning of Article 5 (4) of

the Staff Regulations, it should be noted that this decision was brought to the knowledge of the staff on *15 October 1963* and that, at least from this date, the applicant was in a position to know that a decision adversely affecting him had been made. The applicant did not, in this case either, bring an appeal or lodge a complaint within the prescribed time-limits.

Against these arguments, the *applicant* advances the following arguments in particular:

(a) He never indicated that he considered that he had suffered damage as a result of his classification in Grade B 2 by the decision of 17 January 1963, anticipating his integration within the Staff Regulations, all the more so as the 'automatic' classification consequent upon the first stage of integration under Article 102 of the Regulations could not legally amount to a measure adversely affecting him. The letters of 19 April and 5 June 1963, to which the defendant appears to allude, do not raise complaints on this subject.

In fact:

— in his letter of 5 June 1963, addressed furthermore to the Director-General of Administration and not to the appointing authority, the applicant criticized the decision on integration to the extent that it put him in a step lower than that to which he was entitled on the basis of Article 102 of the Staff Regulations. It was not thus a question of the classification corresponding to the post held, but a question of the relevant step.

— in his letter of 19 April 1963, which must be considered solely in relation to the decision of 28 March 1963 promoting him to Grade B 1 as from 1 October 1962, the applicant asked that the date on which his promotion was to take effect should be fixed at 1 January 1962 (the date of the entry into force of the Staff Regulations). As the definitions of the duties and powers attaching to each basic post were not settled by then, the question of his classification in accordance with Article 5 of the Staff Regulations and Annex I thereto was put aside *sine die* and was left for later consideration.

(b) The request of 19 April 1963 was satisfied by a decision of 21 June 1963. Consequently, neither this decision, nor the previous decision of 28 March 1963 which was partly modified by it, was capable of adversely affecting the applicant, whether in respect of the date on which his promotion to Grade B 1 took effect or as regards the 'settling of his position under the Staff Regulations'. They are not intended to give the applicant a classification in accordance with Article 5 of the Staff Regulations and Annex I thereto, to which the applicant is entitled, but go no further than to grant him, on the basis of Article 45 of the Regulations, a promotion which clearly is not one to which the person concerned has a right.

For all these reasons, the argument of the defendant that the applicant failed within the time-limit of three months to show his dissatisfaction 'concerning his position thus settled under the Staff Regulations' cannot be accepted.

(c) Nor, furthermore, can the claim be accepted that the applicant failed to bring an appeal or to lodge a complaint as soon as he knew of the definitions of the duties and powers attaching to each basic post. It is of course true that as from that date the applicant knew that his classification did not conform with the Staff Regulations, taking into account the definitions of duties and Annex I to the Regulations. Nevertheless, on the one hand, the definitions of duties is not an act having adverse effect and, on the other hand, the irregular nature of his classification in relation to those definitions

and to Annex I to the Regulations followed not from a decision taken by the Secretary-General adversely affecting the applicant, but from the absence of a decision leading to his reclassification. In these circumstances, no act adversely affecting him within the meaning of Article 91 of the Staff Regulations existed in the present case, and the time for bringing an appeal did not begin to run.

In addition, no provision of the Staff Regulations stipulates that the person concerned must lodge his complaint within a time-limit of three-months. The appointing authority, when required to decide upon a complaint based on Article 90 of the Staff Regulations, cannot in any case reject this request on the ground that it has been raised too late. The authority only has the power to refuse to give effect to a right claimed in respect of the period which has expired to the extent to which a time-limit applies, whilst no time-limit may under the Staff Regulations be set against the claims advanced by the applicant.

(d) In a supplementary memorandum accompanying the reply, the applicant mentions that he had notification on 8 October 1964 of the decision of the Secretary-General of 18 July 1964, providing for his classification in Grade B 1, taking into account the definitions of the duties and powers attaching to each basic post. This decision must therefore be regarded as terminating the integration procedure and is sufficient evidence that 'the settling of the applicant's position under the Staff Regulations' had not yet occurred by 9 April 1964 (the date on which he submitted his complaint in respect of final classification), and did not arise out of the decisions of 1963.

The applicant could have waited for notification of the decision of 18 July 1964 in order to claim the rights to which he claims to be entitled, but he considered that a period of six months from the day on which the definitions of duties had been adopted was sufficient to revise his classification, and that is why he submitted his complaint on 9 April 1964.

