JUDGMENT OF THE COURT (FIRST CHAMBER)
17 NOVEMBER 1965[1]

Jean Lens
v Court of Justice of the European Communities

Case 55/64

Summary

1. Officials — Appeals — Time-limits — Extension of time by means of a complaint within the meaning of Article 90 of the Staff Regulations of officials
(Staff Regulations of officials of the ECSC, Article 91)

2. Officials — Appeal against a measure confirming a previous decision — Time-limit for appeal against such decision expired — Loss of right to appeal
(Staff Regulations of officials of the ECSC, Article 91)

3. Procedure — Judgment granting annulment — Legal effects — Limited to the parties and to the persons directly concerned by the measure annulled — Judgment constituting a new fact — Concept

1. Cf. paragraph 5, summary in Case 28/64, Rec. 1965, p. 308.
2. A measure which merely confirms a previous decision cannot revive an already time-barred right of appeal against that decision.
   Cf. paragraph 1, summary in Joined Cases 50, 51, 53, 54 and 57/64.
3. Cf. summary in Case 46/64.

In Case 55/64

JEAN LENS, a Principal Assistant in the Internal Services Department of the Administration of the Court of Justice of the European Communities, represented by Fernand Probst, advocate of the Luxembourg Bar, with an address for service at the latter's Chambers at 26 avenue de la Liberté, Luxembourg,

applicant,

v

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES, represented by its Registrar, Albert Van Houtte, acting as Agent, with an address for service at the Court, 12 rue de la Côte-d'Eich, Luxembourg,

defendant,

1 — Language of the Case: French.

Application for the partial annulment and for the variation of a decision of 8 October 1964 by which the President of the Court refused to alter the step granted to the applicant by a regrading decision of 14 March 1963;

THE COURT (First Chamber)

composed of: L. Delvaux, President of Chamber, A. Trabucchi and R. Lecourt (Rapporteur), Judges,

Advocate-General: K. Roemer
Registrar: H. J. Eversen

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

By decision of the President of the Court taken on 14 March 1963, notified to the party concerned on 2 April 1963, Mr Jean Lens was appointed to the administration of the Court as a Principal Assistant in Grade B1, Step 1 with effect from 1 January 1962. This decision was taken as part of the administrative reorganization rendered necessary by the transition from the Staff Regulations of officials of the ECSC to the Staff Regulations of officials of the EEC.

By a request submitted on 29 September 1964 Mr Lens asked to be assigned to Grade B1, Step 2, with effect from 1 July 1960, pursuant to the principles set out in the judgment in Case 70/63 of 7 July 1964, delivered in an action between another servant of the Court of Justice, namely Mr Collotti, and the said Court.

By letter of 8 October 1964, the President of the Court stated that he could not grant the said request and that the judgment in Case 70/63 could only have legal consequences 'in the case of the official concerned'.

After receiving the said letter of 8 October 1964, Mr Lens lodged an appeal, entered at the Registry under No 55/64 on 5 December 1964, against the decision rejecting his request.

By a resolution of the Court passed on 17 September 1964 the Registrar, Mr Albert Van Houtte, was appointed as Agent for the purpose of representing the Court.

The procedure followed the normal course. However, upon seeing the pleadings of the Court, which argued that the appeal was inadmissible, the applicant applied on 19 July 1965 'for a decision on a preliminary objection in accordance with Article 91 of the Rules of Procedure'.

In doing so the applicant sought to raise two general questions. He suggested that the Court should make clear what was the time-limit for lodging an application

based on Article 90 of the Staff Regulations of officials. He then suggested that the Court should clarify the legal effect of a judgment as regards persons directly 'concerned by the measure annulled', other than the parties to the action.

He expressed the view 'that it would be preferable to dispose of these questions before any discussions as to the substance', without however making any definite request.

The defendant left it to the discretion of the Court to decide whether the 'questions' raised by the applicant in the said request should be dealt with.

The Court decided of its own motion to hear the parties as to the admissibility of the application at the hearing on 6 October 1965, and the parties, who were duly summoned for this purpose, were heard on that date.

The Advocate-General delivered his opinion at the hearing on 21 October 1965.

II — Submissions and arguments of the parties

A — *Admissibility*

The *applicant* argues that since Article 90 of the Staff Regulations of officials does not lay down any time-limit for the submission of a request of a complaint, an application directed against the rejection of the said request or complaint need only be submitted within the period laid down in Article 91 (2) in order for it to be admissible, and this period starts to run from the date when the rejection takes place.

The *defendant* refers to the judgment in Case 3/59 of 8 March 1960 and replies that, 'although it is true that Article 90 does not specifically lay down a time-limit for submitting an appeal through official channels, the principles of law generally accepted in the Member States as well as the case-law of the Court accept the principle "of a reasonable time-limit" in the interests of the efficient running of the institutions and of legal certainty. This principle is intended to prevent the legality of administrative decisions being called in question indefinitely'.

The defendant further states that an appeal through official channels which contests an administrative decision taken nearly a year and a half previously is obviously out of time and that such a decision should be considered as definitive in view of the need for sound administration.

The *applicant* relies secondarily on the judgment in Case 70/63 as a new fact enabling time to start running again. This judgment is of special relevance to the administration of the Court, which was the defendant in Case 70/63 as it is in the present case. Therefore by reason of this new fact the contested decision ceases to be merely confirmatory, if indeed it were so, and constitutes a new decision.

