OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 16 JUNE 1965[1]

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Mr President,
Members of the Court,

Like many other cases, that with which I have to deal today concerns the correct classification of the applicant in the salaries table of the Staff Regulations.

In respect of the facts, let us remember that in 1958 the applicant entered the service of the High Authority in the capacity of translator and that he was established on 2 July 1958. At the beginning he was classified in Grade L/D3 of the old Staff Regulations of the ECSC; on 2 January 1959 he was promoted to Grade L/C1 (which corresponds to Grade L/A6, Step 1, of the new Staff Regulations); with effect from 22 June 1962, the applicant, jumping a step, was classified in Grade L/A6-3.

Since the applicant was not satisfied with this classification, he made requests on several occasions that it should be improved—to his immediate superiors, to the Directorate of Internal Services as well as to the Directorate-General of Administration and Finance. Likewise he put forward his candidature, albeit unsuccessfully, at the same time as four other candidates, for the post of reviser, which had been advertised on 28 May 1964, in the Language Service of the High Authority.

Finally on 10 July 1964 in accordance with Article 90 of the Staff Regulations, he sent a formal request to the President of the High Authority asking him to classify him in the career bracket L/A5-L/A4.

The President of the High Authority replied to him on 12 October 1964 by a letter which stated that his complaint must have been based on a misunderstanding: in fact, even before the applicant's first request for an improvement in his classification, his superior had already proposed that he be promoted to L/A5-3, and this proposal was accepted by a decision of the President of 22 July 1964, with effect from 1 August 1964.

Since the applicant remained classified in career bracket L/A6-L/A5 even after his promotion, he decided to make an appeal to the Court. This appeal is directed in the first place against the note of the President of the High Authority of 12 October 1964, and

1 — Translated from the German.

secondarily against the implied decision of rejection of the High Authority which is deemed to have been taken upon the expiry of the period of two months after the applicant's complaint of 10 July 1964.

The applicant puts forward the following conclusions:

that the Court should declare that he must be classified in career bracket L/A5-L/A4; in consequence declare that the promotion granted to him with effect from 1 August 1964 is one which placed him in career bracket L/A5-L/A4; further declare that as from 1 August 1964 he should be classified in Grade L/A4; alternatively hold that in any case he is at present classified in career bracket L/A5-L/A4 and not in career bracket L/A6-L/A5.

A supplementary claim formulated for the first time in the reply and seeking an order for the removal from his personal file of certain documents (those bearing the numbers 110, 115 and 116), was resolved following an assurance given by the representative of the High Authority in the oral proceedings that the documents in question were to be removed from the personal file as soon as the Court Registry returned it to the High Authority.

As regards the conclusions of the High Authority, it has not raised any objection of inadmissibility to the appeal, but considers that in any case the applicant's claims are unfounded.

Legal consideration

1. The legal examination of this case requires me first to state the basis of the claim which has been submitted. It is the definition of the various posts which the High Authority has given in accordance with Article 5 of the Staff Regulations. To the extent that this definition is of interest to us, we note that career bracket L/A5-L/A4 is there described as follows: 'Expert translator, reviser able to translate particularly difficult texts'.

The applicant considers that the duties which he carried out fall within this definition, whilst the High Authority takes the view that none of the criteria mentioned apply to him.

In examining this question I can see little purpose in proceeding in the manner advocated by the applicant, that is to say, by ascertaining in the first place whether he carries out duties which go beyond the requirements of career bracket L/A6-L/A5 (which, according to him, is the case because he does not fulfil only the one or the other of the alternative criteria contained in the definition of career bracket L/A6-L/A5, but both of them, that is to say, he is a specialist in certain particular fields and also he can give evidence of a thorough knowledge of languages). I cannot see how such a method of proceeding could be useful and decisive, because on the one hand an official whose duties clearly exceed the criteria for a particular career bracket does not necessarily satisfy the positive conditions of the higher career bracket and, on the other hand, the discussion of the present case would be needlessly complicated if we wished first of all to try to clarify the criteria which are characteristic of career bracket L/A6-L/A5. On the other hand, let us consider directly how it is possible to construe the different criteria of career bracket L/A5-L/A4.