The objection raised by the defendant that the period of limitation has expired is thus completely unfounded.

In the rejoinder, the *defendant* states as follows:

(a) Of the three decisions relating to the applicant in 1963, the last (21 June 1963) is doubtless to be considered as settling the classification of the applicant in Grade 1, as from 1 January 1962. The fact that this decision had the effect of back-dating the coming into effect of the applicant's promotion to Grade B 1 does not avoid the position that by confirming him in this grade and not in Grade A 5 or A 4, it necessarily adversely affected him with regard to his classification.

— It is undeniable that a complaint within the meaning of Article 90 of the Staff Regulations may be made at any time. Nevertheless, an appeal cannot be made after the expiration of the prescribed time-limits unless the applicant has made a complaint within the three months following the decision adversely affecting him (cf. judgment of the Court in Case 69/63). It is necessary in fact to prevent an official from being able to question his classification throughout the duration of his active service, and being able to cause the strictly-prescribed period for lodging an appeal to start to run afresh by making a complaint at any time under Article 90 of the Regulations.

— The decision of 8 July 1964 which is mentioned in the supplement to the reply adds nothing new to those of 1963 providing for the applicant's classification in Category B. It merely confirms those previous decisions and thus cannot cause the period for lodging an appeal to start to run afresh.

(b) The modification in the reply of the conclusions set out in the applica-

tion is inadmissible under Article 38 (1) of the Rules of Procedure. It cannot be examined in the light of Article 42 (2) of those Rules, because that Article does not apply to cases such as the present one.

The substance of the case

After recalling that the definitions of the duteis and powers attaching to each post is, together with Annex I to the Staff Regulations, the basis on which the classification of officials rests, the *applicant* asserts that the appointing authority of the Councils should, once those definitions had been adopted, have re-examined the classification of servants which had been made under the transitional provisions (Article 102 (2)) or of promotions made on the basis of Article 45 of the Regulations. If, following this examination, it appeared that an official holding a particular post before and after the entry into force of the Staff Regulations was given a classification lower than that based upon the definitions of duties provided for in the last paragraph of Article 5 of the Staff Regulations, and on the application of Annex I thereto, that official should be entitled to require that his classification be revised to conform with the foregoing rules as from the entry into force of the Staff Regulations.

The applicant next describes the origin, the nature and the characteristics of his duties. He points out to this end:

— that by a decision of the Secretary-General of 1 November 1961 he was put in charge of checking expenditure both as regards liabilities entered into and orders to pay, as provided for in Article 25 of the Financial Regulation concerning the preparation and execution of the budget of the EEC and of the operating budget of the EAEC, and the responsibility of auditors and accountants (Annex I to the application);

— that, after the implementation of the Financial Regulation concerning the preparation and execution of the various parts of the budgets relating to the common institutions and to the Councils, he was made a financial comptroller on 20 December 1963, within the meaning of Article 25 of the same Regulation;

— that, in carrying out his duties, he is *independent* in the sense that he is not under instructions coming from immediate superiors;

— that the supervision which he carries out covers acts of officials who belong mainly to the highest categories (A 1, A 2, A 3 and A 5).

On the basis of these details, the applicant maintains that the post which he holds does not correspond to executive duties within the meaning of the third subparagraph of Article 5 (1) of the Staff Regulations, which are those of Category B, but to administrative and advisory duties falling within Category A.

The conclusion is confirmed by the definitions of the duties attaching to posts in Category B and Category A, adopted by the Council under Article 5 (4) of the Staff Regulations. By analysing in particular the definitions of the duties attaching to posts in career bracket B 1 (the explanations given on this subject apply equally to posts in career bracket B 3-B 2) and in career brackets A 7-A 6 and A 5-A 4 the applicant stresses in the application that his duties are those of a post in career bracket A 5-A 4.

The *defendant* disputes, on the other hand, that the applicant's duties were administrative and advisory duties requiring university education or equivalent professional experience (Category A). In the opinion of the defendant, they correspond to executive duties which require an advanced level of secondary education or equivalent professional experience (Category B).

