adversely affecting an official after the time-limit for lodging a complaint has expired, the person concerned must challenge the express or implied rejection of such request within the time-limit laid down in Article 90(2) of the Staff Regulations, and the lodging of a further request for a review cannot re-open or extend that time-limit. The right of every official under Article 90(1) of the Staff Regulations to request the appointing authority to take a decision relating to him does not allow the time-limits for complaints and actions laid down in Articles 90 and 91 of the Staff Regulations to be disregarded by indirectly calling in question a previous decision not challenged within the prescribed period.

2. Although Article 91(3) of the Staff Regulations provides that where a complaint is rejected by express decision after being rejected by implied decision but before the time-limit for bringing an action has expired, the latter period will start to run afresh, that provision cannot apply at the stage of the request and before the complaint is lodged. As a provision on the rules for calculating time-limits for bringing actions, it must be interpreted literally and strictly. The express rejection of a request after an implied decision rejecting the same request is a purely confirmatory measure which cannot as such re-open the time-limit for lodging a complaint under Article 90(2) of the Staff Regulations.

ORDER OF THE PRESIDENT OF THE FIFTH CHAMBER OF THE COURT OF FIRST INSTANCE
14 July 1993 *

In Case T-55/92,

Josephus Knijff, a member of the temporary staff of the Court of Auditors of the European Communities, residing in Luxembourg, represented by Jean-Paul Noesen, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 18 Rue des Glacis,

applicant,

v

* Language of the case: French.

Court of Auditors of the European Communities, represented by Jean-Marie Sténier and Jan Inghelram, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the Court of Auditors, 12 Rue Alcide de Gasperi, Kirchberg,

defendant,

APPLICATION for an annulment of the decisions of the Court of Auditors classifying the applicant under his contract as a member of the auxiliary staff of 11 July 1992 and under his contract as a member of the temporary staff of 12 October 1992,

THE PRESIDENT OF THE FIFTH CHAMBER
OF THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES

makes the following

Order

Facts and procedure

1 The applicant is a civil servant of the Netherlands Algemene Rekenkamer (National Audit Office), seconded to the Court of Auditors of the European Communities ('the Court of Auditors') since 15 July 1986. During the period of secondment he has been a party to the following contracts:

— from 15 July 1986 to 14 July 1988, a contract as a member of the temporary staff in Grade A4, step 4;

— from 15 July 1988 to 14 July 1990, following the renewal of the first contract, an identical contract as a member of the temporary staff in Grade A4, step 4;

— from 15 July 1990 to 12 October 1990, a contract as a member of the auxiliary staff in category A, Group II, Class 4;

— since 13 October 1990 and until 12 October 1995, a contract as a member of the temporary staff in Grade A5, step 3.

2 The contracts relating to the period from 15 July 1986 to 14 July 1990 were covered by the Court of Auditors' own rules permitting the temporary employment of national civil servants recruited in consultation with the national audit institutions ('NAI'). The contracts for employees recruited in this way are limited to two years but may be renewed for successive two-year periods. Until 1991 the rules in question permitted only one renewal.

3 By letter of 9 February 1990 the Court of Auditors informed the Algemene Rekenkamer that the applicant's contract would expire on 14 July 1990, that the rules did not permit his secondment to be extended beyond that date and that it was therefore appropriate to start the procedure for recruiting his successor. This procedure led to the employment of Mr W. from 17 September 1990.

4 By memorandum of 5 July 1990 the member of the Court of Auditors in charge of the sector to which the applicant was assigned requested that he be given a three-month contract as a member of the auxiliary staff on the expiry of his contract as a member of the temporary staff, to enable him to finish a report to which his contribution was considered essential.

5 Consequently on 11 July 1990 the applicant entered into a contract as a member of the auxiliary staff for the period from 15 July 1990 to 12 October 1990 in category A, Group II, Class 4.

6 By letter of 12 July 1990 the Court of Auditors made a request to the Algemene Rekenkamer for the applicant exceptionally to have his secondment extended for reasons of service.