Let me draw attention from the outset to an essential point; the parties are agreed that a 'reviser-translator' must conform to all the criteria which I mentioned to begin with of the particular career bracket L/A5-L/A4, and not only to certain of these criteria. This clearly follows from the drafting of the sentence, which, unlike, for example, the definition of career bracket L/A8-L/A7, omits the word 'or' between the individual criteria, and also from the fact that the last criterion, formulated in the form of a grammatical phrase ('able to translate . . .'),

appears in the French in the singular, which shows us that the requirement which is expressed relates to the duties of one and the same person.

(a) In the *legal* interpretation, the criterion which reads 'able to translate particularly difficult texts' should give the least difficulty. It is apparent from this wording that it is not necessary that a reviser-translator should actually and permanently be given particularly difficult translations. On the contrary, it is enough that he should have the *ability* to carry out such work. I am further inclined to accept in this respect that certain criteria suggested by the applicant may be used for the solution of the question, that is to say, to speak of particularly difficult translations every time the translations concern new spheres or complicated technical matters, or when their difficult nature requires the services of specialized institutions.

Nevertheless the difficulties begin when, as in the present case, the High Authority disputes that the applicant is actually competent to carry out particularly difficult translations, and when it disputes that it has actually given him duties of this nature. I do not think we can surmount these difficulties on our own initiative, for example by endeavouring to obtain an idea of the nature of the applicant's work by checking his translations. Here, only an expert's opinion can help us. For the moment we can, however, leave open the question whether in the final outcome such an expert's opinion is necessary.

(b) It is the same with the question whether the applicant is in fact an 'expert translator'.

As regards first of all the *legal* interpretation of this concept, the applicant considers it expedient to refer to the qualifications required by the High Authority itself of a translator (experienced translator' of career bracket L/A6-L/A5) who was nominated to the post of reviser after having taken part in the competition mentioned previously. Moreover, to clarify this concept, the applicant also considers it useful to contrast, in a particular way, the duties and criteria of the expert translator with those of the experienced translator. I have doubts on both methods of interpretation. The evaluation arrived at on an experienced translator, in the case mentioned, essentially amounts to nothing more than the evaluation of the personal abilities and the zeal of these candidates. As such, this evaluation can only to a limited degree provide objective criteria for the definition of the duties of an expert translator. According to the applicant, the duties of an experienced translator and of an expert translator are to be distinguished according to the manner in which the linguistic knowledge and other abilities of a translator have been acquired: an experienced translator attains them in a empiric manner, whilst the expert translator must have a corresponding theoretical and practical training before entering the service; this argument does not convince me either. It is obvious that the Staff Regulations reject such a distinction in principle and that Article 5 places the emphasis only upon the knowledge of an official and not upon the way in which this was acquired. Lastly, it appears doubtful to me that the expression 'expert', as the applicant claims, is intended to denote the requirement of a specialization going beyond level of the experienced translator in one or several particular fields, as for example industrial technology. I am inclined rather to follow the High Authority's view that the qualities of an expert in this career bracket are primarily to be judged according to purely linguistic standards, that is to say, an expert translator must be considerably above the average level of the experienced translator so far as the knowledge of languages is concerned in the matter of style, precision of

expression, accurate interpretation and rendering of the meaning of foreign texts. It is at least necessary to ask what justification there is for describing translators in the field of industrial technology as expert translators, whilst denying the same title to translators possessing special knowledge in other fields such as medicine and law.

But in the final analysis all these questions may remain in suspense, because on this point also, although the High Authority has accepted that the applicant has particular knowledge in the sphere of industrial technology, we are faced with a dispute on a question of fact which cannot reliably be decided without the assistance of experts.