In support of this assertion, the de-

fendant points out in its statement of defence that the Staff Regulations themselves do not expressly classify supervisory duties in Grade A or B. The definitions of duties adopted by the Council does not, furthermore, allow of an *a priori* classification of posts which entail supervisory duties in a particular category. This can be explained, moreover, by the fact that such duties may, by their nature, present such differences that their classification must take into account the particular tasks of each post. It thus appears necessary to consider the characteristics of the duties carried out by the applicant on the basis of the particular characteristics of the post provided for in Article 25 of the Financial Regulation.

It appears from Articles 30, 31 (a) and (b) and 40 of that Regulation that the duties which this post entails consist of purely formal financial supervision and relate to financial technique. In order to determine whether these duties require a university level of education, reference should be made to Article 31 (c) according to which a financial comptroller is required to check 'the regularity and the conformity of expenditure having regard to the applicable provisions, particularly budgets and regulations, as well as all measures taken in implementation of the Treaties and the said Regulation'.

In respect particularly of the nature of checking the 'conformity of expenditure . . .', it should be said that this relates only to the compatibility of a particular category of transactions (planned expenditure) with a particular category of rules of law on the subject (budgets, budgetary provisions of the Treaty, financial regulations, etc.). It is a matter in the present case of a clearly defined field of operations and of financial rules, so that the encounter between the two does not require the general critical faculty derived from a university education, but corresponds to executive duties (Grade B). The Member States also have cases where officials lacking in university education or equivalent professional experience carry out within limited fields the task of checking in that way conformity between facts and rules of law (for example the case of the 'Rechtspfleger' in the administration of justice in Germany).

Further, the financial comptroller does not examine the expediency of the expenditure or good financial management, whereas the Audit Board is expressly recognized as having such a power of appraisal (cf. Article 31 of the Financial Regulation and Article 206 of the EEC Treaty). Neither does he consider the 'legality' of the expenditure, but confines himself to checking its 'conformity' with the provisions applicable to the matter, which appears to indicate that he should primarily exercise supervision not on a legal basis, but upon that of financial technique.

In addition the fact that, in the exercise of his duties, the applicant is not subject to orders is not capable of corroborating the arguments of the opposing party. On the one hand, it is a matter of the working independence of the financial comptroller, which the very nature of the duties carried out requires, for the purposes of such supervision. On the other hand, the argument is not conclusive, since in accordance with the letter of the definitions of the duties relating to career bracket A 4-A 5 it must be inferred that the supervisory duties provided for by this career bracket are those which come within the framework of the administrative hierarchy, whilst in keeping within the terms of the definitions for career bracket B 1 it cannot be denied that supervisory duties not subject to superior orders may on the other hand apply to this career bracket.

Lastly, the fact that the officials who are authorizing officers and are supervised by the applicant belong in general

to Category A does not mean necessarily that the applicant should also belong to that category, in order that his personal independence should be guaranteed in respect of the authorities under supervision. This independence is ensured by other means provided for in Article 25 of the Financial Regulation and in any case the supervision carried out by the financial comptroller bears only upon the clearly defined field of the activity of the officials authorized to pass the accounts.

In the reply, the *applicant* points out that the term 'supervising' contained in the definitions of the duties relating to career bracket B 1 is translated in the German version by the word 'Überwachung', from which it would follow that the duties carried out are not those of a 'Kontrolltätigkeit', but those of an 'Überwachungstätigkeit'. The use of a different form of words in the definitions of the duties of career bracket A 5-A 4 in comparison with that used in the definitions of the duties of career bracket B 1 thus proves that the Councils have made provision for supervisory duties only in connexion with posts in Category A.

As to the character and scope of this supervision, he maintains, by a detailed analysis of the duties applying to them, (reply pp. 13 to 20), that the arguments of the defendant that a financial comptroller would not examine 'good financial management', would not consider the 'expediency' of the expenditure and would exercise supervision not of a legal order are false or inadequate. He points out in particular that the competence of a financial comptroller to consider whether financial resources have been used according to the 'principles of good financial management' comes from the actual wording of Article 2 of the Financial Regulation. Furthermore, the distinction between technical supervision and legal supervision in the present case is unjustified since, if an item of expenditure is proper with regard to all the provisions applicable to it, it conforms also to rules such as economic principles and good financial management. Furthermore, the concept of 'expediency' put forward by the defendant appears very vague and confused.

