2. Orders the parties to bear their own costs.

Koopmans O'Keeffe Bosco

Delivered in open court in Luxembourg on 17 September 1981.

J. A. Pompe
Deputy Registrar

T. Koopmans
President of the First Chamber

OPINION OF MRS ADVOCATE GENERAL ROZÈS DELIVERED ON 9 JULY 1981 [1]

Mr President,
Members of the Court,

This action is brought against the Commission by one of its former officials, Jean Leclercq.

I — Mr Leclercq entered the service of the Commission of the European Atomic Energy Community on 15 March 1958. From 1962 he served as a head of division in that Commission and then in the single Commission of the European Communities. In 1973 he applied for the definitive termination of his service in accordance with the first subparagraph of Article 2 (3) of Regulation No 2530/72 of the Council of 4 December 1972 introducing special and temporary measures applicable to the recruitment of officials of the European Communities in consequence of the accession of new Member States, and for the termination of service of officials of those Communities. His request was granted.

As the Court knows, Article 3 (1) of that regulation provides for substantial monthly allowances to be paid to officials in such a situation. Those allowances continue until the retirement of the officials concerned, that is to say in the case of Mr Leclercq until 31 January 1984.

On 6 September 1973 three officials of the Commission who had terminated their service in accordance with Regulation No 2530/72, Mr Brinck, Mr Siebker and Mr Valette, founded a consultancy company called "SCIENCE" (Société de Consultants Indépendants et Neutres de la Communauté Européenne) which carries

1 — Translated from the French.

out technical, economic and sociological forecast studies, particularly in relation to policies for energy and industry. Mr Valette was appointed managing director and still holds that office. The applicant has also for a number of years been a member of the company.

In the past the company has entered into a number of contracts to perform studies for the European Economic Community and the European Atomic Energy Community. At the beginning of 1979 it submitted a tender for a survey relating to solar energy and was notified by telephone that the tender would have to be rejected following the negative opinion which had been given by the Advisory Committee on Commissioned Studies. In reply to the letter which he then sent to the chairman of that committee Mr Valette received a further telephone call informing him, he tells us, that the rejection was based on a series of directives relating to the use of study appropriations, according to which, otherwise than in exceptional cases and by specific derogation, contracts for studies and surveys should not be entered into with former officials who are in a position to enforce pecuniary rights against the Commission.

Thus it came about that in a letter of 12 July 1979 Mr Leclercq, who had been informed of the difficulties by Mr Valette, asked Mr Baichère, the Director-General of Personnel and Administration, to intervene so as to increase the chances of an amicable solution to the problem which had arisen. In his reply of 19 October 1979 the Director-General was able only to confirm that "pursuant to a new decision adopted by the Commission in November last year the Directorate-General for Budgets is no longer authorized to conclude contracts for studies and surveys with undertakings or associations in which former officials who still retain financial connections with the institution under the Staff Regulations have a direct or indirect interest".

Mr Leclercq then decided to take the case to court, whereupon the question arose of how the letter of 12 July and the reply contained in the letter of 19 October should be classified from the legal point of view. Taking the view that his letter might be seen to contain a complaint within the meaning of Article 90 (2) of the Staff Regulations and that the Director-General's reply might be seen as an explicit rejection of it, he took the precaution of lodging the application which was registered on 18 January 1980 as Case 28/80.

In case the letter should be classified as a mere request under Article 90 (1) of the Staff Regulations, on the same day he sent to the Secretariat-General of the Commission a formal complaint expressly referring to Article 90 (2). The purpose of the complaint was to secure withdrawal and, in so far as necessary, annulment of (i) the general decision of "November 1978 with regard to contracts for studies and surveys henceforth to be withheld from undertakings or associations involving former officials of the Commission" and (ii) the specific decision not to grant a contract for a study on solar energy to SCIENCE. The Commission failed to respond to Mr Leclercq's complaint and he lodged a second application which was registered on 14 July 1980 under No 165/80.

With respect to each of the two applications the Commission submitted separate documents pursuant to Article 91 (1) of the Rules of Procedure, applying to the Court for a decision on the admissibility of the applications. The Court then decided that at the stage of the oral procedure discussion would be confined to the admissibility of these two cases, which were joined by order of 26 March 1981.

