JUDGMENT OF THE COURT (FIRST CHAMBER)
4 APRIL 1973 [1]

Domenico Angelini
v the European Parliament

Case 31/72

1. *Officials — Non-contentious procedure — Commencement — Request starting time running — Absence of such effect*
   Staff Regulations, Article 90, Article 91)
2. *Officials — former ECSC Staff Regulations — Application for calculation of pension*
3. *Officials — Contractual employees — Transfer to Staff Regulations — Previous contract — Effects — Renunciation*

1. A letter from an official, intended to draw the attention of the competent authority to the rights he claims to possess in relation to the amount of his pension which has not yet been calculated, cannot be regarded as a request which starts time running so as to give rise to an implied decision of refusal.

2. The question whether the former ECSC Staff Regulations, in force until 1 January 1962, are wholly or partly applicable to auxiliary staff who became subject to the EEC Staff Regulations on 1 January 1962, concerns the merits of the dispute and is not necessarily linked with the establishment of the applicant in grade A 3 on 1 January 1962.

3. The transition from a contractual relationship to a relationship governed by the Staff Regulations implies, in the absence of any contrary provision, the renunciation of the effects of the previous contract.

In case 31/72

DOMENICO ANGELINI, official of the European Parliament, applicant represented by Giancarlo La Scala, advocate at Milan, and having chosen his address for service in Luxembourg in the chambers of Maître V. Biel, 71 rue des Glacis,

applicant,

v

EUROPEAN PARLIAMENT, represented by its Secretary General, H. R. Nord, assisted by Agostino Gambino, advocate at Rome, and having chosen its

1 — Language of the Case: Italian.

address for service in Luxembourg at the seat of the European Parliament, Kirchberg, c/o the Secretary General,

Application for annulment of a decision of the President of the European Parliament of 7 March 1972, rejecting the request made in a letter of 4 January 1973 whereby the applicant sought, first, the calculation of his pension on the basis of the transitional provisions of the old ECSC Staff Regulations and, second, the revisions of his classification with effect from 1 January 1962 in grade A 3, taking account of the step which he had held previously in grade A 4.

THE COURT (First Chamber)

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

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

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts and procedure may be summarized as follows:

The applicant was recruited by the Common Assembly of the European Coal and Steel Community as an auxiliary servant on 28 May 1957, by a temporary contract governed by the 'Rules for Auxiliaries'.

On 26 June 1958 he was recruited by the European Parliamentary Assembly, by a contract of indefinite duration. determinable by one month's notice, without prejudice to the subsequent conclusion of another contract. This contract was governed by the Rules of the European Parliamentary Assembly concerning servants recruited by contract in the institutions of the Communities other than the ECSC High Authority (No APE 351).

On 13 December 1962 the applicant was brought under the EEC-EAEC Staff Regulations with effect from 1 January 1692, pursuant to Article 102 of those Regulations, and was established in grade A 3.

By a decision of 6 January 1972 he was retired with effect from 2 January 1972 and granted a retirement pension with effect from 1 February 1972.

On 4 January 1972 he sent a letter to the President of the European Parliament claiming that his pension should be calculated on the basis of the ECSC Staff Regulations in force between 1957 and 1961, i. e. during the period when he had been in service, first as an auxiliary and later as a contractual servant. He argued that he had been deprived, when he was established in grade A 3 on 1 January 1962, of the steps which he had reached in grade A 4.

On 7 March 1972 the President of the European Parliament replied that his claim had been rejected, since the Rules for Auxiliaries were completely independent of the ECSC Staff Regulations and the Rules No APE 351 made no wholesale reference to those Regulations.

In addition his claim was time-barred in so far as it concerned his movement from grade A 4 to grade A 3.

On 6 June 1972 Mr Angelini instituted proceedings against this decision; his application reached the Registry on 12 June 1972. At the hearing on 7 February 1973 oral statements were made on behalf of the applicant by Maître Biel and on behalf of the European Parliament by Maître Gambino.

The Advocate-General presented his opinion at the hearing on 1 March 1973.

II — Submissions of the parties

The *applicant* asks the Court:

'1. to annul the decision of the President of the European Parliament,

2. to grant the claims put forward in his letter of 4 January 1972.'

The *defendant* asks the Court:

'— to declare that the claims put forward by the applicant are inadmissible, or at least to reject them on the merits,

— to make an order as to cost in accordance with the rules in force.'