Lastly, the supervision carried out by the applicant bears not only upon a part but upon all the duties of authorizing officers and the sphere of his duties is not as confined as the defendant believes, since it implies the taking into consideration of all the provisions applicable by an administrative body, including those of the Staff Regulations which alone account for approximately 65% of the total expenditure of the Councils. In any event, even a restricted sphere of operation may require a university education or professional experience of an equivalent level.

The applicant next criticizes the comparison made by the defendant between the financial comptroller and the 'Rechtspfleger' in German law, and sets against this, on a Community basis, the decision of the Secretary-General of 18 December 1961 nominating an official in Grade A 4 as financial comptroller to the secretariat of the conference set up on the occasion of the negotiations for the entry of the United Kingdom into the Common Market. Still by way of comparison but nevertheless without having in view posible harmonization measures within the meaning of Article 102 of the Staff Regulations, the applicant refers to the classification which was given to the financial comptrollers in the other Community institutions, particularly at the EAEC Commission and at the European Parliament.

He finishes his reply by mentioning the reasons for which he modified the conclusions in the application, so that in this statement he asks as his main request to be classified in A 3. After recalling that the value judgment made

upon his duties is linked to the question whether financial supervision is the responsibility of the Director-General, a Director or a Head of Division (the subordination to one of these superiors not implying however that they give him orders as to the exercise of his duties), that is to say if, in the definitions of the duties, his post is a post in career bracket A 3 or a post in career bracket A 5-A 4, he explains that at the time when he brought his action, he did not know who his immediate superior was, so that he had considered that his post ought to be at least a post in career bracket A 5-A 4. It appears from the 'note to the staff' of 29 June 1964, which was given to him after the application was lodged, that the applicant works directly under Mr Markull, the Director-General, who, according to the list drawn up by the appointing authority in application of the decision of the Councils of 25 May 1964, is both his immediate superior and his reporting officer.

It thus follows from the administrative situation as it appears at present that the applicant holds a post falling within career bracket A 3.

The *defendant* replies in the rejoinder that the word 'Überwachung' appearing in the definitions of the duties attaching to career bracket B 1 does not set out a different concept from that of 'Kontrolle'. It thus remains confirmed that supervisory duties may just as well be included in career bracket B 1 as in various career brackets of Category A, and that it is only by undertaking an examination of the nature and importance of the tasks of financial comptrollers that it is possible to resolve the problem of their classification.

With a view to proving that the duties of a financial comptroller at the Secretariat are to be regarded as executive duties, the defendant once more mentions the considerations already set out in its statement of defence concerning the nature of the duties of the applicant who is required to consider the conformity of certain facts with legal rules and who carries out his supervision over a small sector of the activities of the officials who are authorizing officers.

In respect more particularly of the scope of the supervision carried out by the applicant, the defendant admits that the rules of the Staff Regulations are also taken into account by the comptroller, but nevertheless disputes that the latter may base himself, in the exercise of his duties, 'on all of the provisions applied by an administrative body'. The application of many of the rules is in fact removed from his power of supervision, since that is exercised only in respect of a body of rules which are well defined by reason of their financial nature.

Further, since the supervision carried out by the financial comptroller does not extend over all the acts of the officials who are authorizing officers, the claim of the applicant to be classified in Grade A by reason of the classification of these officials does not appear to be justified on this point either.

The defendant ends by referring once more to national law to prove that one and the same function may be exercised by officials of different categories, and mentions the factors which appear to the defendant to justify the classification in Grade A of financial comptrollers in the other institutions or in the secretariat of the conference set up at the time of the negotiations concerning the accession of the United Kingdom to the Common Market.

IV — Procedure

The procedure followed the normal course.

On hearing the report of the Judge-

Rapporteur and the opinion of the Advocate-General, the Second Chamber of the Court decided not to undertake any preparatory inquiry and fixed 3 February 1965 as the date of opening of the oral procedure.
The Advocate-General delivered his opinion on 17 March 1965.

Grounds of judgment

The naming of the defendant as a party

The applicant has directed his application against the Secretary-General of the Councils of the European Communities, considering that since, under the terms of Article 90 of the Staff Regulations, a complaint must be addressed to the appointing authority the appeal provided for in the following Article must also be brought against the said authority in the absence of express provisions to the contrary.

