JUDGMENT OF THE COURT
17 JUNE 1965[1]

Richard Müller
v Councils of the EEC, EAEC and ECSC

Case 43/64

Summary

1. Officials — Appointing authority acting in the name of its institution — Measures affecting the legal position of officials and other servants — Attributable to the institution

(Staff Regulations of officials of the EEC and EAEC, Article 2)

2. Officials — Appeals by officials — Citation of institution from which the act adversely affecting the person concerned originates

(Staff Regulations of the EEC and EAEC, Article 91)

3. European Communities — Separate legal personality — Councils of Ministers — Institutions legally separate

4. 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. Cf. para. 1, Summary, in Case 28/64.
2. Cf. para. 2, Summary, in Case 28/64.
3. Cf. para. 3, Summary in Case 28/64.
4. 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.

In Case 43/64

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 EUROPEAN ECONOMIC COMMUNITY, COUNCIL OF THE EUROPEAN ATOMIC ENERGY COMMUNITY AND THE SPECIAL COUNCIL OF MINISTERS OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by Hans Jürgen

1 — Language of the Case: German.

Lambers, Legal Adviser at the Secretariat-General of the Councils, with an address for service in Luxembourg at the offices of Jacques Leclerc, an official at the Secretariat-General of the Councils, 3 rue Auguste-Lumière,

defendant,

Application for the classification of the applicant at a higher step in Grade B1,

THE COURT

composed of: Ch. L. Hammes, President, A. M. Donner and R. Lecourt, Presidents of Chambers, L. Delvaux, A. Trabucchi, 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:

On 31 August 1959 the applicant was employed under contract by the Secretariat-General of the Councils in Grade B VIII, Step 3. Subsequently he was classified at Step 4 of the same Grade, and as from 1 April 1961 at Step 3 of Grade P. VII.

By a decision of 17 January 1963 he was integrated under the new Staff Regulations in Grade B2, Step 3, with effect from 1 January 1962.

By a decision of 28 March 1963, the Secretary-General granted the applicant Grade B1, with seniority back-dated to 1 October 1962. This was further back-dated to 1 January 1962 by a decision of 21 June 1963, which took account of a complaint made by the Applicant on 19 April 1963.

On 7 October 1963 the Secretariat adopted the definitions of the duties and powers attaching to each basic post, in accordance with Article 5 of the Staff Regulations.

These definitions were brought to the notice of the staff on 15 October 1963.

By letter dated 9 April 1964, the applicant asked to be classified in one of the grades of career bracket A5-A4 as from 1 January 1962, asserting that, according to the abovementioned definitions, the post occupied by him, which he was occupying before the Staff Regulations came into force, fell within this career bracket. Having received no reply by 9 June 1964, the applicant lodged Application 28/64 on 2 July 1964.

By letter of the same date, the Secretary-General made his position clear with respect to this complaint and re-

jected the applicant's request to be classified in career bracket A5-A4, stating that the post which the applicant was occupying before the Staff Regulations came into force fell within career bracket B1.

On 15 July 1964 the applicant submitted a new request to the Secretary-General of the Councils, based on the position which the Secretary-General had adopted, for the applicant to be placed at *Step 3* of Grade B1, with seniority as from 1 April 1961.

On 18 July 1964 the appointing authority took a decision on the career bracket to which the duties performed by the applicant corresponded, having regard to the definitions of the duties and powers attaching to each basic post. Analogous decisions were taken at the same time for all officials of the Secretariat.

As, two months after the request of 15 July, the applicant had not received any reply, he instituted the present proceedings by applications dated 23 September 1964.

On 8 October 1964 the Secretary-General informed the applicant of the decision of 18 July 1964.

II—Conclusions of the parties

The *applicant* claims that the Court should:

'1. Annul the implied decision of the Secretary-General of the Councils of the European Communities resulting from the expiry on 15 September 1964 of the time-limit laid down in the second subparagraph of Article 91 (2) of the Staff Regulations of officials of the European Economic Community and of the European Atomic Energy Community rejecting a request by the applicant to be classified at Step 3 of Grade B1 with effect from 1 January 1962 with seniority at that step back-dated to 1 April 1961;

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

The *defendants* request the Court

'To declare the application inadmissible or, alternatively, unfounded and to order the applicant to bear the costs, in so far as they are not payable by the defendant by virtue of 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:

As to the naming of the defendants as parties

The *defendants* assert that the applicant, in his capacity as an official of the Councils of the EEC and the EAEC, should have instituted proceedings against those bodies rather than the Secretary-General, particularly since the impugned decision must be attributed to the Councils themselves.

