JUDGMENT OF THE COURT (FIRST CHAMBER)
2 JULY 1969[1]

Reinaldus Renckens
v Commission of the European Communities

Case 27/68

Summary

1. *Officials — Rationalization of departments after the Merger Treaty — Powers of the Commission*
   (Regulation No 259/68 of the Council, Article 4)

2. *Officials — Decision adversely affecting — Statement of reasons — Scope*
   (Staff Regulations of Officials of the ECSC, Article 25)

3. *Officials — Decisions concerning officials — Review by the Court — Limits*

1. In conferring on the Commission power to take measures, in particular pursuant to Article 4 of Regulation No 259/68, terminating the service of individuals consequent upon the rationalization and the reduction of staff, the Council did not delegate legislative powers to the Commission but entrusted it with the practical implementation of the rules which it laid down in that regulation within the limits of the jurisdiction conferred on it by the Treaty.

2. The duty to state the reasons for a decision adversely affecting an official is fulfilled when the reasons on which the measure in question is based are shown clearly and unambiguously. The Administration cannot be expected to go further and give particulars of its assessment of him in comparison with each of the other officials of equal rank who are not the subject of the same measure.

3. Although the Court may not substitute its own value judgment for that of the Commission, it may nevertheless check whether the decision terminating an official's service was taken having regard to the criteria laid down in Article 4 of Regulation No 259/68 and with the object of rationalizing its departments.

In Case 27/68

REINALDUS RENCKENS, an official of the European Communities, residing at 78 Route d'Arlon, Luxembourg, represented and assisted by Jacques Putzeys, Advocate at the Cour d'Appel, Brussels, with an address for service

1 — Language of the Case: Dutch.

in Luxembourg at the Chambers of Ernest Arendt, 34 rue Philippe-II,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Louis de la Fontaine, assisted by H. Ph. Visser 't Hooft, of the Commission's Legal Department, with an address for service in Luxembourg at the Chambers of Émile Reuter, Legal Adviser to the Commission, 4 boulevard Royal,

defendant,

Application for:

(a) annulment of the decision of 26 June 1968 terminating the applicant's service;

(b) annulment of the implied decision rejecting the complaint lodged by the applicant on 15 July 1968 under Article 90 of the Staff Regulations of Officials of the ECSC against the decision of 26 June 1968 and, in addition, annulment of the rejection of his application for the vacant post in the Press and Information Office at The Hague;

(c) annulment of the express rejection of the aforesaid complaint contained in the letter of 31 October 1968 from the President of the Commission.

THE COURT (First Chamber)

composed of: J. Mertens de Wilmars, President of Chamber (Rapporteur), A. M. Donner and R. Monaco, Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The applicant entered the service of the High Authority of the ECSC in May 1953. When the events which gave rise to these proceedings took place, he was serving as an Adviser in Grade A3 in the Directorate-General for Press and Information of the Commission of the European Communities based in Luxem-

bourg. By letter of 22 May 1968, the President of the Commission informed the applicant that, as part of the rationalization of departments, his name appeared on a list of the officials in respect of whom the Commission intended to take measures terminating their service as provided for under Article 4 of Regulation No 259/68 of the Council.

In a letter of 14 June 1968 (Schedule II to the application), addressed to the President of the Commission, the applicant set out his objections to his inclusion on the aforesaid list. He laid special emphasis on the fact that a post equivalent to the one he occupied at Luxembourg was vacant at The Hague.

On 24 June 1968, the applicant addressed another letter to the President of the Commission requesting that, as an alternative, he be assigned to an A5-A4 post which was due to become vacant shortly in the Spokesman's Group in Brussels (Schedule IV to the application).

On 26 June 1968, at its 42nd meeting, the Commission adopted a measure terminating the service of the applicant with effect from 1 October 1968 and informed him of it in writing on 28 June (Schedule V to the application).

