JUDGMENT OF THE COURT (FIRST CHAMBER)
15 DECEMBER 1966[1]

Hans Dieter Mosthaf
v Commission of the EAEC

Case 34/65

Summary

1. Measures adopted by an institution — Definitive nature — Criteria

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

3. Measures adopted by an institution — Annulment dependent on a new factor — Criteria — Principle of legal certainty to be taken into consideration

1. A measure containing a specific decision made without any reservations must be regarded as final in the absence of material factors clearly and consistently indicating the contrary.
2. Cf. para. 4, summary, Case 43/64, Rec. 1965, page 500.
3. Protection of the certainty of legal positions and relationships implies that the existence of decisions of Community authorities governing such positions and relationships cannot for ever be called in question.

In Case 34/65

HANS DIETER MOSTHAF, an official of the Commission of the European Atomic Energy Community, represented by Arved Deringer, advocate of the Oberlandesgericht, Cologne, with an address for service in Luxembourg at the Chambers of Ernest Arendt, advocate of the Cour d'Appel, 6 rue Willy-Goergen,

applicant,

v

COMMISSION OF THE EUROPEAN ATOMIC ENERGY COMMUNITY, represented by its Legal Adviser, Louis de la Fontaine, acting as Agent, with an address for service in Luxembourg at the offices of the Secretariat of the Legal Department of the European Executives, 2 place de Metz,

defendant,

1 — Language of the Case: German.

Application to annul the decision adopted by the Commission of the European Atomic Energy Community on 3 March 1965, dismissing the complaint made by the applicant on 22 January 1965;

THE COURT (First Chamber)

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

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

gives the following

JUDGMENT

Issues of fact and of law

I — Facts

The facts may be summarized as follows.
The applicant was recruited on the basis of a letter from the Commission of 1 June 1960 and was assigned to the Directorate for Health and Safety. He took up his duties on 10 June 1960 with a salary appropriate to Grade A 7, Step 1, of the Staff Regulations of the ECSC.
By analogy with the abovementioned Staff Regulations, the applicant was reclassified as from 1 December of the same year in Grade A 6, Step 1. Following the integration procedure, in accordance with Article 102 of the Staff Regulations of Officials, he was appointed an Administrator and established in the same grade with effect from 1 January 1962.
As from 10 February 1962 the applicant was assigned to the 'Commission Spokesman's Group'. He was later promoted to Grade A 5, Step 1, as from 1 December 1962.
Following Vacancy Notice No V/55/63 of 26 June 1963, the applicant applied for a vacant post in the Directorate-General for Industry and Economy (Economy Division).
While remaining in his previous Grade A 5, the applicant was assigned this post with effect from 1 March 1964 by decision of the Commission of 13 February 1964. This is the post which he holds at present. He was informed of this decision by letter of 19 February 1964.
In a memorandum of 17 August 1964, addressed to the Director-General for Industry and Economy, the applicant observed that this classification was too low, having regard to the duties attaching to his post which, in his opinion, corresponded to those of Head of Division. The applicant referred to an earlier undertaking and requested promotion to Grade A 4.
In his reply of 9 November 1964, the Director-General for Industry and Economy emphasized that in accordance with the decision of the appointing authority the Notice of Vacancy on the basis of which the applicant had been selected specifically concerned a post of Principal Administrator in Grade A 5 – A 4. He further explained that under the procedure drawn up by the Commission concerning advancement the applicant could not be granted the promotion requested.
By letter of 22 January 1965 the applicant submitted a complaint to the Commission in which, developing the arguments already set out in the memorandum of 17 August 1964, he asked to be granted Grade A 3 as

being appropriate to his duties and powers which were effectively those of Head of Division. This request has rejected by a decision of the Commission of 3 March 1965, notified to the applicant by letter of 8 March 1965. It is this decision which forms the subject of the present application for annulment.

II — Conclusions of the parties

In his application instituting the proceedings the *applicant* claims that the Court should:

'1. Annul the decision of the Commission of 8 March 1965;
2. Order the Commission to classify the applicant in Grade A 3 as from 1 April 1965;
3. Order the Commission to pay the costs.'

In its statement of defence, the *defendant* contends that the Court should:

'1. Declare that the application is inadmissible;
2. In the alternative, dismiss it as unfounded;
3. Order the applicant to pay the costs of the action.'