7 On 18 and 19 July 1990 the applicant took written and oral tests in a selection procedure for the recruitment of a temporary principal administrator to Audit Group III.

8 By letter of 18 September 1990 the Court of Auditors informed the Algemene Rekenkamer that the applicant had been successful in the selection procedure and that it was willing to employ him for a period of five years subject to the Algemene Rekenkamer's consent. By letter of 25 September 1990 the Algemene Rekenkamer gave its consent to the applicant's employment.

9 By letter of 12 October 1990 the Court of Auditors informed the applicant that it had decided to offer him employment as a temporary member of staff for a period of five years. Paragraph 2 of the letter states: 'Your salary will be calculated by reference to classification in Grade A5, step 3 ...'. On the same day the applicant signed the abovementioned contract as a temporary member of staff for the period from 13 October 1990 to 12 October 1995 in Grade A5, step 3.

10 On 21 February 1991 the Court of Auditors adopted Decision No 91/17 concerning the recruitment, selection and classification of persons to be appointed to

temporary posts, in consultation with the national audit institutions (NAIs), which took effect on the same day. The decision removed the restriction on the renewal of contracts for members of the temporary staff. Whereas under the former rules contracts for members of the temporary staff recruited in consultation with the NAIs could be renewed only once for a period of two years, Decision No 91/17 merely provides that they can be renewed for successive periods of two years.

11 By memorandum of 7 March 1991 the applicant submitted a request to the Secretary-General of the Court of Auditors for re-classification so that his career, which started on his recruitment in July 1986 at Grade A4, step 4, would continue in accordance with Article 44 of the Staff Regulations.

12 By memorandum of 15 March 1991 the Secretary-General rejected the request on the grounds, firstly, that in October 1990 the applicant had been employed on the basis of a contract as a member of the temporary staff which could in no way be treated in the same way as the contracts under which he had previously been employed — which in this case involved recruitment in consultation with the NAIs — and, secondly, that by accepting the October 1990 contract of employment, he had accepted the classification stipulated therein. Although the memorandum is written on the headed notepaper of the Secretary-General of the Court of Auditors and his name is typed at the bottom of the page, it does not bear his handwritten signature.

13 By memorandum of 10 June 1991 the applicant repeated his original request for re-classification and, alternatively, submitted an application concerning the calculation of the financial rights which he had acquired between 15 July 1986 and 14 July 1990. In his memorandum the applicant points out that the memorandum of 15 March 1991 was not signed.

14 By memorandum of 26 August 1991 the Secretary-General confirmed his decision of 15 March 1991 rejecting the request for re-classification.

15 On 22 November 1991 the applicant lodged a complaint concerning the memorandum of 26 August 1991.

16 On 6 May 1992 the Secretary-General of the Court of Auditors rejected the complaint in so far as it concerned a request for re-classification, on the ground that it was out of time and that, in any event, it was not justified for the reasons stated in the previous decisions.

17 Consequently, by application received by the Court Registry on 3 August 1992, the applicant brought this action against the decision rejecting his complaint and against the previous decisions.

18 As the Court of Auditors did not lodge a defence within the prescribed time-limit, the applicant applied, by letter of 5 October 1992, for judgment by default.

19 The applicant was heard by the Court on 10 November 1992. During the hearing he withdrew the application for judgment by default and requested the Court to give the defendant the opportunity to lodge a defence.

20 The remainder of the written procedure followed the normal course.

21 The applicant claims that the Court should:

— declare the action formally admissible;

— declare it also well-founded;

and therefore annul the decisions of the appointing authority of 15 March 1991 and 26 August 1991 refusing to grant the applicant's request for a review of his re-classification, and the decision of the appointing authority of 6 May 1992 following his complaint pursuant to Article 90(2) of the Staff Regulations of Officials of the European Communities;

— order the defendant to pay the costs.

22 The defendant contends that the Court should:

— dismiss the appeal as inadmissible or, failing that, unfounded;

— order each of the parties to bear its own costs.