On 15 July 1968, the applicant submitted a complaint against this decision through official channels. He reiterated his conviction that he fulfilled the conditions for appointment to the post vacant at The Hague and challenged the reasons given for the decision terminating his service. He made particular reference to the fact that, at the end of 1967, he had been asked whether he would accept this post, and that, having said that he would, he had even discussed with a member of the Commission working methods to be applied at the office at The Hague.

The vacant post at The Hague was advertised on 17 October 1968. On 31 October 1968 the Commission expressly rejected the applicant's complaint, declaring that the disputed measure had been taken with due regard to all the considerations to be taken into account: the ability, efficiency, conduct in the service, family circumstances and seniority of all officials in the same grade (Schedule VIII to the application).

The present appeal was lodged at the Court Registry on 13 November 1968.

In a separate document on the same date, the applicant lodged an application for suspension of the operation of the disputed decisions.

These applications were dismissed by order of 15 December 1968.

The pleadings of the parties were lodged within the prescribed time-limits and the written procedure followed the normal course.

At the hearing on 14 April 1969 the Court (First Chamber), upon hearing the preliminary report of the Judge-Rapporteur and the views of the Advocate-General, decided to open the oral procedure without any preparatory inquiry.

The oral observations of the parties were made at the hearing on 30 April 1969.

The Advocate-General delivered his opinion at the hearing on 4 June 1969.

II — Conclusions of the parties

A — The *applicant* claims that the Court should:

1. Entertain the action for annulment;
2. As to the substance of the case, annul the contested measures, and, in consequence, declare that the applicant has remained an official of the European Communities and order that the Commission shall duly restore him to his financial position and his rights under the Staff Regulations;
3. Order the defendant to pay the costs.

B — The *defendant* contends that the Court should:

— dismiss the application for annulment instituted by Mr Renckens as un-

founded with appropriate order as to costs.

III — Submissions and arguments of the parties

A — *Admissibility*

The defendant does not dispute the admissibility of the application.

B — *The substance of the case*

1. First complaint

The *applicant* argues that the decision, taken on 26 June, to terminate his service is irregular because, despite the task, which is in any case invalid, assigned to it by the Council, the Commission has no power to take such a measure.

Under Annex I to the Merger Treaty, the Commission is assigned the task of rationalizing its departments.

As, under the second paragraph of Article 9 of the Merger Treaty, the Commission exercises the powers and jurisdiction which previously devolved, in particular, on the High Authority of the ECSC under the conditions laid down in the Treaties, it cannot be assigned tasks not provided for under the Merger Treaty by the Plenipotentiaries of Member States who signed the aforesaid Protocol.

In entrusting the Commission with the power to amend, if only by means of temporary measures, the Staff Regulations issued by the Council of Ministers, the Plenipotentiaries of the Member States exercised a delegation of powers involving an amendment of the Treaties which could have been agreed expressly only by the high contracting parties.

The Council could not, on the basis of an unlawful delegation, use Regulation No 259/68 as a device for authorizing the Commission to adopt measures creating exceptions to the Staff Regulations in the case of members of staff who had not already been specified by reference to objective and impersonal criteria. The application of staff regulations in derogation of their provisions amounts to the same thing as amending them.

The *defendant* replies that the task assigned to the Commission in Annex I to the Final Act of the Brussels Conference meant that the Commission had to take certain steps within the framework of its responsibilities, that these responsibilities are specified in Regulation No 259/68 which, pursuant to Article 24 of the Merger Treaty, laid down the new Staff Regulations common to officials of the three Communities. In this instance, the argument put forward by the applicant concerning the validity of the task assigned to the Commission is inadmissible since the disputed decision was taken solely on the basis of Regulation No 259/68.

Moreover, the validity of the said regulation cannot be challenged by questioning the legality of the said task since Regulation No 259/68 is founded on Article 24 of the Merger Treaty pursuant to which the Council, as the competent body, drafted it.

This regulation, and more particularly Chapter II thereof, in no way empowers the Commission to take measures substantially amounting to an amendment of the new Staff Regulations laid down in Chapter I and, even though Chapter II speaks of 'Special measures' the chapter forms an integral part of the new Staff Regulations.