In its application on a procedural issue, the *defendant in the main action* contends that the Court should:

'1. Make a preliminary ruling on the plea of inadmissibility in accordance with Article 91 of the Rules of Procedure;
2. Dismiss the application as inadmissible;
3. Order the applicant to bear the costs of the action.'

In his statement lodged on 30 November 1965, the *applicant in the main action*, claims that the Court should:

'1. Dismiss the request for a preliminary ruling submitted by the Commission;
2. In the alternative, reserve, its decision for the final judgment.'

III — Submissions and arguments of the parties

The submissions and arguments of the parties may be summarized as follows.

A — *Admissibility*

In his application the *applicant* maintains that the contested measure does not merely confirm an earlier decision, since the Commission, not having previously assessed the post in question, first did so by this measure and found that by reason of the duties performed the post corresponded to the career bracket of Principal Administrator. Furthermore, the change in the legal concepts of both the Commission and the Council as applied to several officials following the judgments in the cases of *Maudet* and *Reynier/Erba* constitutes a new factor, requiring that the Commission, in accordance with the principle of equality of treatment, must review its earlier decisions.

The *defendant* puts forward the objection that, although in theory the application is directed against the decision of 3 March 1965, it in facts contests the decision of the Commission of 13 February 1964 concerning the applicant's assignment to his present post, to the extent that this decision concerns the classification of the post. The application is this inadmissible in that it is out of time.

The decision of the Commission of 3 May 1963 on which the abovementioned Vacancy Notice is based is not, as the applicant claims, provisional; it contains no reservation of any kind nor the slightest evidence for the conclusions which the applicant is claiming to draw.

Moreover, classification of the post in question in career bracket A 5 – A 4 necessarily follows from both Annex I to the Staff Regulations and the description of this post given by the Commission which had been circulated as early as 13 March 1963. This being so, the decision of the Commission of 3 March 1965 rejecting the applicant's complaint can only be regarded as a confirmatory measure and not such as to start a new period for bringing an application to run.

The judgments of the Court of Justice in the *Maudet* and *Reynier/Erba* cases to which the applicant refers do not of their nature reopen the periods for bringing applications since, as the Court stated in its judgment in *Müller* (Case 43/64) the legal consequences of a judgment are limited to the parties to the action and the persons directly concerned by the measure itself.

In his reply the *applicant* maintains that the

Notice of Competition did not automatically involve classification of the duties concerned, since recruitment to a post appearing in the detailed list of posts and classification of the duties of that post are, logically, quite distinct acts.

Although the Notice of Competition may by implication contain this classification and although it may be admitted that normally the appointing authority opens a post to competition in the grade corresponding to the duties involved, in this instance the circumstances do not lead to such a presumption. The minutes of the meeting of the Commission of 3 May 1963 contradict the defendant's statement that the post had been classified when the Notice of Competition was circulated. These minutes merely state that the post must be filled by an official in career bracket A 5 – A 4, thus repeating the words of the last sentence of the proposal made by Mr Funck, Director-General for Administration and Personnel, on 4 April; at the same time, by giving the reference of the document in question, they refer back to this proposal which anticipated the separation of the Notice of Competition in A 5 – A 4 from the classification to be made later 'because it is at present impossible to make valid comparisons with posts at the same level in other Directorates-General'.

The applicant maintains that when the Commission does not follow the proposals of the administration this is always stated in the minutes. It must therefore be concluded from the terms of the latter that the Commission intended to follow the proposal of the Directorate-General for Administration and Personnel. Moreover, a final classification of the post in question would have been contrary to the general policy followed by the Commission at the time as expressed in the abovementioned memorandum from Mr Funck, the Director-General responsible for the implementation of the Staff Regulations. This memorandum stated *inter alia* that:

'In considering the classification of the staff of the Commission on their admission to posts coming under the Staff Regulations, appointments or promotions to Grade A 3 have been postponed in order to allow a thorough examination of the posts at this level on the basis of the structure of each Directorate.

I must therefore remind you that the general problem of the classification of new servants in Grade A 3 for the financial year 1963 has to be further examined and that it will not be possible in the near future to assess any proposals which may be drawn up.'