Admissibility

23 Under Article 111 of the Rules of Procedure, where an action is manifestly inadmissible, the Court of First Instance may give a decision on it, by reasoned order and without taking any further steps in the proceedings. In the present case the Court has sufficient information from the documents in the file and decides that there is no need to continue the procedure.

Arguments of the parties

24 The defendant contends that the action is inadmissible because the complaint was brought after the three-month time-limit provided for in Article 90(2) of the Staff

Regulations. It considers that the acts having adverse effect are those classifying the applicant, that is the contracts signed on 11 July 1990 and 12 October 1990, and contends that they were clearly not challenged within the time-limits.

25 In his application, the applicant relies upon the entry into force of Decision No 91/17 as a substantive new fact justifying a request, after expiry of the time-limit for lodging complaints, for a review of the classification decisions. In his reply, he also refers to another new fact, namely that during the proceedings before the Court, he discovered a 1985 decision of the Court of Auditors concerning the classification of employees from national audit bodies, but he did not state that he submitted an application for re-classification on the basis of that discovery.

Findings of the Court

26 The Court observes that it is not denied that the applicant was informed by the letters of 11 July 1990 and 12 October 1990 of the classification decisions which are the subject of this action, that the classifications in issue are also provided for in the contracts signed by the applicant on the same dates and that no complaint was lodged against those classifications within the three-month time-limit which started to run on the abovementioned dates.

27 It is settled law (Case T-54/90 *Lacroix* v *Commission* [1991] ECR II-749 and order in Case T-67/91 *Torre* v *Commission* [1992] ECR II-261) that the time-limits laid down by Articles 90 and 91 of the Staff Regulations for submitting complaints and bringing actions, applicable by way of analogy to members of the temporary and auxiliary staff under Articles 46 and 73 of the Conditions of Employment of Other Servants of the European Communities, are a matter of public policy and even where the administration has replied at the pre-litigation stage to the arguments put forward by the applicant on the substance of his claim, the Court of First Instance is not exempted from the obligation to verify whether the action is admissible from the point of view of observance of the time-limits laid down by the Staff Regulations.

28 Although a new substantive fact may justify a request for a review of the decision regarding classification after expiry of the time-limit for lodging a complaint, if the request is rejected, whether expressly or implicitly, the official or the employee in question must challenge such rejection within the time-limit for complaints laid down in Article 90(2) of the Staff Regulations, and a further request cannot re-open or extend that time-limit. Article 90(1) of the Staff Regulations provides that any official may request the appointing authority to take a decision relating to him but that right does not allow the time-limits for complaints and actions laid down in Articles 90 and 91 to be disregarded by indirectly calling in question a previous decision not challenged within the prescribed period (judgment of the Court of Justice in Case 231/84 *Valentini* v *Commission* [1985] ECR 3027).

29 In the present case, on 7 March 1991 the applicant made the original request to be re-classified by reason of the entry into force of Decision No 91/17. On 15 March 1991 he received a memorandum rejecting the request on the ground that his employment was not covered by Decision No 91/17, so that the entry into force of that decision did not constitute a new substantive fact so far as he was concerned. Although the memorandum is written on the headed notepaper of the Secretary-General of the Court of Auditors and his name is printed at the bottom of the page, it does not bear his handwritten signature.

30 On 10 June 1991, referring to the Secretary-General's memorandum of 15 March 1991, which he described as 'unsigned', the applicant submitted a second request to be re-classified on the basis, *inter alia*, of the entry into force of Decision No 91/17. With regard to his request to be reclassified, he wrote: 'Firstly, I adhere to the request I made on 7 March 1991 to be reclassified, to which I have not received a legally valid reply'. This second request was rejected by a memorandum of 26 August 1991, duly signed by the Secretary-General of the Court of Auditors.

31 On 22 November 1991 the applicant lodged a complaint. Following the rejection of the complaint on 6 May 1992, the applicant commenced this action on 3 August 1992.