The Commission confined itself to the administrative implementation of Staff Regulations which were issued by the competent authority and which clearly took full account of the requirements of the merger. It is therefore incorrect to speak of a delegation of powers to the Commission.

2. Second complaint

The *applicant* states that, on the pretext of rationalization, Regulation No 259/68 introduces emergency legislation contrary to the general principle of equality of treatment of officials.

According to him, Article 4 of Regulation No 259/68 means that, for reasons of political expediency, the Commission is authorized to put an end to a service relationship under Staff Regulations and to infringe the guarantees which they contain of permanent employment; he alleges that, in reality, the opportunity was taken to dispense with certain officials on the pretext of a non-existent rationalization.

In allowing the Commission to violate the principles of legal certainty the Council acted *ultra vires*.

The *defendant* replies that the applicant has not substantiated his allegation. According to the Commission, the rationalization of departments created an objective basis for the measures to be taken by the Commission and that objectivity was further underwritten by the criteria set out in Article 4(2) of Regulation No 259/68.

3. Third complaint

The *applicant* contends, in addition, that the reasons given for the decision of 26 June 1968 do not correspond to the facts.

According to him, while the Commission was dismissing officials on the pretext of rationalization, it was recruiting others for equivalent posts, and dismissed the applicant without finding out whether he could be taken back in a vacant post at The Hague.

As the termination measures had to be taken for the purpose of rationalizing the departments, consideration should be given to the question whether in fact any such rationalization took place.

The applicant states that, as regards the Information Department, which was already a joint one, three new divisions were set up with the result that, after the merger, the number of officials increased from 118 to 173. According to him there was no genuine rationalization and it is for the Commission to prove that there was no possibility of retaining him in his grade when the staff complements were re-structured and expanded.

The applicant finds it difficult to believe that it was impossible to re-classify him, the more so because a number of A3 and A4-A5 posts, a list of which was published in the Staff Courier, were declared vacant in the weeks prior to the contested decision and, according to him, a transfer would not have been impossible. This applies particularly to the post at The Hague, for which the applicant had every qualification without needing to undergo a period of adjustment. This is because the duties of the post at The Hague were similar to those he carried out in Luxembourg, as described in a note to Mr Rabier (Schedule I to the reply) and because, moreover, the reports on the applicant indicate that he fully met the demands made on him.

In any case the defendant did not even consider his application for the post at The Hague. It is begging the question for the Commission to assume merely from the fact that the applicant was not assigned to the post that it has proved that his application was considered. There is therefore, no evidence of a consideration of the comparative merits of the candidates.

The *defendant* replies that the reasons given for the contested decision could not be expected to go expressly into every possible alternative solution though, needless to say, the Commission duly considered all possible alternatives.

The Commission emphasizes the limits imposed on the extent to which the Court may review the assessments of merit which the Commission is called upon to make.

Nevertheless it feels able to rebut the specific arguments advanced by the applicant:

(1) With regard to the contention that several A3 and A4-A5 posts were declared vacant during the weeks previous to the contested decision, the defendant points out that the applicant is merely trying to create an 'impression'. The

Commission cannot be expected to prove, in each individual case, that the applicant was not suitable for the vacant post.

The difficulty of the Commission's task, the fact that the vacancies mentioned by the applicant are clearly beyond his capabilities and the impossibility of demonstrating the justice of every aspect of a value judgment justify the assumption that the rationalization was carried out with the utmost care.

(2) With regard to the argument that the number of staff in the Information Department was increased, the defendant replies that a re-structuring which does not result in a reduction in staff is not necessarily incompatible with rationalization. It points out that the new detailed list of posts comprises at least 15 posts in Grade A which were previously occupied by experts on a contractual basis or by auxiliary staff. Again, the new Directorate-General absorbed certain activities previously carried out by another department (such as certain documentation and analysis activities of the ECSC). The alleged increase from 50 to 58 in the number of Grade A officials is thus in fact a reduction and the information sector has in fact been rationalized.