The earlier classification of the duties attaching to the post in question, applied by the Commission itself in the period before the entry into force of the Staff Regulations, also go against the presumption that the Notice of Competition contains a classification of the duties attaching to the post in question. Before the entry into force of the Staff Regulations the applicant's predecessor, Mr Bauer, held Grade A 4 and according to the classification in force at the time had to be classified in career bracket A 4 – A 3 which, under the new Staff Regulations, entitled him to the classification of Head of Division. Moreover, in the definition of the duties involved in this post the abovementioned Notice of Competition does not indicate whether it involves the running of a division, of a section or of a particular unit although such an indication is obligatory under the second paragraph of Article 4 and the second subparagraph of Article 5(4) of the Staff Regulations. It is possible to conclude from this omission that there was a deliberate intention to avoid designating the administrative unit and thus to omit any classification of the post. This classification is, moreover, not contained in the transfer decision, which merely refers to the Notice of Competition.

The applicant maintains that in 1963 the Commission had not finished reclassifying the posts in Grade A 3: during 1964 it had again dealt with this question but had only reclassified two posts leaving any decision on the others until the following year. It was only in the spring of 1965 that eight posts had been reclassified in Grade A 3 without any alteration of the duties and powers of the officials holding such posts.

In its application on the procedural issue opposing the applicant's argument based on a supposed failure to undertake a classification, the *defendant* maintains that any Notice of Vacancy implies the classification of the post to be filled. In this instance,

classification had been made by the decision of the Commission of 3 May 1963 preceding the Notice of Vacancy. The designation of the post of 'Principal Administrator in career bracket A 5 – A 4 in the Directorate-General for Industry and Economy (Economy Division)' contained in the Vacancy Notice of 20 June 1963, is a plain fact, the significance of which cannot be influenced by the circumstances to which the applicant refers. The arguments put forward by the applicant in his reply are thus based on false premises and are, therefore, wholly irrelevant.

In his observations on the application on the procedural issue, the *applicant* opposes the argument that it is impossible to separate the filling of a post from classification in the grade corresponding to the duties involved. Not only does this argument contradict the statements made by the Court in the cases of *Maudet* and *Reynier/Erba*, but also the view of the Commission and of the Director-General for Administration and Personnel.

In its rejoinder the *defendant* refers to the judgment of the Court of 14 December 1965 given in Case 5/65, which confirms its view on the admissibility of the present application.

Moreover, the defendant denies that the entry into force of the Staff Regulations called for a general reclassification of the staff. On the contrary, those classifications made before the entry into force of the Staff Regulations generally corresponded to the classification in accordance with Annex I to the Regulations and the definition of posts drawn up by the Commission. Any postponement of the reclassification in A 3 or in other grades as alleged by the applicant would thus have no purpose. It is true that in the memorandum of 4 April 1963 from the Directorate-General for Administration and Personnel there is a reference to a postponement of the classification of posts in Grade A 3. However, this only concerned reclassifications in the financial year 1963, for which a postponement was necessary as the Commission had only arrived at a decision on the reclassifications in A 3 permitted by the 1963 budget as its meeting of 25 September 1963.

There is no connexion between the reclassifications made during the years 1963 to 1965; they were merely those which could be made and needed to be made on the basis of the posts available for the year in question. There can thus be no connexion between the decision on the classification of the applicant's post and the reclassifications in A 3 made during these years. In this instance therefore these procedures cannot have had any effect on the expiration of the period for bringing applications.

As regards the alleged contradictions in the conduct of the Commission regarding the classification of the post in question the defendant observes that, as in the majority of cases, the career bracket of the applicant's predecessor, Mr Bauer, had not been expressly determined before the entry into force of the Staff Regulations. The fact that Mr Bauer, who had been recruited in Grade A 5, was later promoted to Grade A 4 without any statement's being made at that time regarding his career bracket is evidence that he was promoted within the framework of career bracket A 5 – A 4.

B — *Substance*

The *applicant* maintains that his post, by reason of the duties attaching thereto, can only correspond to career bracket A 3. In support of this statement he puts forward the following facts:

(a) While holding Grade A 4 the applicant's predecessor, Mr Bauer, received from Mr Margulies, the Commissioner concerned, the undertaking that should he remain in the service of the Commission he would immediately be promoted to Grade A 3 in a post involving the same duties. Moreover, on 14 March 1963, the Director-General for Industry and Economy requested that after Mr Bauer's departure his post be filled by an official in career bracket A 3 having regard to the tasks and duties involved therein. Although it relates to a post in career bracket A 5 – A 4, the Vacancy Notice unquestionably refers to the post already in existence and formerly held by Mr Bauer, which was being retained and which involves the same duties as before.