II — My opinion will therefore be limited to an examination of the grounds of inadmissibility pleaded by the Commission. One of these, based on the lack of *locus standi* and on the absence of an act adversely affecting the person concerned is common to the two cases. The other, based on the failure to submit a prior complaint through official channels, is specific to the action brought first.

During the hearing, the representatives of the parties indicated that they regarded the latter objection as being of minor importance. In my view, it is merely subsidiary in nature by comparison with the argument that there was no act having an adverse effect on the applicant.

To demonstrate this, it is doubtless sufficient to refer to the actual terms of Article 90 (2) from which it is clear that a complaint must, if it is to be valid, be directed against an act adversely affecting the complainant. In other words, in the absence of an act having an adverse effect a complaint is, in the strict sense, without object.

In my opinion the applications lodged by Mr Leclercq are not directed against acts adversely affecting him.

Like the complaint of 18 January 1980, these applications are directed both against "the decision notified by Mr Baichère, by letter of 19 October 1979", that is to say against the rejection of the tender submitted by SCIENCE for a survey relating to solar energy, and against "the 'decision' of the general provisions adopted or decided upon" by the Commission in November 1978, to which Mr Baichère's letter refers.

With regard to the latter, it should first of all be made clear that in fact, as disclosed in the course of the action, the decision was adopted by the Commission on 26 June 1974. It has also been possible to establish during the course of the action the exact wording thereof, which is:

"Otherwise than in exceptional cases and by express derogation decided upon by the Commission, contracts for studies and surveys should not be concluded with former officials who retain financial links with the Commission."

This wording shows that the act is one of a general and impersonal nature.

Like Mr Advocate General Capotorti (in his recent opinion of 14 May 1981, *Bowden and Others* [1981], not yet published), I consider that an act of this kind cannot be challenged by means of the action which officials — and, by extension, former officials — are entitled to bring under Article 179 of the Treaty and for which provision is made by Articles 90 and 91 of the Staff Regulations. In the first place, the very text of Article 90 (2) presents an obstacle; it provides, as Mr Capotorti points out, "that an official may submit to the

appointing authority a complaint against any 'decision' adversely affecting him". I concur that "the use of the term 'decision' clearly means that only binding acts of an individual nature may be challenged".

To this textual argument may be added another, which is more fundamental inasmuch as it is based on consideration of the system of remedies set up by the Treaty. I do not need to remind the Court that, for individuals in general, actions seeking the annulment of acts which are general in scope are clearly inadmissible under Article 173 of the Treaty. In my opinion there is no reason for actions of the same kind brought by officials on the basis of Article 179 to be treated differently. For this reason there is no doubt in my mind that the actions brought by Mr Leclercq are inadmissible in so far as they are directed against the decision of 26 June 1974.

It is equally clear that the same conclusion is called for in so far as the actions seek annulment of the decision rejecting the tender for a survey in relation to solar energy. Despite its individual character, that decision likewise does not constitute an act adversely affecting the applicant. In a series of consistent decisions the Court has in fact taken the view that "only measures capable of directly affecting a specific legal situation may be considered as having an adverse effect" (judgments of 1 July 1964 in Case 26/63 *Pistoj* v *Commission* [1964] ECR 351 and in Case 78/63 *Huber* v *Commission* [1964] ECR 375; of December 1969 in Case 32/68 *Grasselli* v *Commission* [1969] ECR 511, paragraph 4, and of 11 July 1974 in Joined Cases 117/73 and 5/74 *Reinarz* v *Commission* [1974] ECR 828, paragraph 13. In this case, if the contested decision directly affects a specific legal situation, it can only be that of the company to which it is addressed, not the legal situation of the members of that company. In other words, the company SCIENCE acts as a sort of screen between Mr Leclercq and the decision made in relation to the company.

In these circumstances, my opinion can only be that the applications lodged by Mr Leclercq against the Commission on 18 January 1980 (Case 28/80) and 14 July 1980 (Case 165/80) are totally inadmissible.

Pursuant to Articles 69 (2) and 70 of the Rules of Procedure, the parties should bear their own costs.