(3) With regard, finally, to the contention that the Commission did not consider the applicant for the post at The Hague, the defendant believes that, on the contrary, the facts as a whole point to the conclusion that his application was considered. If the applicant's contention concerning the burden of proof had to be accepted, the Commission would be faced with the task of providing proof which it is almost impossible to supply.

The defendant emphasizes that the qualifications required at The Hague were very different from those required in Luxembourg. Mr Rabier's note (Schedule I to the reply) shows that the qualifications of the applicant were based on ECSC requirements rather than on those of Euratom and the EEC, which are called for at The Hague. Finally, the exploratory discussions in the winter of 1967-1968 could in no way restrict the defendant's freedom of action.

4. Fourth complaint

The *applicant* claims that the contested decisions are based on a statement of reasons which is purely formal and makes no mention of the factual considerations underlying them, whereas the grounds for a decision must be set out in precise terms in order to enable the official concerned to examine them and the Court to review them.

According to the applicant, the procedure provided for under Article 4(2) of Regulation No 259/68 must be applied in conjunction with that provided for under Article 29 of the Staff Regulations; in the present case, the Court should carry out its review under two heads:

(a) That of the decision to terminate his services: how the considerations to be taken into account were fixed and how they have been applied;

(b) That of the appointments procedure: how the applicant's qualities have been compared and considered.

The applicant believes that, under the procedure provided for in Article 4 of Regulation No 259/68, he has a right to know how the list provided for under that article, and which is the outcome of a comparison between himself and others, was drawn up; by what method the selection was made; and whether and to what extent the criteria used were applied not only to his own case but also to officials who were not axed.

The Commission has not in this case produced proof that it carried out an objective assessment. In fact the reasons stated for the decision of 26 June 1968 are that, in view of the applicant's age, it seemed undesirable to assign him to Grade A duties which called for a different training from his own and which

would have made necessary a period of adjustment to the post concerned.
This very general assessment might perhaps apply in respect of many vacant posts but not all of them. This statement of reasons is quite worthless as regards the vacant posts in the Press and Information Department, since in this case what is at issue is a question of promotion and transfer.
Finally, the letter of 31 October 1968 represents nothing more than confirmation of the decision of 26 June 1968.
The *defendant* replies that the reasons given for the decision of 26 June 1968 are complete, and include references to the applicant's family circumstances and age, and that in its letter of 31 October 1968 it once again set out in full the considerations taken into account.
For the rest, the defendant refers to the case-law of the Court concerning the limit to the extent to which the grounds for decisions must be detailed and the extent to which they may be reviewed by the Court (judgment of 5 December 1963, *Leroy* v *High Authority*, [1963] E.C.R. 197; judgment of 19 March 1964, *Raponi* v *EEC Commission*, [1964] E.C.R. 129).

5. Fifth complaint

The applicant argues that the contested decisions violate the legal principles governing the statement of reasons for administrative measures and infringe the Staff Regulations of Officials, more particularly Article 29, because the applicant's candidature for the post at The Hague was dismissed without reason given though like every official he had the right to demand that his merits and qualities should be properly and objectively compared with those of the other candidates.
The reasons for the decision were given in the statement of defence only after the contested measure in order to justify it.
Furthermore, the reasons given were insufficient. The applicant represented the director of the joint department in Luxembourg and was therefore the senior official in that department in Luxembourg. He was responsible for official visits and training courses in Luxembourg. He was responsible for maintaining contact with the editors of Dutch newspapers and had, moreover, taken over part of the work of the office at The Hague. No proof has been adduced that he was incapable of assuming responsibility for the office at The Hague.
The *defendant* refers to the reply given in answer to the applicant's third and fourth complaints and expresses the view that the fifth has no real substance.

Grounds of judgment

1/2 The application seeks the annulment of the decision of 26 June 1968 whereby the Commission adopted a measure terminating the service of the applicant, and also the annulment of the implied decisions rejecting (a) his complaint through official channels against the said decision and (b) the application for the post of Head of the Press and Information Office at The Hague which he submitted on 14 June 1968; and, finally, the annulment of the express rejection of the aforesaid complaint by letter from the President of the Commission dated 31 October 1968. The application also seeks a declaration that the applicant has remained an official of the European Communities and that the Commission should duly restore him to his financial position and rights under the Staff Regulations.

