REPORT FOR THE HEARING
delivered in Case 125/87 *

I — Facts and procedure

The applicant, who until 31 July 1981 was employed by the Court of Justice as a clerical officer in Grade C 2, was appointed an administrative assistant in Grade B 5 with effect from 1 August 1981. He is now classified in Grade B 4, Step 3.

On 12 November 1981 the applicant had lodged a complaint under Article 90 (2) of the Staff Regulations against his appointment as administrative assistant and the grant of a differential allowance equal to the difference between his net salary in his former Grade C 2 and his net salary in Grade B 5 in which he referred to the prejudicial financial effects of that decision in the light of his previous position. The complaint was rejected by the President of the Court on 5 February 1982. In the statement of reasons for the decision the President emphasized that Article 46 of the Staff Regulations was not applicable in the applicant's case and that there were no legal grounds capable of justifying the grant of a differential allowance taking into account a notional career in the applicant's former grade.

On 12 July 1983 the applicant submitted a request under Article 90 (1) of the Staff Regulations 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 in which the President pointed out that the time-bar resulting from the expiry of the period within which a complaint must be lodged cannot be avoided by the submission of a request seeking a new decision concerning the subject-matter of the dispute.

Following the latter decision extensive correspondence took place between the applicant and the President of the Court between 29 November 1983 and 5 August 1986. The correspondence related to the applicant's attempts to have the previous decisions reconsidered, in particular in the light of the Court's judgment of 29 January 1985 in Case 273/83 *(Michel* v *Commission* [1985] ECR 347). In that judgment the Court held that 'the classification in step of an official moving from one category to another must be based on the principles laid down in Article 46 and not on those laid down in the second paragraph of Article 32' of the Staff Regulations.

In his various communications the President of the Court replied in essence to the applicant's enquiries by referring to the two adminstrative decisions of 5 February 1982 and 8 November 1983, to the fact that the time-limit for lodging an appeal had expired and to the fact that the decision relating to the applicant's classification was final.

On 10 April 1986 the President of the Court, in his capacity as the appointing authority, adopted a decision of general application concerning the classification and remuneration of officials who change to a higher category following a competition. That decision, which was notified to the

* Language of the Case: French.

staff of the Court on 26 March 1987, provides under heading B ('Differential allowance') as follows:

'If the remuneration relating to the grade and step of an official in the higher category is lower than the remuneration which he received in his former grade and step prior to his transfer to the higher category, he shall be granted a differential allowance.

In the past, the allowance was absorbed as the remuneration in the new classification increased.

Henceforth, the allowance shall take account of the automatic advancement in step in the grade of the former category and of adjustments in the remuneration relating to the former classification (Article 65 (1) and (2) of the Staff Regulations).

The measure referred to under B shall take effect from 1 March 1986 and shall apply, without retroactive effect, to all officials who, on that date, satisfied the conditions referred to thereunder, even if they were appointed to a higher category before 1 March 1986.'

In his complaint of 5 August 1986 lodged under Article 90 (2) of the Staff Regulations the applicant objected to the date of 1 March 1986 as the date on which the decision of general application adopted by the President of the Court on 10 April 1986 took effect and 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 the higher category, or at least from 1 February 1985.

In its decision rejecting that complaint on 30 January 1987, the Court relied in essence on the absence of any legal obligation to lay down any other date with retroactive effect as the date on which the decision of general application adopted by the President of the Court on 10 April 1986 was to take effect.

By his application lodged at the Court Registry on 10 April 1987 the applicant claimed that the Court should:

(1) Declare that the application is inadmissible;

(2) Annul the Committee of the Court's rejection of 30 January 1987;

(3) Declare that the applicant is entitled to the differential allowance with retroactive effect from the date on which he was appointed to Grade B 5;

(4) Declare that the applicant is entitled to be accorded seniority in step or in grade, as the case may be, since his promotion to Grade B 5;

(5) Declare, in any event, that the applicant is entitled to the differential allowance intended to make up the difference between his salary in his former Grade C 2, Step 5, and the salary in Grade B 4, Step 2, with effect from 1 February 1985;

(6) Order the Court of Justice to pay interest at the rate of 8% per annum on the amount corresponding to the difference in salaries;

(7) Permit the applicant to submit any necessary evidence.

By a document lodged on 6 May 1987 the Court of Justice raised an objection of inadmissibility against the application under Article 91 (1) of the Rules of Procedure.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court (Second Chamber) decided to restrict the oral procedure to the objection of inadmissibility raised by the defendant without considering the substance of the case and without any preparatory inquiry.

II — Submissions and arguments of the parties

The Court of Justice maintains that the purpose of the application is to call in question the applicant's appointment on 13 August 1981 to Grade B 5 in so far as it provided for a differential allowance calculated in a certain manner. Since the applicant did not lodge an appeal against that decision following the rejection of his complaint on 5 February 1982, this application is out of time and therefore inadmissible.

The Court of Justice further points out that the definitive nature of the decision to appoint the applicant in so far as it provided for a differential allowance calculated in a certain manner cannot be called in question by the Court's judgment of 29 January 1985 in the case of *Michel* v *Commission*. It follows from the Court's case-law that the only persons concerned by the legal effects of a judgment of the Court annulling an administrative measure are the persons directly affected by the measure. A judgment of the Court cannot constitute a new factor as regards other officials giving them the right to request the administration to reconsider decisions which have become final.

The applicant observes in reply that the new fact affecting his administrative position is not that judgment but the general decision adopted by the President of the Court.

In addition, the applicant maintains that the decision at issue affects not only the position with regard to his past career but also his present and future position and that the application is accordingly admissible.

K. Bahlmann
Judge-Rapporteur