The *defendant* replies that the recent case-law of the Court (judgments in Cases 46/64 of 8 July and 50/64 of 14 July 1965) shows that the judgment in Case 70/63 was only concerned with the individual position of the applicant Collotti, and its legal effects cannot go beyond that particular case.

B — *The substance of the case*

The *applicant* requests that the principles on which the judgment in Case 70/63 is based be applied. He maintains that a regrading based on a reassessment of the post which he occupies requires that he be given the same step in the new grade as the one which he had in the old one.

The *defendant* relies upon the procedure generally followed by the institutions and upon the case-law of the Court. It argues that the judgment in Case 70/63 only applies to the personal position of Mr Collotti.

III — Conclusions of the parties

The applicant claims that the Court should:

'declare that the present appeal is admissible and that it is well-founded;

accordingly, vary the refusal contained in the decision of the President of the Court of 8 October 1964;

hold that the grading of the applicant as fixed on 14 March 1963 is erroneous;

hold that the applicant is to be classified in Grade B1, Step 2, with 18 months' seniority in the step and with arrears of pay back-dated to 1 January 1962;

order the defendant to pay the costs'.

The defendant contends that the Court should:

'dismiss the appeal made by Mr Jean Lens as inadmissible because it has been lodged out of time;

alternatively, should the appeal be accepted as admissible, dismiss it as unfounded in law;

order the applicant to bear his own costs and expenses'.

The two pleadings 'relating to the procedural issue raised by the applicant on the basis of Article 91 of the Rules of Procedure' do not contain formal conclusions.

Grounds of judgment

On 5 December 1964 Mr Lens lodged an appeal against the decision of the President of the Court of 8 October 1964, rejecting his complaint of 29 September 1964. This decision related to the grading given to him by a decision of 14 March 1963, notified to him on 2 April 1963.

The admissibility of the application on a procedural issue

During the course of the procedure, and by a document dated 19 July 1965 headed 'Application on a procedural issue pursuant to Article 91 of the Rules of Procedure' Mr Lens made it known to the Court that it seemed to him 'preferable to dispose of "two questions" before any discussions as to the substance of the appeal'. Since this document does not contain any formal conclusions it seems simply to express a wish. It has therefore failed to bring effectively a clearly stated application on a procedural issue before the Court, and it must be declared inadmissible.

The admissibility of the appeal

Under Article 92 of the Rules of Procedure the Court may at any time of its own motion consider whether there exists any absolute bar to proceeding with a case. The admissibility of the appeal made by Mr Lens must therefore be examined from this point of view.

On 29 September 1964 the applicant submitted 'a request of complaint' through official channels under Article 90 of the Staff Regulations of officials against the disputed decision of 14 March 1963.

This request or complaint through official channels invited the appointing authority to revoke the said decision and to regrade the applicant retroactively on the basis of the principles stated in the grounds of the judgment in Case 70/63.

Under Article 91 (2) of the Staff Regulations of officials, appeals to the Court shall be filed within three months beginning with the date of notification of the decision to the person concerned. Therefore a request or complaint through official channels which is not filed within the said period cannot suspend the effects of this time-limit.

In the present case, since notification of the decision was given to the applicant on 2 April 1963, his request or complaint through official channels filed on 29 September 1964 was thus made almost eighteen months later, which means that it was made after the expiry of the period of three months laid down in Article 91 (2) of the Staff Regulations. Therefore the said request or complaint could not suspend this limitation period.

It is not possible to find in the answer given by the appointing authority on 8 October 1964 to the request or complaint through official channels any factors which could enable the period referred to in Article 91 (2) of the Staff Regulations to start to run afresh. In fact this answer does no more than confirm the decision of 14 March 1963. Therefore it cannot have caused the period for filing an appeal to the Court based on Article 91 of the Staff Regulations to start to run afresh.

The applicant relies on the new fact constituted, according to him, by the judgment in Case 70/63 delivered by the Court on 7 July 1964 in a case between its administration and one of its servants, Mr Collotti. However, this judgment was delivered in a case to which the applicant was not a party, and as regards him it cannot cause the period for lodging an appeal to the Court to start to run afresh. In fact it matters little that the defendant in that case and the defendant in the present one are the same. This does not alter in any way the fact that the applicant was not directly concerned by the judgment delivered in the action brought by Mr Collotti.

Therefore the said judgment in Case 70/63 cannot constitute a new fact in the present case.

The appeal is therefore inadmissible.

Costs

The applicant has failed in his appeal.

Under Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs.

However, Article 70 of the Rules of Procedure provides that, in proceedings commenced by servants of the Communities, institutions shall bear their own costs.

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 Staff Regulations of officials, especially Articles 90 and 91;
Having regard to he Rules of Procedure of the Court of Justice, especially Articles 69 and 70,

THE COURT (First Chamber)

hereby:

1. **Dismisses the appeal in Case 55/64 as inadmissible;**
2. **Orders the parties to bear their own costs.**

Delvaux Trabucchi Lecourt

Delivered in open court in Luxembourg on 17 November 1965.

H. J. Eversen
Assistant Registrar
for the Registrar

L. Delvaux
President of the First Chamber

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 21 OCTOBER 1965[1]

Mr President,
Members of the Court,

Just as in Case 20/65, the applicant in the case upon which I am about to deliver my opinion is an official of the Court. He performs the duties of a Principal Assistant (Grade B1 in the Staff Regulations of officials) in the Internal Services Department of the Administration of the Court.
After the entry into force of the new Staff Regulations of officials and the adoption of the definitions of posts by

1 — Translated from the German.