It is alleged that such procedure is all the more justified in the present case as the applicant is an official of the Councils of the EEC and EAEC, whilst these two institutions together with the Special Council of Ministers of the ECSC form a legal and administrative unit having a common secretariat.

Under the terms of Article 2 of the aforementioned Regulations 'Each institution shall determine who within it shall exercise the powers conferred by these Staff Regulations on the appointing authority'.

It follows from this provision therefore that the appointing authority acts in the name of the institution which designated it, so that acts concerning the legal position of officials and which may adversely affect them must be attributed to the institution to which they are attached.

Although Article 90 of the Staff Regulations makes provision for a complaint to be submitted to the appointing authority, this is because such a procedure amounts to an appeal through official channels having no contentious element.

Lastly, as each of the Communities has a separate legal personality and as the Treaties did not establish the Councils as a common institution, the mere fact of the existence of the single secretariat cannot establish the legal unity of the said Councils.

Under the terms of the general provisions concerning legal proceedings contained in the EEC and EAEC Treaties, an appeal must be brought against the institutions from which the act having an adverse effect emanated.

For all these reasons, this application must be regarded as being directed against the Councils of the EEC and EAEC to which the applicant belongs.

Admissibility

1. The defendants maintain that this application is out of time, on the ground that the complaint put forward by the applicant arises from the earlier decisions of 28 March 1963 and 21 June 1963, promoting him to Grade B 1 as from 1 January 1962.

Further, as the decision of the Councils adopting the definitions of the duties and powers attaching to each post, within the meaning of Article 5 (4) of the Staff Regulations, was brought to the attention of the staff on 15 October 1963, the applicant was in a position, from this date at least, to realize that a decision affecting him had been taken.

Since the applicant neither made an appeal nor submitted a complaint against those decisions or the abovementioned definitions within the prescribed time-limit, it is claimed that he is time-barred.

The applicant claims that his classification does not conform to the definitions of the duties and powers attaching to each post, adopted by the Councils under Article 5 (4) of the Staff Regulations.

The applicant claims that the decisions of 28 March and 21 June 1963, having been taken before the adoption of these definitions, cannot be regarded as prejudging the permanent classification of the applicant in the light of these definitions, and thus as adversely affecting him.

As the definitions of the duties and powers attaching to each post are capable of constituting an important new fact in respect of the decisions of 28 March 1963 and 21 June 1963, it was permissible for the applicant to rely on those definitions when asking that these decisions should be revised.

The applicant maintains that this request, amounting to a complaint within the meaning of Article 90 of the Staff Regulations, may be made at any time, the Regulations laying down no time-limit in this respect.

Although it is true that a complaint may be submitted at any time, it cannot nevertheless extend the period for lodging an appeal to the Court unless it is made within the period laid down for the latter.

If the contrary were the case, it would be permissible for any official to thwart the intention of the authors of the Staff Regulations, clearly expressed in the wording of those Regulations, to limit the period of time during which the legality of an administrative measure may be questioned.

It has been established, however, that the decision applying the definitions of duties adopted by the Councils in the case of the applicant was not made until 18 July 1964 and was not made known to him until 8 October 1964.

In view of this belated application of the said definitions, the defendant cannot raise the objection of inadmissibility on the ground that time has run out against the applicant's application, which was made on 2 July 1964 and thus prior to its own decision.

Although the application of 2 July 1964 was premature, as the Councils had not yet arrived at their decision by that date, it was validated by the subsequent decision adopting the attitude in dispute.

Consequently in the circumstances of the present case the objection of inadmissibility must be rejected.

2. In addition, the applicant modifies in the reply the conclusions set out in the application in which he requests principally to be classified in Grade A 3.

The defendant pleads the inadmissibility of these conclusions by pointing out that they are contrary to Article 38 (1) (d) of the Rules of Procedure.

Nevertheless the said conclusions do not amount to a substantial modification of the conclusions contained in the application and aimed at the reclassification of the applicant in accordance with the provisions of the Staff Regulations applicable in the present case. They are confined in fact to clarifying the scope of the previous conclusions in respect of the foreseeable result of the application of the rules of the Staff Regulations.

In these circumstances they are admissible.

The substance of the case

In support of his application the applicant puts forward the decision of the Councils of 21 June 1963, adopting the table of definitions of the duties and powers attaching to each post, which was brought to the knowledge of the staff on 15 October 1963.