The *applicant* draws attention to the fact that he is an official of the European Economic Community and of the European Atomic Energy Community and that he works in the Secretariat-General of the Councils of the EEC, EAEC and ECSC. The argument of the defendants that officials of the Secretariat of the Councils who are officials of the EEC and EAEC should make their applications against the Councils of those Communities and that those who are officials of the ECSC should make them against the Special Council of Ministers gives rise to practical difficulties with regard to the execution of judgments of the Court, for from the budgetary point of view the three Councils are one and the same institution. The argument is also open to criticism from the legal point of view,

for it would result in a servant of the Secretariat having to bring his action against an institution (in this case the Council of the ECSC) of which he is not an official.

Besides, in view of the fact that the complaints referred to in Article 90 of the Staff Regulations must be submitted to the appointing authority, it would seem that the appeals mentioned in the following Article should also be made against the said authority (cf. judgment in Joined Cases 79 and 82/63).

The *defendants* reply that in any event the Secretary-General acted as the appointing authority on behalf of the Councils of the EEC and the EAEC. Even if the appointing authority is not, as in the present case, identical with the institution properly so-called, an appeal can only be made against the institution. The judgment in Joined Cases 79 and 82/63 does not contradict this principle. Reference should be made on the other hand to Cases 78/63 and 80/63.

Admissibility

1. After recalling the fact that in Application 28/64 the applicant had asked to be classified in a grade of career bracket A4-A5, whereas in the present application he starts from the premise that his duties are those of a post in career bracket B1, the *defendants* advance the argument that the conclusions of Applications 28/64 are in contradiction 28/64 are in contradiction with those of Application 43/64. The application in the present case may at the most, it seems, be considered as an alternative to that in the preceding case. However this is a proposition which the applicant seems to wish to exclude, since he argues that the two cases are independent of each other. On the other hand, disregarding the question of the grade in which the applicant should be classified, the conclusions of Application 43/64, aimed at obtaining the third step, cannot be accepted as they are not sufficiently precise. The fact is that a step can only be granted in a grade which has already been decided upon.

The defendants conclude by leaving this point to the discretion of the Court.

The *application* first reminds the Court of the circumstances prior to his bringing this application, and then emphasizes its independent character compared with Application 28/64. He points out in this respect that Application 28/64 dealt with the classification of the applicant having regard to the nature of the duties which he performs, whereas Application 43/64 is directed at securing a particular step, that is to say, the adoption of a measure which, from the appointing authority's point of view, is the direct consequence of a decision which it has taken. In both applications the act impugned adversely affects the applicant. In Application 28/64 the act in question is the rejection of the request by the applicant that he be classified in career bracket A5-A4. In Application 43/64 the act is the rejection of his request to be placed at a particular step as a result of the decision of the Secretary-General concerning his classification in Grade B1.

Although it is true that the present application would become pointless if the Court, before giving a decision on it, were to hold that Application 28/64 was well founded, the applicant, who had submitted his complaint on 15 July 1964, nevertheless had to start the present proceedings in order to avoid being time-barred under Article 91 of the Staff Regulations.

The *defendants* reply by repeating the arguments already put forward. They particularly draw attention to the fact that while the institution of the present proceedings is due to the necessity for the applicant to avoid being time-barred under Article 91 of the Staff Regulations, he has nevertheless put himself in this situation by addressing two incompatible requests to the appointing authority at almost the same time.

2. The *defendants* argue furthermore that the present application is inadmissible because it was made out of time. In support of this they argue in particular that the applicant is really bringing his application against the decisions of 28 March and 21 June 1963, by which he was classified in Grade B1, Step 1, as from 1 January 1962. So the alleged damage has existed since 21 June 1963.

Even if it be admitted that the applicant could not ascertain the damage caused him by the said decision before the definitions of the duties and powers attaching to each basic post adopted by the Councils on 7 October 1963 was communicated to the staff, the present application is still out of time as these definitions were communicated to the staff on 15 October 1963. Therefore the period of three months laid down in Article 91 of the Staff Regulations began to run from this date at the latest.

