JUDGMENT OF THE COURT (Second Chamber)
8 March 1988 *

In Case 125/87

Leslie Brown, an official of the Court of Justice of the European Communities, represented by Aloyse May, of the Luxembourg Bar, with an adddress for service at his Chambers, 31 Grand-Rue,

applicant,

v

Court of Justice of the European Communities, represented by Francis Hubeau, Head of the Personnel Division, acting as Agent, assisted by Robert Andersen, of the Brussels Bar, 241 avenue Montjoie, Brussels, with an address for service in Luxembourg at the office of its Agent, Weimershof Building, Weimershof,

defendant,

concerning, at the present stage of the proceedings, the admissibility of an application for the annulment of the Court's decision of 30 January 1987 by which it rejected the applicant's complaint of 5 August 1986 against the general decision adopted by the President of the Court on 10 April 1986 concerning the introduction, with effect from 1 March 1986, of a new method of calculating the differential allowance granted to officials who change from one category to another after a competition, and for the grant of a differential allowance calculated in accordance with the new method of calculation with effect from 13 August 1981, the date on which the applicant was appointed to Grade B 5, or in the alternative with effect from 1 February 1985, and the payment of interest at the rate of 8% a year on the amounts representing the differences in salary, as the case may be,

* Language of the Case: French.

THE COURT (Second Chamber),

composed of: O. Due, President of Chamber, K. Bahlmann and T. F. O'Higgins, Judges,

Advocate General: J. Mischo
Registrar: J. A. Pompe, Deputy Registrar

having regard to the Report for the Hearing and further to the hearing on 19 November 1987,

after hearing the Opinion of the Advocate General delivered at the sitting on 8 December 1987,

gives the following

Judgment

1 By an application lodged at the Court Registry on 10 April 1987 Leslie Brown, an administrative assistant in Grade B 5 at the Court of Justice, brought an action seeking in substance the grant of a differential allowance in accordance with the general decision adopted by the President of the Court in his capacity of appointing authority on 10 April 1986 concerning the introduction of a new method of calculating the differential allowance granted on a change from one category to another after a competition and the back-dating of the grant of that allowance to 13 August 1981, the date on which the applicant was appointed to Grade B 5, or in the alternative to 1 February 1985. The applicant also claims interest at the rate of 8% a year, to be paid on the amounts representing the differences in salary.

2 Mr Brown, who was a clerical officer in Grade C 2 at the Court of Justice at the time, was appointed an administrative assistant in Grade B 5 with effect from 1 August 1981. On 12 November 1981 he lodged a complaint against his appointment as administrative assistant and the grant of a differential allowance equal to the difference between his salary in his former Grade C 2 and his salary when he was classified in Grade B 5 on the ground that the decision would be

financially detrimental to him in comparison with his previous situation. The complaint was dismissed by the appointing authority on 5 February 1982.

3 On 12 July 1983 Mr Brown submitted a request seeking an amendment of the method of calculating his differential allowance on the basis of a notional career in Grade C 2. That request was rejected by a decision of the President of the Court of 8 November 1983.

4 Following that decision a long exchange of letters took place between the President of the Court and Mr Brown, who, as regards the calculation of his differential allowance, relied on the Court's judgment of 29 January 1985 in Case 273/83 *(Michel* v *Commission* [1985] ECR 347), which had been delivered in the mean time. The replies given by the President of the Court essentially consisted in referring the applicant to the two aforementioned decisions of 5 February 1982 and 8 November 1983 and emphasized the fact that an action before the Court was time-barred and that the decision concerning his classification and the grant of the differential allowance had become final.

5 On 10 April 1986 the President of the Court adopted a general decision concerning the classification and remuneration of officials who change to a higher category after a competition. That decision, which was notified to the staff of the Court on 26 March 1987, introduced a variable differential allowance applicable from 1 March 1986 to all officials, including those who had changed from one category to another prior to that date.

6 On 5 August 1986 Mr Brown lodged a complaint under Article 90 (2) of the Staff Regulations in which he objected to the date on which the aforementioned decision of 10 April 1986 took effect. He requested that the decision be applied to all officials not with effect from 1 March 1986 but with effect from the date on which each official concerned was appointed to a higher category or at least,

having regard to the Court's aforementioned judgment of 29 January 1985, from 1 February 1985. The *ad hoc* committee of the Court called upon to give a ruling on complaints lodged under Article 90 of the Staff Regulations rejected the complaint on 30 January 1987 on the ground that there was no legal obligation to lay down a date with retroactive effect for the entry into force of the general decision of 10 April 1986. Mr Brown has brought this action against the rejection of his complaint.