The applicant's formal request submitted on 22 January 1965 on the basis of Article 90 of the Staff Regulations and referring to his

reclassification in Grade A 3 was supported by the Director-General for Industry and Economy.

Although, in the official documents of the administration, the applicant was never described as a Head of Division, the Directorate-General for Administration and Personnel never opposed the use of this designation in relation to the applicant. It was only in December 1964 that this Directorate had replaced the term 'Division' by 'Sector of activity' in a draft research contract in which the applicant appeared as Head of Division.

(b) The administrative unit for which the applicant is responsible has numerous powers and at present its work mainly concerns civil liability in nuclear matters, the insurance of joint undertakings against nuclear risks and the transport of radioactive materials. The applicant, who is directly subordinate to the Director for Economy, enjoys a large measure of independence in the direction of this work. In addition, he conducts negotiations with third parties, often represents his division in collaboration with other Directorates-General and with the Legal Department of the Commission of the EEC. This wide autonomy is explained by the fact that the applicant's duties are largely legal in nature, while the other work of the Directorate mainly concerns problems of economic policy and industrial and commercial management. Two other officials in Category A, in Grades A 5 and A 7 assist the applicant, as does a permanent adviser.

By never describing the administrative unit directed by the applicant as a 'Division', the Commission follows its general policy of failing to describe clearly the administrative units answerable to Directorates-General and Directorates.

(c) Finally, referring to the case-law laid down in the cases of *Maudet* and *Reynier/Erba*, the applicant maintains that if the duties attaching to his post are taken into account, this post must be placed in the same career bracket as those of the officials whose career brackets were defined by these judgments of the Court.

As is shown by the judgment in *Maudet*, the fact that the applicant's predecessor was never classified in Grade A 3, but in Grade A 4, does not mean that he did not hold the position of Head of Division. Moreover, the conduct of the Commission of the EEC shows that the term 'division' is irrelevant to the assessment of the administrative unit concerned. In fact, the Commission has requested that two posts belonging to the Spokesman's Group be reassessed in Grade A 3 without the administrative units concerned being regarded as divisions.

As regards the conduct of the EAEC Commission in the *Moreau* Case, (Joined Cases 15/64 and 60/65), the applicant observes that Mr Moreau had never before been regarded as a Head of Division; in spite of this, the Commission considered itself bound to reclassify Mr Moreau in Grade A 3. Thus, the Commission cannot now adopt a different attitude as regards the applicant without discriminating against him.

Finally, the applicant criticizes the contested decision for having failed to put forward any reason to support the assessment of this post and also criticizes the Commission for having made this assessment without the documents necessary for a thorough consideration.

In its statement of defence, the *defendant* puts forward the objection that this submission is inadmissible. The power of the appointing authority to decide on the classification of duties is discretionary and thus can only be challenged on the ground that the Commission has committed a wrongful act or omission in exercising it. No such complaint has been made by the applicant, who has merely set out the facts which, in his opinion, would have justified the Commission's reaching a different decision on the substance. Thus, the application also proves to be unfounded.

The defendant puts forward the following alternative considerations:

(a) It is irrelevant to claim that the title of Head of Division had been used in relation to Mr Bauer, as it had not been used by the appointing authority. Secondly, as all the facts referred to occurred before 1 January 1962 they cannot be taken into consideration in relation to the classification of a post under the provisions of the Staff Regulations at present in force.

The undertaking allegedly given to Mr

Bauer concerning immediate promotion to Grade A 3 could only have referred to the intention of the department concerned to modify the duties of that official, which alone would have justified the new classification.

(b) As regards the definition of the duties attaching to the applicant's post, the defendant maintains that it never determined the powers of the applicant in the way in which he describes them. It contests generally the justification of all the arguments put forward by the applicant on this point and claims that they are without relevance to the extent that they refer to the nature and importance of the duties allotted to him. Furthermore, it is normal for an administrator in charge of a specialized department to enjoy a certain measure of independence and to have a certain number of assistants.