III — Pleas and arguments put forward by the parties

The pleas and arguments put forward by the parties may be summarized as follows:

1. Admissibility of the proceedings

The *defendant* pleads that the proceedings are inadmissible because they are time-barred and because of the applicant's renunciation and delay.

— Expiry of time limits

The *defendant* pleads that the proceedings are time-barred, both with respect to the implied decision of refusal, which was deemed to occur, according to Article 91 (2), second subparagraph, two months after the claim of 4 January 1972, and with respect to the decision of the President of the European Parliament of 7 March 1972, which in any case merely confirmed the previous implied refusal and could not therefore re-open the time limits for instituting proceedings (Judgment of 7 July 1971, 79/70, Müllers v Economic and Social Committee, Recueil 1971, 689; Judgment of 24 June 1971, 53/70, Vinck v Commission, Recueil 1971, 601; Judgment of 17 March 1971, 47/70, Kschwendt v Commission, Recueil 1971, 251; Judgment of 14 April 1970, 24/69, Nebe v Commission, Recueil 1970, 145). The proceedings are also time-barred with respect to the decision to retire the applicant, taken on 6 January 1972 and notified to him on 8 February 1972.

The applicant considers that the plea of inadmissibility must be rejected. The letter of 4 January 1972 merely had a preventive character and therefore did not constitute a request to the appointing authority within the meaning of Article 90, meeting with a refusal implied from the absence of a decision

by the appointing authority. The proceedings against the decision of 7 March are admissible; the time limit of 3 months prescribed in Article 91 of the Staff Regulations should be calculated from the day when the decision was notified to the party concerned, and ten days should be added to the time limit to allow for the distance, in accordance with Annex II of the Rules of Procedure.

The defendant replies on this point that the notification of the decision — following the Court's case law (Judgment of 23 February 1961, 30/59, Gezamenlijke Steenkolenmijnen in Limburg v High Authority, Recueil 1961, 1) — is regarded as taking place on the day when it is sent, as proved by the post-mark.

— Renunciation and delay

According to the defendant, the applicant had also, by his declaration of 2 January 1963, expressly waived his rights under the contract which existed before 1 January 1962 between him and the European Parliament, thereby confirming by an express declaration the waiver which was already included in the actual text of Article 104 of the Staff Regulations.

By that declaration, the substitution of the EEC-EAEC Staff Regulations for the previous contractual rules became unchallengeable and excluded any subsequent attack.

Moreover, the proceedings are also time-barred and therefore inadmissible in so far as they seek the annulment of the applicant's establishment in grade A 3 on 13 December 1962. In this context the defendant cites the Court's case law (Judgment of 17 June 1965, 43/64, Muller v Council, Recueil 1965, 500; Judgment of 14 July 1965, 50/64, Loebisch v Council, Recueil 1965, 1016; Judgment of 17 November 1965, Lens v Court of Justice, Recueil 1965, 1034; Judgment of 14 December 1965, 47/65, Kalkuhl v European Parliament, Recueil 1965, 1251).

According to the applicant the waiver mentioned by the defendant should be regarded as null and void, since length of service confers a right to a deferred payment which an official cannot waive under Article 62 of the Staff Regulations.

The defendant replies that Article 62 of the Staff Regulations has no connection with the question at issue. The last paragraph of Article 62 states in any case that the 'remuneration' which an official cannot waive only covers basic salary, family allowances and the allowances set out in Annex VII. The impermanence of the contractual system to which the applicant was subject would not have prevented him making use of judicial remedies capable of protecting his legitimate interests.

2. The merits

— Calculation of the Pension

The applicant claims that his pension should be fixed on the basis of the ECSC Regulations.

He argues that it is impossible that a right which he possessed, at the time when he moved from the contractual system to the system of the EEC-EAEC Staff Regulations, should disappear by virtue of Article 102 of the Staff Regulations, solely because he accepted that transfer. The nature of the rights in question, being referable to public policy, makes waiver impossible.

Moreover, he could not have claimed, at the moment of his transfer, a right which would not become due until the moment when his pension became payable.

The applicant also relies on the single article of Annex X to the ECSC Staff Regulations in force from 1 January 1962 onwards. At that date he had been in service for more than 6 months and fulfilled the conditions prescribed in Article 28 (a), (b), (c), (e) and (f) of the Staff Regulations. The defendant should have recognized the rights which he had expressly or impliedly obtained before he was brought under the Staff Regulations. Moreover, the right to a

pension, regarded as deferred remuneration, could not be affected by an adverse amendment, as shown by Article 92 in the transitional and final provisions of the Staff Regulations of 1 January 1962. Consequently, an official cannot be deprived of a right which, if his contract had simply come to an end in 1962, would have enabled his pension to be paid in accordance with the transitional provisions of the ECSC Staff Regulations.