(c) In consequence it only remains to attempt to decide the case in the context of an examination of the concept of 'reviser' which is also a part of the definition of career bracket L/A5-L/A4.

If I have properly understood the applicant, he has abandoned his original argument that a reviser in the sense of the said definition is also a translator whose translations as a general rule are not revised and who is so to speak his own reviser. As far as the facts are concerned, the High Authority disputes the applicant's assertion that his activities come within this category (and its view is confirmed by a text submitted by the applicant himself). Besides, the High Authority rightly emphasizes that the mere fact of not having a document revised may be explained not only by the quality of the translation, but also by other circumstances such as, for example, the necessity of obtaining a translation in a short time, or the fact that for internal meetings a rough draft translation may be sufficient. In respect of the concept of revision. it is indisputable that one cannot speak of revision unless the work of *another* is checked, and not when the translator undertakes the necessary correction of his own translations, a task which must be regarded as an integral part of the work of translation itself.

Next it is clear that the definition of the career bracket of reviser-translator must not be understood as meaning that the *ability* alone to be a reviser is sufficient. On the contrary, the wording of the definition obliges me to conclude that it is necessary that such work should actually be done. Were it otherwise, one could have chosen here also, as in the case of the third criterion—ability to translate difficult texts—the formula 'ability to undertake work of revision'.

In consequence it only remains to consider whether the applicant can succeed in his endeavour to attach to the concept of 'reviser' in the definition of the duties of a reviser-translator, a particular meaning which plainly deviates from the concept of a reviser. The applicant proposes to do this by relying on the criteria of expert translator. According to him it would be possible in consequence to speak of a reviser's activity even when translators specialized in certain matters occasionally advise their colleagues, even the revisers, and, should the occasion arise, improve their translations with the help of their special technical knowledge.

I do not see how it is possible to follow the applicant in this attempted interpretation. What must be decisive is that in the disputed definition only the concept of 'reviser' is used, and without restriction or addition. Given that as a general rule the definition of posts describes different duties by means of different concepts, or at least distinguishes them by extra information added to general concepts, it appears to me that it is only permissible to understand the concept of 'reviser' in the sense in which it is generally used. In consequence, it must involve an activity which has as its object the comprehensive revision and checking of a translation done by another person from the liguistic and technical points of

view. According to this argument, what distinguishes the reviser-translator from the ordinary reviser is the fact that the work of revision does not take up more than *a part* of his time, and that the official in question is given during the rest of the time particularly difficult translations or during that time carries out the functions of an expert translator.

One may regret this manner of defining a career bracket and regret above all the fact that the High Authority has barred to particularly well-qualified translators, who are not simultaneously engaged in revision, the possibility of being promoted to Grade A4. We must however state that the Court is quite unable to criticize the definition of posts itself which to a great extent arises from the discretionary power of the High Authority.

2. Given that it is indisputable that the applicant does not exercise the duties of a reviser in the sense which has been explained and that because of this fact his request lacks an element essential to justify his claim for reclassification, we are obliged to reject as unfounded his appeal with all its individual conclusions concerning the nature of the career bracket in question without its being necessary to examine other objections of the High Authority.

3. As regards costs I would say that the applicant has been successful in respect of a part of his conclusions, that is to say, to the extent that these referred to the removal of certain documents from his personal file. It is certainly true that his appeal and the costs which flow from it were not caused by the inclusion of these documents in his personal file; but it is necessary to recognize that this procedural incident, although of a minor nature, has obliged the applicant to enlarge upon the argument in his reply. It appears to me in consequence justifiable to order that at least a certain part of his costs should be borne by the High Authority.

4. Summary and conclusion

My conclusion is accordingly as follows: The appeal of Mr Emmanuel Stipperger is admissible but is unfounded. It must be dismissed with the proviso that in accordance with Article 70 of the Rules of Procedure, the High Authority must bear its own costs and must further in accordance with Article 69 (3) of the Rules of Procedure bear a part of the costs of the applicant.