Furthermore it is a mistake to say that any uncertainty concerning the grading of the duties of the applicant was only completely cleared up after the Secretary General's letter of 2 July 1964. This uncertainty never existed, since the applicant could only be promoted to Grade B1 if his duties corresponded to that grade.

The *applicant's* main points in reply are as follows:

— The decision of 28 March 1963 was taken on the basis of Article 45 of the Staff Regulations, taking into account Article 108. Thus the applicant was promoted to Grade B1 as from 1 October 1962. The step which was allocated to him (Step 1) was fixed on the basis of Article 46 of the Staff Regulations.

— By reason of this promotion the applicant was classified in a higher career bracket of Category B as from 1 October 1962. Since he carried out the same duties at least from 1 January 1962, he concluded that he could ask to be classified in Grade B1 as from that date. The definitions of the duties and powers attaching to each basic post had not yet been adopted by the Councils, and the settling of his position under the Staff Regulations was thus postponed *sine die*. He was simply doing his best to obtain the most favourable classification which he could claim in the shortest possible time, and it was for this purpose that he made his request of 19 April 1963.

Pursuant to this request the effective date of the abovementioned classification was carried back to 1 January 1962, by a decision of *21 June 1963*. This was preceded by a letter of 20 June 1963 from the Secretary-General according to which the said decision was not considered by the appointing authority as constituting a measure in response to a possible request on the part of the applicant for his administrative position to be regularized in accordance with Annex I to the Staff Regulations, but rather as promotion with maximum retroactive effect. Therefore the decision could not adversely affect the applicant. In the first place, it did not decide the question of the applicant's classification. Secondly, the applicant could not attack the decision with a view to showing that his duties corresponded to a particular career bracket and thus to claiming all his seniority in this grade for the simple reason that he was not in a position to show cause to a sufficient extent until the definitions of the duties and powers attaching to each basic post were adopted.

The administration's memorandum communicated to the applicant on 26 June 1963 in fact announced the adoption of a further decision on 'the new career bracket to which the applicant was assigned, in accordance with the table of basic posts and corresponding career brackets'. This decision, which brought the integration procedure to a close,

took place on 18 July 1964 and was communicated to the applicant on 8 October 1964.

However it was anticipated by a letter of 2 July 1964 from the Secretary-General addressed to the applicant as a result of his complaint of 9 April 1964 (which was the basis of Application 28/64).

Thus at that moment the applicant realized that his being given Grade B1 with effect from 1 January 1962 was not in reality the result of promotion within the meaning of Article 45 of the Staff Regulations, but that it was rather the result of a definitive classification. Hence his letter of 15 July 1964 asking that the consequences flowing from this measure concerning the step to which he is entitled should follow.

It is incorrect to state that the applicant should have started proceedings at the latest three months after the definitions of the duties and powers attaching to each basic post were communicated to the staff on 15 October 1963.

These definitions could not turn the decision of 21 June 1963 into an act adversely affecting the applicant. If the said decision was not such an act when it was notified to him, it could not become one through any effect of these definitions. Besides, the definitions of the duties and powers attaching to each basic post did not give any indication that the appointing authority already considered the duties of the applicant as falling within Grade B1.

The *defendants* reply by emphasizing that the decisions of 28 March and 21 June 1963 adversely affected the applicant in so far as they conferred lesser advantages on him than those to which he claims to be entitled. Thus the applicant considered that the fact that his promotion only took effect later than it should have done adversely affected him. What is true of a decision which reflects his claims concerning the *date* of his classification, applies equally to a decision which presents the same disadvantages concerning the allocation of a specific *step*. Therefore the applicant should have raised this point as well in contesting the decision of 21 June 1963, particularly since the Secretary-General's letter of 20 June did not admit that the applicant's arguments at that time concerning his administrative position were correct.

The decision of 21 June 1963 adversely affected the applicant even before the definitions of the duties and powers attaching to each basic post were communicated to the staff on 15 October 1963. In any event, after receiving notice of these definitions the applicant should have claimed his rights, and the fact that in his opinion the definitions did not clearly ascribe his post to a particular career bracket should, if anything, have made him more active.

As for the Secretary-General's decision communicated to the applicant on 8 October 1964, this cannot cause time to start to run afresh, because so far as the applicant is concerned all it does is to confirm decisions taken previously (those of 28 March and 21 June 1963).