7 As the defendant raised an objection of inadmissibility under Article 91 (1) of the Rules of Procedure, the Court (Second Chamber) decided to restrict the oral procedure to an examination of that objection without considering the substance of the case.

8 Reference is made to the Report for the Hearing for the facts of the case, the relevant legal provisions and the arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

9 The defendant maintains that the purpose of the application is to call in question the decision of 13 August 1981 appointing Mr Brown to Grade B 5 in so far as it determines the differential allowance in a certain manner. As the applicant failed to institute proceedings against that decision following the rejection of his complaint of 5 February 1982, this application is out of time and therefore inadmissible.

10 The defendant also maintains that the final nature of the decision to appoint Mr Brown cannot be called in question by the Court's aforementioned judgment in the *Michel* case. It observes that, according to the Court's decisions, the only persons concerned by the legal effects of a judgment annulling an administrative measure are the persons directly affected by the measure in question.

11 The applicant does not accept that objection of inadmissibility. He points out that his complaint and application are directed against the general decision of 10 April 1986: that decision constitutes a new factor affecting his administrative position so that the fact that the period for bringing an action before the Court has expired cannot be relied upon against him.

12 It must be observed in the first place that the application consists of two heads of claim: the first seeks the grant of a differential allowance calculated on the basis of the principles laid down in the general decision of the President of the Court from the date of the applicant's appointment and the second seeks the grant of such an allowance with effect from 1 February 1985, that is to say following the Court's aforementioned judgment in the *Michel* case.

13 As regards the first head of claim, it must be pointed out that in effect it calls in question an individual decision which has become final. The Court has consistently held (see, in particular, its judgment of 15 December 1971 in Case 17/71 *Tontodonati* v *Commission* [1971] ECR 1059) that an official cannot reopen the limitation period provided for in Article 91 of the Staff Regulations which he has allowed to lapse by lodging a complaint on the same subject-matter as the decision which has become final. As the Court stated in its judgment of 15 May 1985 in Case 127/84 *(Esly* v *Commission* [1985] ECR 1437), only the emergence of a new fact is capable of causing time to start running again so as to enable contentious proceedings to be instituted against such a decision. In that regard, the Court has consistently held (see, in particular, its judgment of 17 June 1965 in Case 43/64 *Müller* v *Councils of the EEC, EAEC and ECSC* [1965] ECR 385) that a judgment annulling an administrative measure can constitute a new factor only as regards the persons directly affected by the measure which is annulled.

14 In this case it must be added that the general decision in question, by its very nature and its legal scope, cannot constitute a new factor either. The decision has neither the purpose nor the effect of calling in question administrative decisions which have become final before it entered into force. Consequently, in so far as the application seeks the grant of a differential allowance calculated according to the criteria laid down in that general decision with effect from the date of the applicant's appointment, it must be dismissed as inadmissible.

15 As regards the second head of claim, it must be observed that it relates to a measure of a general nature introducing a new system of differential allowance. The applicant maintains that the President of the Court was obliged to give retroactive effect to the general decision in order to draw immediately the administrative consequences of the Court's aforementioned judgment in the *Michel* case.

16 In that regard it must be pointed out that the fact that the decision of 13 August 1981 appointing Mr Brown is final does not prevent the exercise of the right to lodge an appeal against an act of a general nature adversely affecting him, which is expressly provided for in Article 90 (2) of the Staff Regulations. The applicant must therefore be allowed to contest the legality of the general decision of 10 April 1986 in so far as, in his view, that decision has not drawn the administrative consequences of the Court's judgment in the *Michel* case.

17 Consequently, the application must be held to be admissible in so far as it seeks a declaration that the general decision ought to have provided that it had retroactive effect from 1 February 1985.

18 The second part of the application must therefore be declared admissible and the proceedings ordered to be continued.

Costs

19 Costs are to be reserved.

On those grounds,

THE COURT (Second Chamber),

before giving judgment on the substance of the case,

hereby:

(1) Dismisses the objection of inadmissibility raised against the claim relating to the granting with effect from 1 February 1985 of a differential allowance calculated in accordance with the general decision of the President of the Court of Justice of 10 April 1986; the proceedings will be continued with regard to the substance;

(2) The rest of the application is dismissed as inadmissible;

(3) Costs are reserved.

Due Bahlmann O'Higgins

Delivered in open court in Luxembourg on 8 March 1988.

J.-G. Giraud
Registrar

O. Due
President of the Second Chamber