He maintains that the post which he holds corresponds, according to this table, to that of financial comptroller, the duties of which fall within career bracket A 5 - A 4, or even within Grade A 3.

He points out for this purpose that the duties which he carries out correspond to administrative and advisory duties within the meaning of the second subparagraph of Article 5 (1) of the Staff Regulations, requiring university education or equivalent professional experience.

Thus the appointing authority, by its refusal to confer upon him the grade corresponding to those duties and by classifying him in Grade B 1, has infringed Article 5 (4) of the Regulations and Annex I thereto, as well as the above-mentioned decision of 21 June 1963.

The applicant carries out the duties of financial comptroller, under Article 25 of the Financial Regulation of the three Communities, which entered into force on 1 January 1963.

The reference to supervisory duties appears in this table both with reference to posts in Category A and to those in Category B.

In these circumstances, the table of the definitions of duties does not by itself make it possible to decide to which category the supervisory duties exercised by the applicant belong.

It is thus appropriate, in order to resolve this problem, to consider the nature of the duties in dispute, taking into account the provisions relating to them in the Financial Regulation mentioned above.

Under Articles 30, 31 and 40 of that Regulation, a financial comptroller is entrusted with the task of checking, both as regards commitments to incur expenditure and orders to pay, the correctness of the budgetary heading and of the availability of credit, and generally of examining the regularity and the conformity of expenditure with regard to all the applicable provisions as well as the measures adopted in implementation thereof.

It appears from these provisions that the supervision or checking exercised by a financial comptroller consists in essence of examining whether the commitments to incur expenditure or the orders to pay in respect of each item of expenditure are covered by the provisions of the rules in force. It does not include an evaluation of the expediency of each item of expenditure or of good financial management, such appraisals coming within the exclusive province of other budgetary or financial authorities.

Although it is true that Article 2 of the above-mentioned Financial Regulation provides that budget appropriations may be used only in conformity with principles of economy and good financial management, it is nevertheless not for a financial comptroller to ensure observance of these principles, his refusal to give approval for a commitment to incur expenditure not having the character of a final decision.

It may be inferred, therefore, that the duties of a financial comptroller as laid down in the Financial Regulation do not necessarily require knowledge of a university level or equivalent professional experience.

Moreover the facts and legal considerations submitted for consideration by the Court are not such that it emerges clearly from them that the duties of checking or supervision entrusted to the applicant are in the present case so far-reaching that they require such knowledge or equivalent professional experience.

Further, the independence enjoyed by the applicant in the exercise of his duties and the possibility for him to exercise supervision over acts carried out by officials classified in very high grades are an indispensable requirement for the exercise of supervisory activities, but they give no indication of the quality and nature of the supervision carried out in the present case.

The fact that the applicant is placed directly under the authority of a Director-General who is at the same time his reporting officer is not decisive, for it is a characteristic of a financial comptroller to have the advantage of considerable independence in the exercise of his duties.

Lastly, the favourable reports made in respect of him by his Director-General involve a value judgment concerning his ability and his competence in the exercise of his duties, but do not enable the nature of the latter to be determined for the purpose of their classification.

For all these reasons it does not appear that the duties exercised by the applicant necessarily correspond to administrative and advisory duties as defined in the second subparagraph of Article 5 (1) of the Staff Regulations.

By classifying the applicant in Grade B 1, the appointing authority has thus not disregarded this Article and Annex I to the Staff Regulations.

The application is consequently dismissed as unfounded.

Costs

The applicant has failed in his application.

Under the terms of Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs.

However, under Article 70 of the Rules of Procedure, costs incurred by the institutions in applications by servants of the Communities shall be borne by the institutions.

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 Economic Community and of the European Atomic Energy Community;
Having regard to the Staff Regulations of officials of the European Economic Community and of the European Atomic Energy Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Articles 69 and 70;

THE COURT (Second Chamber)

hereby:

1. **Dismisses Application 28/64 as unfounded;**
2. **Orders the applicant to pay the costs of the proceedings, with the exception of those incurred by the defendant.**

Donner Strauß Monaco

Delivered in open court in Luxembourg on 7 April 1965.

H. J. Eversen
Assistant Registrar
For the Registrar

A. M. Donner
President of the Second Chamber