In its statement of defence, the defendant institution maintains that the applicant was never subject to the ECSC Staff Regulations. These regulations provided no rules for auxiliaries and other servants. On cases where the Rules for auxiliaries entailed the application, by analogy, of certain provisions of the ECSC Staff Regulations, such provisions were expressly indicated. Besides, the Rules applicable to contractual servants (No APE 351) referred to a special Provident Fund, governed by specific rules (Provisional Rules adopted by the Bureau on 8 April 1959 — No APE 1658), with an independent fund separate from the fund provided for the staff subject to the ECSC Staff Regulations.

Even if the applicability of the ECSC Staff Regulations were conceded, no illegality could be discerned in changing from one set of Staff Regulations to another. The relationship between temporary servants and Community institutions should be regarded as a public law relationship (Judgment of 19 July 1955, 1/55, Kergall, Recueil 1955-6, 11) and the letter of appointment expressly stated that it was without prejudice to the creation of a different relationship. Consequently, the advantages conferred on an official in these circumstances by the previous Staff Regulations could not be regarded as acquired rights unless the necessary conditions for their acquisition had already been realized in full. The right to a pension is therefore governed by the Staff Regulations in force at the time of retirement. This principle corresponds to the rules governing the civil service in the Member States.

The defendant adds that contributions to the Provident Fund were taken into account when the pension was calculated, and that in fact the applicant's length of service had even been extended backwards, in accordance with Article 48 of Annex VIII to the Staff Regulations, to 16 May 1957, the date when he took up his duties as an auxiliary servant, although he had not been affiliated to any fund before 1 July 1958, because, during the first period, the Rules for auxiliaries did not provide for such affiliation. The applicant could not derive any right from Annex X to the Staff Regulations which governed only the establishment of officials holding a permanent post in one of the institutions when the Staff Regulations came into force.

Article 92 of the Staff Regulations concerns only those officials who had been brought under the ECSC Staff Regulations; it was provided that the new Staff Regulations would apply automatically to these officials in place of the Staff Regulations repealed. Article 92 does not have the meaning attributed to it by the applicant, but merely provides that the new Staff Regulations may not prejudice acquired rights.

While denying that an adverse amendment took place, the defendant points out that in any case the nature of the amendment should be determined by comparing the general scope of the new Staff Regulations with the old Staff Regulations, and not merely particular aspects.

— Appointment to grade A 3

The applicant argues in this context, as in the case of the calculation of his pension, that the rights of an official cannot be barred by lapse of time.

The defendant points out in the first place that the claim does not contain 'a brief statement of the grounds on which

the application is based,' as required by Article 38 (1) of the Court's Rules of Procedure. Moreover, the movement from grade A 4 to grade A 3 took place pursuant to Article 46 of the EEC-EAEC Staff Regulations, which corresponds to Article 46 of the ECSC Staff Regulations.

The applicant replies that his claim on this point must be interpreted, not as a legal action, but as a criticism designed to induce the Court to annul of its own motion a measure which can no longer be attacked. The refusal to bring the applicant's treatment into line with the treatment spontaneously extended by the defendant to other officials, following a new trend in the Court's case law, constitutes a new fact, justifying Court proceedings.

The defendant replies that the Court has held constantly that its decisions concern only the parties to the case and do not constitute a new fact for other parties whose position is similar (Judgment of 14 December 1965, 47/65, Kalkuhl, Recueil 1965, 1252; Judgment of 8 July 1965, 49/64, Stipperger, Recueil 1965, 661).

The movement from grade A 4 to grade A 3, pursuant to Article 46 of the Staff Regulations, took place in accordance with a criterion which the Court has held to be legitimate in the case of contractual servants who were established when the Staff Regulations came into force Judgment of 15 December 1966, Joined Cases 15/64 and 60/65, Moreau, Recueil 1966, 663).

Grounds of judgment

1 By his application of 6 June 1972, which reached the Court's Registry on 12 June 1972, the applicant instituted proceedings for the annulment of a decision of the President of the European Parliament of 7 March 1972 rejecting his claim of 4 January 1972 whereby the applicant sought to have his pension calculated on the basis of the (more favourable) transitional provisions of the old ECSC Staff Regulations and to obtain, with effect from 1 January 1962, the benefit in grade A 3 of the steps which he had reached by that date in his former grade A 4.