A — Admissibility

3/4 The application, in so far as it seeks the annulment of the implied rejection of the applicant's complaint, has lost its purpose, since the complaint was expressly rejected by letter from the President of the Commission dated 31 October 1968. The application is also inadmissible in so far as it concerns the said letter of 31 October 1968 which did no more than confirm the decision of 26 June 1968, which is also the subject of the application.

5/8 The application is, moreover, inadmissible in so far as it concerns an implied decision rejecting the application by the applicant for the post of Head of the Press Office at The Hague. No post had, in fact, been declared vacant at that date and, in these circumstances, the silence of the Commission could not be regarded as an implied decision rejecting the application. Nevertheless, the considerations to which the applicant has drawn attention in this connexion might, in an appropriate case, require to be taken into account in deciding upon the legality of the decision terminating his service. They will therefore be examined when the objections which he has raised against that decision are considered.

9/10 The applicant's request that the Commission be ordered to restore him to his financial position and rights under the Staff Regulations is likewise inadmissible. If the decision were to be annulled, it would be for the Commission to take the necessary steps to comply with the judgment.

11/12 The application for annulment is admissible in so far as it is directed against the decision of 26 June 1968 since the appeal through official channels of 15 July 1968 was brought within the prescribed period. For the rest, it is inadmissible.

B — The substance of the case

First submission

13 In his first submission the applicant challenges what he believes to be the legal basis of the contested decision and contends that the Commission was not competent to take the decision, since the power delegated to it under Annex I to the Merger Treaty of 8 April 1965 was contrary to the Treaties, in particular the Treaty establishing the European Coal and Steel Community.

14/18 Annex I to the Merger Treaty signed, like the Treaty itself, by the representatives of the Member States, calls on the Commission to take the necessary

steps to rationalize its departments following the merger of the executives and fixes a time within which this must be done. The task thus assigned to the Commission does not, however, incorporate any extension of the powers which it already possessed under the Treaties and this is borne out by the statement in the Annex that the task assigned to it must be carried out 'within the framework of its responsibilities'. It was therefore the duty of the Commission to effect the rationalization of its departments within the framework of the Staff Regulations of Officials of the Communities as they were at the time or as later amended by the Council, which under Article 24 of the Merger Treaty is alone competent for this purpose. Under Article 24 it was also its duty, in this connexion, to submit proposals to the Council with a view to the preparation of new Staff Regulations. It is not disputed that the contested decision constitutes an application of Article 4 of Regulation No 259/68 concerning the Staff Regulation of Officials of the European Communities.

19 Annex I to the Merger Treaty did not, therefore, incorporate any delegation of powers whatsoever and the contested decision was taken in implementation of the Staff Regulations as adopted by the Council, which is the competent authority for this purpose.

20 The first head of this submission must therefore be dismissed.

21 The applicant goes on to argue that Article 4 of Regulation No 259/68 is illegal and, because it embodies an improper delegation of legislative powers in favour of the Commission, cannot therefore be used as a basis for the contested decision.

22/24 Under Article 24 of the Merger Treaty it is incumbent on the Council to lay down the Staff Regulations of Officials of the Communities. In so doing it clearly had to take into account the requirements of the merger of the executives. It met these requirements in particular by means of the provisions of Chapter II of Regulation No 259/68 entitled 'Special Measures'.

25 In conferring on the Commission power to take measures, in particular pursuant to Article 4 of Regulation No 259/68, terminating the service of individuals consequent upon the rationalization and the reduction of staff, the Council did not delegate legislative powers to the Commission but entrusted it with the practical implementation of the rules which it laid down in that regulation within the limits of its jurisdiction under the Treaty.

26 The second head of this submission is unfounded.

Second submission

27/28 Objecting that the Council has acted illegally, the applicant complains that, in Regulation No 259/68, it created 'emergency legislation or, more accurately, the opportunity to dispense with certain officials on the pretext of a non-existent rationalisation'. The applicant does not, however, adduce any evidence capable of substantiating this view.