The real truth is that the applicant is trying to revive time-limits which expired long ago in order to take advantage of the principle contained in the judgment of the Court in Case 70/63. However this judgment cannot cause time to start to run afresh to the applicant's advantage for the simple reason that it only applies to the parties concerned in the said case.

The substance of the case

The applicant reminds the Court that he was integrated in Grade B2, Step 3, with effect from 1 January 1962, with seniority in this step as from 1 April 1961. In his letter dated 2 July 1964 the Secretary-General stated that the post which the applicant already occupied before the Staff Regulations came into force fell within career bracket B1 according to the definitions of the duties

and powers attaching to each basic post (adopted by the Councils on 7 October 1963) and taking into account Annex I to the Staff Regulations.

From this it follows that the applicant is entitled to be classified in this grade as from 1 January 1962. The allocation of this grade cannot in his case be considered as promotion within the meaning of Article 45 of the Staff Regulations and, therefore, his seniority and his step should be calculated on the basis of Article 46. Thus the applicant is entitled, by virtue of Article 103 of the Staff Regulations, to be classified at the same step (Step 3) and with the same seniority in that step (as from 1 April 1961) as he had in Grade B2.

The *defendants* object that Article 103 of the Staff Regulations, which according to the applicant gives him the right for his seniority to be transferred unchanged from Grade B2 to Grade B1, only applies when servants employed before the entry into force of the Staff Regulations are integrated in accordance with Article 102. Article 103 had already been applied to the applicant on his being integrated and cannot be used for a revaluation of a post, which is a completely different matter from that of integration (cf. judgment of the Court in Joined Cases 20 and 21/63).

Instead of Article 103, it is Article 46 of the Staff Regulations which applies in this case. In fact the revaluation of a post does not exclude the possibility that that post may be filled by means of promotion. No servant has the right to particular duties and, where his duties are revalued, the appointing authority must be able to consider whether the former occupant of the post can continue to keep them, or whether they must be carried out by other more qualified servants.

If the duties are left in the hands of the former occupant of the post, that person must be placed in the higher bracket corresponding to his new duties. But this grading is the result of promotion within the meaning of Article 45 of the Staff Regulations and, therefore, the seniority in the new grade together with the step must be calculated in accordance with the rules laid down by Article 46. Thus the allocation of Step 1 of Grade B1 to the applicant with effect from 1 January 1962 conforms with the Staff Regulation.

Besides, even supposing that the classification of the applicant in Grade B1 were not to be the result of promotion, Article 46 of the Staff Regulations nevertheless applies to him. This Article applies not only to promotion but also to all other cases where he is 'appointed to a higher grade', subject to certain exceptions such as those recognized by the Court in Case 70/63, which do not obtain in this case. In Case 70/63 the applicant had in fact acquired all his seniority in the same post, which he held at the time when the Staff Regulations came into force. However in the present case the applicant did not, for the main part, acquire his seniority while performing the duties of a financial comptroller, but those of an accountant, and those accountancy duties have not been revalued with effect from 1 January 1962. In fact, the applicant was only appointed a financial comptroller as from 1 November 1961 and the revaluation of those duties cannot therefore have the effect of revaluing the accountancy duties which he carried out in the past. Even if the applicant had been promoted to Grade BVI (now B1) on 1 November 1961, and not on 1 January 1962, which in this case would have been perfectly possible, he could only have claimed the first step in that grade, particularly since he had been promoted seven months previously (1 April 1961).

Finally it would not be true to say that the applicant was being discriminated against as compared with a servant who had been appointed a financial comptroller on 1 January 1962 and who had the same specific professional experience

as the applicant over the same length of time. That servant would also, in fact, have been classified at Step 1 of Grade B1, and without doubt no allowance of seniority would have been accorded to him for one would suppose that, as with the applicant, he could rely on only a few months' specific professional experience.

The *applicant* replies that Article 103 does apply in this case. It follows from the judgment of the Court in Joined Cases 20 and 21/63 that, when the integration procedure laid down by Article 102 takes place, the appointing authority need not take into account differences between the grading allocated to the servant on the basis of that Article and that which results from the definitions of the duties and powers attaching to each basic post and from Annex I to the Regulations.