Admissibility

2 The defendant pleads in the first place that the proceedings are inadmissible, because they should have been directed against the implied decision of refusal, to be inferred from the defendant's failure to take a decision within two months in reply to the claim put forward in the letter of 4 January 1972.

3 This time limit expired on 5 March 1972. The defendant expressly rejected the applicant's claim by a letter of 7 March 1972. The letter of 4 January 1972, intended to draw the competent authority's attention to the rights to

which the applicant considered himself entitled, concerning the amount (which had not yet been calculated) of his pension, cannot be regarded as a request which starts time running so as to give rise to an implied decision of refusal. The applicant was therefore right to bring proceedings against the express decision of 7 March 1972; the time limit for the proceedings must be calculated from the notification of that decision.

4 The defendant pleads in the second place that, even if this is so, the proceedings are time-barred because they were brought outside the three months time limit.

5 Because the applicant resided in Italy, the time limit must be increased by 10 days in accordance with Article 1 of Annex II to the Rules of Procedure, and therefore expired at the earliest on 18 June 1972. This plea of inadmissibility must therefore be dismissed.

6 The defendant goes on to argue that the proceedings are inadmissible because they seek to re-open the validity of acts which have become final, and which the applicant did not attack at the appropriate time.

7 As regards the first part of his claim, the applicant argues that his pension should be calculated on the basis of the provisions of the ECSC Staff Regulations in force until 1 January 1962. The question whether these Regulations are, in whole or in part, applicable to auxiliary servants who were brought under the EEC Staff Regulations on 1 January 1962, concerns the merits of the dispute; contrary to the defendant's arguments, this question is not necessarily linked to the applicant's establishment in grade A 3 under the EEC Staff Regulations on 1 January 1962. The proceedings are admissible in this respect.

8 The proceedings are designed, in the second place, to give the applicant, with effect from 1 January 1962, the benefit in grade A 3 of the steps which he claims to have reached by that date in grade A 4.

9 If the applicant questioned the legality of the terms on which he was established with effect from 1 January 1962, by a decision of 13 December of the same year, he should have sought the annulment of that decision within the prescribed time limit. His present proceedings are, from that point of view, time-barred and therefore inadmissible.

Merits

10 The applicant argues that the calculation of his pension should take into account the provisions of the Staff Regulations of the Coal and Steel Community in force until 1 January 1962.

11 However, before the applicant was brought under the EEC Staff Regulations and established as an official of the European Parliament, he was never subject to the Staff Regulations of the ECSC, but was employed as an auxiliary servant on a contractual basis. Nothing prevented this category of servants, at the moment when they were brought under the new Staff Regulations, from waiving their rights (including their acquired rights) under their previous contracts, in order to obtain instead the benefits of the Staff Regulations.

12 Such a waiver must, in the absence of provisions to the contrary, which do not exist in the present case, be implied from the transition from a contractual relationship to a relationship governed by the Staff Regulations, and was moreover confirmed by the applicant's express waiver on 2 January 1963 of the clauses of the contract which previously existed between him and the European Parliament. The proceedings must therefore be dismissed on this point.

Costs

13 According to Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs. The applicant has been unsuccessful. However, according to Article 70 of the Rules of Procedure, costs incurred by the institutions in proceedings brought by servants of the Communities shall be borne by those institutions.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the oral arguments of the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to the Staff Regulations of the European Coal and Steel Community in force until 1 Janury 1962;

Having regard to the ECSC Staff Regulations which came into force on 1 January 1962, particularly Article 92 and the single article of Annex X;
Having regard to the Rules (No APE 351) of the European Parliamentary Assembly concerning servants recruited by contract in the institutions of the Communities other than the High Authority of the ECSC;
Having regard to the Staff Regulations of 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 Rules of Procedure of the Court of Justice of the European Communities, especially Article 1 of Annex II:

THE COURT (First Chamber)

1. **Dismisses the action.**
2. **Orders each party to bear its own costs.**

Delivered in open court in Luxembourg on 4 April 1973.

Monaco Donner Mertens de Wilmars

A. Van Houtte
Registrar

R. Monaco
President of the First Chamber

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 1 MARCH 1973 [1]

Mr President,
Members of the Court,

The applicant in the case on which I am presenting my opinion entered the service of the Common Assembly of the European Coal and Steel Community as an 'auxiliary assistant adviser' on the basis of a contract dated 28 May 1957. The said contract was originally valid for the period 16 May 1957 to 30 June 1957. Later it was repeatedly extended, it

1 — Translated from the German.