29 The submission must be rejected.

Third submission

30 The applicant maintains that the statement of reasons for the contested measures is purely formal, that it makes no reference to factual considerations which might justify the decisions and that it does not explain how the list of officials affected by the measures of termination of service was drawn up.

31/32 Under the first paragraph of Article 25 of the Staff Regulations of Officials any decision adversely affecting an official shall state the reasons on which it is based. This requirement is met if the reasons on which the measure adversely affecting an official is based are shown clearly and unambiguously.

33/35 In the present case the decision of 26 June 1968 does refer to a number of considerations, such as age, vocational training, reports and family responsibilities, which, after the post occupied by the applicant had been abolished in the new detailed list of posts, were taken into account, in order to demonstrate the justice of the decision not to re-assign him to another A3 post and, in consequence, to apply the contested measure to him. The Commissiion cannot be expected, as the applicant desires, to go further and give particulars of its assessment of him in comparison with each of the other officials of equal rank who are not the subject of a decision terminating their service. Such comparisons entail complex value judgments relating to individual cases which must not be embodied in the statement of reasons for the contested decision or made known to the person concerned.

36 The submission is therefore unfounded.

Fourth submission

37/40 The applicant maintains that the decision in dispute is arbitrary and is not in fact based on the requirements of department rationalization. According to

him, several A3 and A4 posts were declared vacant during the weeks prior to the disputed measure; in the Directorate-General for Information, the number of posts was actually increased as a result of the merger. Finally, he maintains that the Commission never gave objective consideration to the possibility of re-settling him in another post in the Information Department or, more precisely, in the post of head of the office at The Hague.

41/42 Article 4 of Regulation No 259/68, while laying down precise rules to guide the Commission in drawing up the list provided for under that article, leaves the Commission free to assess each individual case on its merits. Although the Court may not substitute its own assessment for that of the Commission, it can nevertheless check whether the disputed decision was taken having regard to the criteria laid down in Article 4 of Regulation No 259/68 and with the object of rationalizing its departments.

43/44 After stating the facts concerning the age and family circumstances of the applicant and the reports on him, the Commission, in its letter of 26 June 1968, justifies the measure of termination of service on the basis that the post filled by the applicant no longer appeared in the detailed list of posts. The defendant justifies its decision not to assign the applicant to another post in Grade A3 by stating that the appointment would have required the applicant to have knowledge other than that which he possessed and would have entailed a period of adjustment to the new duties which, in view of his age, was hardly desirable.

45/47 It is clear from this decision that the Commission had regard to the criteria set out in Article 4 of Regulation No 259/68. It is also clear that, after noting that the applicant's post had been abolished, the Commission considered the possibiilty of re-assigning him to other posts which were, or were about to become vacant and that it reached a negative conclusion concerning the applicant's suitability for these posts. Thus, the fact that a number of posts were vacant is not one which could invalidate the disputed decision to terminate his service.

48 Finally, the fact relied upon by the applicant that the number of posts in the Directorate-General of Information increased in comparison with the number of posts in the former department, though only to a small extent, in no way lessens the importance of the fact that the applicant's post had been abolished in circumstances which made any re-assignment ultimately dependent on the Commission's assessment of his suitability.

49 The submission is therefore unfounded.

Costs

50/52 The applicant has failed in his appeal. Under Article 69(2) of the Rules of Procedure, the unsuccessful party must bear the costs. Nevertheless, under Article 70 of the Rules of Procedure, in proceedings instituted by servants of the Communities, the 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 Treaty establishing the European Economic Community;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;
Having regard to the Staff Regulations of Officials of the European Communities;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT (First Chamber)

hereby:

1. **Dismisses the application as unfounded in so far as it seeks annulment of the Commission's decision of 26 June 1968 and for the rest as inadmissible;**

2. **Orders each party to bear its own costs.**

Mertens de Wilmars Donner Monaco

Delivered in open court in Luxembourg on 2 July 1969.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President of the First Chamber