In such a case the integration procedure consists of two things, the first of which concerns the application of Article 102 of the Staff Regulations and the second of which is aimed at eliminating those differences and thus reclassifying the servant in accordance with the revaluation of his post as provided for by the abovementioned definitions and Annex. It is therefore during the second stage that Article 103 is applied. It follows from the foregoing and from the abovementioned judgment that Article 103 (which is one of the transitional provisions of the Staff Regulations) has effect not only as regards measures taken when the servant is integrated but also when he is reclassified by virtue of the definitions of the duties and powers attaching to each basic post and Annex I to the Staff Regulations. This argument is actually confirmed by the penultimate paragraph of section B, 1, of the grounds of the judgment of the Court in Case 70/63.

It further follows from the judgment of the Court in Joined Cases 20 and 21/63 that the defendants' assertion that the revalued post can be filled by means of promotion is mistaken. It is not a matter of the filling of a revalued post, as the wording of that Article makes clear, but the classification of the person concerned resulting from the fact that after being established he has been retained in the same post as before. He has not retained his post by means of promotion; but, by reason of the fact that he has retained his post, he acquires the right to be graded accordingly. Besides, taking into account the decisions of 17 January, 28 March and 21 June 1963, the Secretary-General could not have refused to reclassify the applicant at the time when he was promoted by entrusting the same duties to another servant by promoting the latter to Grade B1.

Having said this, the applicant does not agree that Article 46 applies in this case. He analyses Chapter B, Title III, of the Staff Regulations and Article 45 in particular and alleges that the legal scope of this Chapter is confined to promotion and to a change of career bracket, and that Article 46 deals with the calculation of seniority when an official is classified in a higher grade either as a result of promotion or of a change of career bracket following a competition. However the classification of the applicant in Grade B1 was not the result of either of those measures.

The argument of the defendants that Article 46 applies every time that there is an appointment to a higher grade, subject to exceptions for special circumstances relating to an official's position, has no force as it is illogical and contrary to the wording of that Article. Furthermore, as for the 'exceptions' mentioned by the defendants, and particularly those recognized by the Court in Case 70/63, it should be observed that the Court did not base its judgment on the fact that the applicant had held the same post with six years' seniority when the Staff Reglations came into force. As regards this point the applicant can show in his favour that the

circumstances are analogous. The decision of 1 November 1961 must not be taken to mean that the applicant was only made a financial comptroller as from that date. In a memorandum of 4 October 1961 Mr Markull, the Director-General, suggested to the Secretary-General that the applicant be reclassified in Grade VII, Step 3, with effect from 1 April 1961, because he had been given the duties of a financial comptroller on that date. Furthermore the personal file produced to the Court makes it clear that the applicant acquired his seniority in Step 3 of Grade VII (now B2) as from 1 April 1961, as a financial comptroller. Since this grading was not the result of promotion (in fact the applicant was not classified in the first step of Grade VII) but of a change of duties, it follows that the applicant primarily acquired his seniority in that grade as a financial comptroller and not as an accountant. Therefore his case is analogous to that of the applicant in Case 70/63. The fact that the latter had six years' seniority is not of great importance, for the judgment in question intended to establish a general legal principle and not to reward long service.

Furthermore it is not correct to state that, if the applicant had been promoted to Grade VI (now B1) with effect from 1 November 1961, he would only have been given Step 1 in this case as well. First of all, such a promotion would have been impossible because of the lack of the minimum seniority required, and could not have taken place from Grade VIII upwards. Secondly, if the post had been ascribed to Grade VI the applicant would have received the same step as the one which he was given when he was classified in Grade VII (Step 3). Finally, the defendants' assertion that an official newly employed on 1 January 1962 would not have received a higher step than that of the applicant is incorrect as appears from the Staff Regulations.

The applicant concludes by referring to the judgment of the Court in Case 70/63, which, according to him, lays down a general legal rule that, when an official who is established within the meaning of Article 102 of the Staff Regulations is entitled to have his administrative position regularized in accordance with the definitions of the duties and powers attaching to each basic post and with Annex I to the Staff Regulations, he shall have the same step and the same seniority in that step in the new grade corresponding to his post as he had in the former grade during the first stage of integration as laid down by Articles 102 and 103 of the Staff Regulations.