32 In the light of the procedure as described above, the Court finds that, even if the entry into force of Decision No 91/17 could be considered a new substantive fact justifying the applicant's request for a review of his classification, this would not affect the admissibility of the action because of his delay in bringing it.

33 Firstly, if the Secretary-General's memorandum of 15 March 1991 is not considered a 'legally valid' reply to the original request of 7 March 1991, the latter must be deemed to have been implicitly rejected on 7 July 1991. Such rejection started the time-limit running for lodging a complaint, and this ended on 7 October 1991.

34 However, the complaint under Article 90(2) of the Staff Regulations was lodged on 22 November 1991, after the time-limit for a complaint had expired, and the adoption of the decision of 26 August 1991 rejecting the second request for re-classification did not cause the time-limit to be reopened. As the Court of First Instance and the Court of Justice have held, the last indent of Article 91(3) of the Staff Regulations, which reads 'where a complaint is rejected by express decision after being rejected by implied decision but before the period for lodging an appeal has expired, the period for lodging the appeal shall start to run afresh', cannot apply at the stage of the request and before the complaint is lodged. As a provision on the rules for calculating periods for bringing actions, the last indent of Article 91(3) must be interpreted literally and strictly. The express rejection of a request after an implied decision rejecting it is in the nature of a purely confirmatory measure and cannot reopen a time-limit (see the judgment of the Court of Justice in Joined Cases 75/82 and 117/82 *Razzouk and Beydoun* v *Commission* [1984] ECR 1509, paragraph 12; order of the Court of First Instance in Case T-38/91 *Coussios* v *Commission* [1991] ECR II-763, paragraph 29; judgments of the Court of First Instance in Case T-129/89 *Offermann* v *Parliament* [1991] ECR II-855, paragraph 32, and Case T-15/91 *Bollendorff* v *Parliament* [1992] ECR II-1679, paragraph 26).

35 Accordingly, the second request for re-classification of 10 June 1991 cannot be considered a 'complaint' within the meaning of Article 90(2) of the Staff Regulations

either, as it was lodged before the expiry of the four-month period which the administration has under Article 90(1) of the Staff Regulations for replying to a request.

36 Secondly, although the Secretary-General's memorandum of 15 March 1991 may be regarded as a decision rejecting the first request, that rejection caused the time-limit for a complaint to run and it ended on 15 June 1991.

37 However, the applicant lodged his complaint on 22 November 1991. Furthermore, the decision of 26 August 1991 rejecting the second request cannot, as a measure which merely confirmed the decision rejecting the first request, reopen the time-limit for lodging a complaint.

38 To the extent that the second request of 10 June 1991 may thus be viewed as a complaint, the present action must nevertheless be deemed to be out of time because the application was lodged at the Court Registry on 3 August 1992, that is more than three months after the decision of 26 August 1991 rejecting the second request of 10 June 1991.

39 It follows that the action must be dismissed as inadmissible.

Costs

40 Pursuant to Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. However, under Article 87(3) of those Rules, the Court may, where the circumstances are exceptional, order that the costs be shared and, under Article 88,

in proceedings between the Communities and their servants the institutions are to bear their own costs.

41 The Court observes that in this action the defendant did not lodge its defence within the prescribed period and that this led the applicant to set in motion the procedure for judgment by default provided for in Article 122 of the Rules of Procedure. During the hearing in the course of that procedure, the applicant requested the Court to allow the defendant to lodge its defence out of time.

42 The Court considers it fair to order the applicant's costs relating to the default procedure and the hearing of 10 November 1992 to be borne by the defendant.

On those grounds,

THE PRESIDENT OF THE FIFTH CHAMBER
OF THE COURT OF FIRST INSTANCE

hereby orders:

1. The application is dismissed as inadmissible.

2. The defendant shall pay, in addition to its own costs, the applicant's costs relating to the default procedure and the hearing of 10 November 1992.

3. The applicant shall bear the remainder of his own costs.

Luxembourg, 14 July 1993.

H. Jung — D. P. M. Barrington

Registrar — President