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

André Saudray
v Commission of the European Economic Community

Case 5/65

Summary

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

Cf. paragraph 3, summary in Case 43/64, [1965] ECR.

In Case 5/65

ANDRÉ SAUDRAY, an official of the European Economic Community, residing at Overijse (Belgium), assisted by Marcel Grégoire, Advocate of the Cour d'Appel, Brussels, with an address for service in Luxembourg at the Chambers of Tony Biever, 83 boulevard Grande-Duchesse-Charlotte,

applicant,

v

COMMISSION OF THE EUROPEAN ECONOMIC COMMUNITY, respresented by its Legal Adviser, Louis de la Fontaine, acting as Agent, 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 annulment of the refusal of the defendant on 29 October 1964 to classify the applicant in Grade A6 with effect from 1 January 1962,

THE COURT (Second Chamber)

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

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

gives the following

1 — Language of the Case: French.

JUDGMENT

Issues of fact and of law

I — Facts

The facts upon which the present case is based may be summarized as follows:

The applicant entered the service of the defendant on 16 June 1958. He was first posted to the Salary and Missions Department and classified in accordance with the table then in force in Grade B6, Step 1.

In January 1959, he was given the post of Head of the Special Cases Section which is part of the Staff Administration Division; he has been in this post until the present time.

After being given Step 5 of his grade on 1 December 1961, he was integrated by a decision of 12 December 1962 in Step 5 of Grade B1 which corresponds to Grade B6 of the old system.

On 3 August 1964, he made an appeal through official channels to the defendant requesting his classification in Grade A6 as from 1 January 1962.

On 29 October 1964, a letter from the President of the Commission informed him that the Commission did not consider it possible to make a favourable reply to his request.

It is against this decision that the applicant has made the present application which was lodged at the Court Registry on 26 January 1965.

II — Conclusions of the parties

In his application the *applicant* claims that the Court should:

'1. Annul the decision of the Commission of the EEC of 29 October 1964 to the extent to which it refused to classify him as from 1 January 1962 in Grade A6 with all consequences arising therefrom in law;

2. Rule that the applicant must be reclassified in Grade A6, Step 1, as from 1 January 1962, with all consequences arising therefrom in law;

3. Order the Commission of the EEC to pay to the applicant the arrears of salary which, taking into account his grade, are due to him since 1 January 1962;

4. By way of damages, order the Commission of the EEC to pay to the applicant interest on the arrears of salary due, at a rate to be fixed by the Court;

5. Order the Commission of the EEC to pay the costs;

6. Take note that the applicant reserves the right to put forward supplementary evidence in support of his submissions during the course of the proceedings and taking into account the arguments of the Commission of the EEC'.

In his reply he repeats his conclusions, but amends point 2 to read: 'Step 5'.

In its statement of defence and its rejoinder the *defendant* contends that the Court should:

'dismiss the present application as inadmissible and unfounded on all points; order the opposing party to pay the costs in accordance with the applicable provisions'.

III — Submissions and arguments of the parties

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

The *defendant* raises the objection of the inadmissibility of the application on the ground that it is time-barred. In fact, the decision of 29 October 1964

simply confirms that of 12 December 1962, which the applicant failed to dispute within the prescribed time-limit.

The application is time-barred even if the date on which time started to run is taken as 2 October 1963, the date on which the definitions of duties and powers attaching to each basic post, adopted by the defendant in accordance with Article 5 (4) of the Staff Regulations, were brought to the knowledge of the staff.

The *applicant* replies that the decision of 12 December 1962 was 'incapable of being challenged'. In fact, as appears from the judgments of the Court in Joined Cases 20 and 21/63 and in Joined Cases 79 and 82/63 (Rec. 1964, p. 213 et seq.; p. 511 et seq.), a decision concerning integration must be dissociated from the right of every official to have his position regularized, where necessary, according to the principle of the correspondence between grade and post. Accordingly, this decision could not be regarded as a refusal to comply with the claims of the person concerned regarding his grade.

Further, these decisions amount to new factors capable of reviving the right of appeal. In fact, they have led the defendant to prepare a list of officials who have requested reclassification; furthermore, prior to the said judgments both the defendant and the applicant considered that an official could attain a higher grade only by promotion or by competition.

The publication of the definitions of duties mentioned above must also be regarded as a new factor. Nevertheless it was still not at this moment that time began to run in respect of the time-limit in question. In fact, far from adversely affecting the applicant, the said definitions constitute the very basis of his application. On the other hand, as soon as the definitions enabled him to determine his grade, he increased 'his attempts to obtain that grade by all the means open to him'. In particular, he put forward his candidature for the A6 post mentioned in Vacancy Notice No 872; on being refused the post, he made a complaint without result.

The *defendant* replies by relying upon the case-law of the Court according to which a complaint submitted under Article 90 of the Staff Regulations cannot extend the period prescribed by the said Regulations for appeals to the Court. Consequently the present appeal would only have been admissible if the complaint to which it relates had been made at the latest within the three months following the publication of the abovementioned definitions, and this independently of the fact that those definitions did not adversely affect the applicant.