The *defendants* reply that the judgments of the Court in Joined Cases 20 and 21/63 and in Case 70/63 are relied on in error by the applicant in attempting to prove that Article 103 of the Staff Regulations can be applied when a person is appointed to a higher grade, following revaluation of the post, after having come under the Staff Regulations. This Article simply speaks of the retention of the seniority to which the official is entitled 'before these Staff Regulations were applied to him' and, by that very fact, can only refer to the act of integrating the official, even before any possible appointment to a higher grade.

In the applicant's case, his appointment from Grade B2 to Grade B1 cannot on the other hand be considered as anything else than promotion. Just like the other officials, the applicant was not entitled to retain the revalued duties. The fact that there was delay in bringing the Staff Regulations into force so that the competent authority only formally confirmed its intention to retain him in his duties by the decisions of 28 March and 21 June 1963 cannot alter this view. In any event, Article 46 of the Staff Regulations should have been applied to the applicant in order to fix his step, as this Article is not just limited to the cases set out in Article 45 but also

applies, without limits, to those cases where an official is 'appointed to a higher grade'. No derogation from Article 46 can be accepted in this case, such as was possible in Case 70/63. It must be emphasized that in this case the applicant was certainly given some of the duties of a financial comptroller, even before 1 November 1961, by a decision of his immediate superior, the head of the accountancy department. But this allocation of duties was made in the context of his duties as an accountant, and the mere decision of his immediate superior was not enough for these new duties to be formally attributed to him. A decision of the appointing authority was necessary for this.

Having said this, the defendants again rebut the applicant's argument that a financial comptroller newly starting on 1 January 1962 and having specific professional experience analogous to that of the applicant would have been treated in a more favourable way than he was. They dispute the assertion that in Case 70/63 the Court laid down a general rule as formulated by the applicant.

First, it may be noted that that judgment is based on particular circumstances, because the applicant in that case had occupied the same post throughout the period during which he had accumulated steps of seniority in the lower grade, and, according to the new Staff Regulations, the post corresponded to a higher grade. That was a particular case, because in others the duties concerned have developed and this was the reason for revaluing the relevant post.

Secondly, if the argument put forward by the applicant were applied, it would often lead to inequality of treatment between officials occupying the same post. It would not be possible to rectify this inequality because the Staff Regulations do not allow two steps to be granted at a time. The defendants try to prove that this assertion is well founded by taking the following examples concerning two officials:

(a) In the first example one official has been appointed to a revalued post by means of reclassification, and the other has been recruited directly for a higher post or has been promoted to it before the Staff Regulations came into force.

(b) In the second example the two officials before the Staff Regulations came into force held posts of the same type at different steps, and the career bracket extended over two grades, whereas it only comprises one grade since the Staff Regulations came into force.

The defendants' conclusion is that considering all the above it seems that, apart from rare exceptions, the reclassification of an official whose post has been revalued should take place by way of promotion, as was done in this case. The rules for promotion make it possible to take into account the interests of officials as a whole, while at the same time not adversely affecting those who benefit from them.

IV — Procedure

The procedure followed the normal course.

By order of 3 December 1964 the Second Chamber of the Court decided to refer the case to the Court sitting in plenary session in accordance with Article 95 (2) of the Rules of Procedure.

Upon hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General, the Court decided not to make any preparatory inquiry in this case.

The parties presented oral argument at the hearing on 18 March 1965.

The Advocate-General delivered his opinion at the hearing on 6 May 1965.

Grounds of judgment

On the naming of the defendants as parties

The applicant has directed his application against the Secretary-General of the Councils of the European Communities, claiming that, as under Article 90 of the Staff Regulations a complaint must be submitted to the appointing authority, the appeals provided for in the following Article must also be brought against the same authority, in the absence of special provisions to the contrary.

The applicant alleges that this position is all the more justified because he is an official of the Councils of the EEC, the EAEC and the ECSC, which form a single legal and administrative entity, endowed with a common secretariat.

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

Therefore it follows that the appointing authority acts in the name of the institution which has designated it, so that the acts affecting the legal situation of officials and capable of adversely affecting them must be deemed to be those of the institution by which they are employed.

Although Article 90 of the Staff Regulations lays down that a complaint must be submitted to the appointing authority, this is because such a procedure constitutes an appeal through official channels and with no contentious element.

Finally, since each of the Communities has a separate legal personality, and since the Treaties have not established the Councils as a common institution, the mere fact that only one secretariat exists cannot show that the said Councils are a single legal entity.

Under the terms of the general provisions of the Treaties concerning actions before the Court the action must be brought against the institution responsible for the act.

For all these reasons this application must be considered as directed against the Councils of the EEC, the EAEC and the ECSC by which the applicant is employed.

Admissibility

1. In this application the applicant asks to be classified at Step 3 of Grade B1 with seniority in that Step as from 1 April 1961.

The defendants assert that, since a step can only be granted in a given grade, the conclusions of this application contradict those of Application 28/64, the object of which was the classification of the applicant in either Grade A3 or a post in the career bracket A5-A4. They state that for this reason the present application is inadmissible.

In spite of the applicant's assertions to the contrary, this application must be considered as an alternative to Application 28/64. In fact its conclusions would only cease to be relevant if a right on the part of the applicant to be graded in A5-A4 or in A3 had been recognized. No such right has been recognized, as the conclusions in favour of this grading were rejected by the Court as unfounded in its judgment of 7 April 1965 in Case 28/64.

Therefore the interest of the applicant in being classified at a higher step of Grade B1 cannot be denied. It follows that the objection of inadmissibility is unfounded.

2. The defendants also assert that the present application is out of time, having regard to the fact that the alleged ground of complaint arose from the decisions of 28 March 1963 and 21 June 1963 by which the applicant was classified at Step 1 of Grade B1, so that it is against those decisions, or at least against that of 21 June 1963, that he should have directed his application within the time-limit laid down by Article 91 of the Staff Regulations.

Moreover, as the decision of the Councils adopting the definitions of the duties and powers attaching to each basic 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 concerning him had been taken. Since the applicant neither made an appeal nor submitted a complaint against the said decisions within the prescribed time-limit, it is claimed that he is time-barred.

On the other hand, the applicant argues that it was only after reading the letter of 2 July 1964 from the Secretary-General that he was in a position to appreciate the injury which he had suffered in the matter of his grading, and particularly as regards his being given Step 1 of Grade B1.

The abovementioned definitions do no more than state the grade in which each basic post must be classified in each category or in the language service. They do not establish any criteria for the allocation of steps. The decisions

of 28 March and 21 June 1963 appointed the applicant to Grade B1, Step 1, whereas he had been classified in Grade B1, Step 3. Thus these decisions gave him a step which was lower than the one which he had held previously and to which he claims to be entitled.

Therefore it is against these decisions that he should have made his application within the time-limit laid down by Article 91 of the Staff Regulations.

However, in his complaint 19 April 1963 submitted to the Secretary-General of the Councils, he asked that his classification in Grade B1, Step 1, should be applicable as from a date different from that mentioned in the decision of 28 March 1963, but did not raise any criticism as to the step which had been given to him.

The Secretary-General took note of his complaint by the decision of 21 June 1963 which granted his Step 1 of Grade B1 as from 1 January 1962.

3. It was only on 15 July 1964 that the applicant submitted to the Secretary-General of the Councils a complaint, within the meaning of Article 90 of the Staff Regulations, by which he asked to be classified at Step 3 of Grade B1.

Thus both that complaint and this application against the rejection of the complaint were made after the expiry of the time-limits, calculated as running from the time of the said decisions.

Nevertheless the applicant asserts 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 appeal to start to run afresh. He deduces from this that both the complaint of 15 July 1964 and the present application are admissible, as they were made within the time-limits calculated as running from the date when the judgment in Case 70/63 was given.

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.

However it is evident that the applicant was not directly concerned by the measure annulled by the Judgment in Case 70/63. Therefore the said judgment in Case 70/63 cannot be considered, as regards the applicant, as a new factor capable of causing time to start to run afresh in this case after it has once expired.

For all these reasons it must be concluded that this application was made out of time, and that it must on this account be dismissed as inadmissible.

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 the terms of Article 70 of the said Rules, the costs incurred by institutions in proceedings commenced by servants of the Communities are to 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 Article 69, 70 and 95;

THE COURT

hereby:

1. **Dismisses the present application as inadmissible.**
2. **Order the applicant to pay the costs of the proceedings, with the exception of those incurred by the defendant.**

Hammes Donner Lecourt

Delvaux Trabucchi Strauß Monaco

Delivered in open court in Luxembourg on 17 June 1965.

A. Van Houtte
Registrar

Ch. L. Hammes
President