The judgments cited by the applicant do not amount to new factors, their force of *res judicata* being limited to the parties to those proceedings. Furthermore, in those cases, unlike that of the applicant, there was no dispute concerning the level of seniority of the duties carried out by the person concerned. With regard to the decisions as to reclassification taken following the said judgments in respect of officials other than the applicants in those cases, the defendant was not legally obliged to take them.

Lastly, among all the representations made by the applicant to obtain a higher classification, the only one which counts, from the point of view of time-limits, is the complaint of 3 August 1964.

IV — Procedure

The procedure followed the normal course.

After hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General, the Second Chamber of the Court decided that there was no necessity for a preparatory inquiry.

The parties presented their oral arguments at the hearing on 3 November 1965.

The Advocate-General delivered his opinion at the hearing on 2 December 1965.

Grounds of judgment

I — Admissibility

The defendant raises an objection of inadmissibility on the ground that the application was not made within the prescribed period.

1. The application is directed against the refusal of the President of the Commission on 29 October 1964 of the complaint made on the previous 3 August for the reclassification of the applicant in Grade A6 as from 1 January 1962.

This refusal may be regarded as confirmation of the decision of 12 December 1962, in so far as it appointed the applicant to Grade B1.

It is true that the applicant made neither a complaint through official channels nor an appeal to the Court against this decision within the period laid down by Article 91 of the Staff Regulations.

Nevertheless, the applicant cites the judgments of the Court in Joined Cases 20 and 21/63 and in Joined Cases 79 and 82/63 (Rec. 1964, p. 213 et seq., p. 511 et seq.), inferring therefrom that he could not have made an appeal against the abovementioned decision.

In fact, he claims that the Court considered on that occasion that the decision concerning integration must be dissociated from the right of the servant to have his administrative position regularized.

The applicant fails to appreciate that, as these judgments accepted in respect of the officials concerned, he could at the time have submitted a request to the defendant for such regularization and could have disputed a refusal before the Court.

2. The applicant points out that the publication by the defendant in 1963 of the definitions of the duties and powers attaching to each basic post—the definitions provided for by Article 5 (4) of the Staff Regulations—constituted a new factor capable of causing the time in which to bring an appeal against the previous classification to start to run afresh.

Although this argument is correct in itself, it must however be stated further that the applicant did not dispute this classification either within the period laid down by the aforementioned Article 91, dating from the said publication.

It is true that the applicant alleges that, as soon as the definitions in question had enabled him to determine the grade to which he believed himself to be entitled, he had 'increased his attempts to obtain that grade by all the means open to him'.

Nevertheless, the fact remains that the complaint of 3 August 1964 was the first complaint and the only one dealing with his retroactive reclassification on integration.

The approaches which he made in order to obtain a higher grade by way of promotion or of competition cannot be regarded as such a complaint, in view of the differences which exist between these two groups of requests in respect of their basis and their possible effects.

3. According to the applicant the abovementioned judgments of the Court also constituted new factors.

The only persons concerned by the legal effects of a judgment of the Court annulling a measure are the parties to the action and those persons directly affected by the measure which is annulled.

Consequently, such a judgment can only constitute a new factor as regards those persons.

It is true that the judgments in question annulled decisions of the Commission of the EEC refusing to regularize the position of the persons concerned in accordance with the principle of the correspondence between duties and grade laid down in Annex I to the Staff Regulations.

As those decisions only applied to the individual position of each person concerned, they cannot directly concern third parties, such as the applicant.

In these circumstances, the judgments in question cannot be regarded, in respect of the applicant, as new factors capable of causing the period for lodging an appeal against the decision classifying him in Grade B1 to start to run afresh.

It follows from the foregoing that the present objection is well founded and that consequently the application must be dismissed as inadmissible.

II — Costs

The applicant has failed in his application.

Consequently, in application of the combined provisions of Articles 69 (2) and 70 of the Rules of Procedure, he must bear the costs of the case, with the exception of those incurred by the defendant.

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 Rules of Procedure of the Court of Justice of the European Communities, especially Articles 69 and 70;
Having regard to the Staff Regulations of Officials of the European Economic Community and of the European Atomic Energy Community, especially Article 91;

THE COURT (Second Chamber)

hereby:

1. **Dismisses the application as being inadmissible;**
2. **Orders the applicant to pay the costs of the case, with the exception of the costs incurred by the defendant.**

Strauß Donner Monaco

Delivered in open court in Luxembourg on 14 December 1965.

A. Van Houtte
Registrar

W. Strauß
President of the Second Chamber

OPINION OF MR ADVOCATE-GENERAL GAND DELIVERED ON 2 DECEMBER 1965[1]

Mr President,
Members of the Court,

The application made to you by Mr André Saudray is directed against the refusal of the President of the Commission of the EEC on 29 October 1965 of his claim of the previous 3 August that he should be reclassified as from 1 January 1962 in the career bracket of

1 — Translated from the French.