(c) As regards the arguments based on the case-law of the Court, the defendant objects that in this instance the decisions of the Court in the cases of *Maudet* and *Reynier/Erba* are irrelevant, being plainly distinguishable from the present case in that the parties in question had never disagreed over the fact that the applicants in those cases were Heads of Division. Moreover, these cases concern the *a posteriori* classification of posts in the light of the situations existing before the entry into force of the Staff Regulations, while in this instance the classification of the applicant's post in career bracket A 5 – A 4 occurred after the entry into force of these Regulations.

The reason why the post held by the applicant was not classified as one of Head of Division is that the duties of the Directorate-General in question are part of the economic and technical fields of activity of the Commission rather than of the legal field. As a result the administrative units within this Directorate, classified as Divisions, are also responsible for carrying out tasks of a technical or economic nature. However, as the administrative unit directed by the applicant was only responsible for duties of a specifically legal nature within this Directorate-General, it cannot be classed as a Division but only as a specialized department, as expressly provided for in the definition of the posts of the Commission.

Referring to the case-law of the Court, the *applicant* replies that, when dealing with specific duties, the appointing authority has no discretionary power in making a classification. It is true that in defining the nature and importance of a particular administrative subdivision the Court has acknowledged the administration to have a certain measure of discretion. However, the applicant considers it significant that the Court did not here employ the term 'discretionary power'. The Commission was thus wrong to have put forward a plea of inadmissibility in the absence of any complaint of misuse of powers.

Contrary to the defendant's statement that it has never defined the post in question as one of Head of Division, nor the administrative unit directed by Mr Mosthaf as a Division, the applicant maintains that on this point the Court declared that the criterion applicable was not that of the designation of the post, the administrative unit or the grade conferred, but that of the duties and powers involved.

As regards the description of the post, the applicant refers to the definition of duties given by Mr Michaelis, the Director concerned, in a memorandum of 27 March 1963 on the publication of the Notice of Competition. In addition, the applicant refers to the statements made by the Commissioner, Mr Margulies, concerning the importance of insurance in nuclear matters.

Finally, the applicant maintains that it is sophistry on the part of the Commission to denigrate duties and powers to which it formerly attached great importance, on the pretext of their legal nature. He again states that questions of law and economics may be closely connected and that often economic problems can only be resolved by legal means.

In its rejoinder, the *defendant* again states that the task of determining which departments it requires in order to carry out the tasks entrusted to it and what specific duties it shall entrust to particular departments, is part of its discretionary power of organization. This power is only limited by the interests of the department. The classification of posts necessarily follows from the decision organizing the department.

The defendant puts forward an objection to

the definition of the applicant's duties contained in the application and specifies that questions concerning measures determining liability in case of nuclear damage or injury are dealt with by the Legal Department in cooperation with the Directorate-General for Industry and Economy. On the other hand, questions concerning insurance are dealt with by the Directorate-General for Industry and Economy in cooperation with the Legal Department. As regards the other sectors of activity referred to by the applicant, the defendant states that a legal problem may occasionally be dealt with by the specialized department directed by the applicant, but that the final responsibility for legal questions does not lie with this department which is answerable to the Directorate-General for Industry and Economy, but only with the Legal Department of the Commission. This is alone sufficient to prevent any comparison's being made between the administrative unit directed by the applicant and the other administrative units of the same Directorate-General.

The defendant maintains that questions of principle and specific questions concerning the insurance of the Commission's own nuclear risks were not within the powers of the applicant, but were covered by those of another administrative authority.

As regards the memorandum from the Director, Mr Michaelis, which is referred to by the applicant, the defendant observes that certain tasks mentioned therein have been allocated to another administrative unit within the same Directorate. Moreover, at present the applicant has only one assistant in Category A.

IV — Procedure

The procedure followed the normal course. After lodging the reply, and by means of an application lodged at the Registry on 2 October 1965, the defendant initiated the procedure provided for in Article 91(1) of the Rules of Procedure asking the Court to make a preliminary ruling on the admissibility of the application.

By order of 15 December 1965, the First Chamber of the Court reserved its decision on the application made by the defendant for the final judgment.

By letter of 15 February 1966, the applicant put forward an objection of inadmissibility on the basis of Article 42(2) of the Rules of Procedure concerning that part of the rejoinder which related to the definition of the applicant's duties and powers, on the ground that only in this document did the defendant first define its position on the reasons for the application.

Alternatively, the applicant requested to be allowed to submit his observations and evidence in writing on the justification for this statement by the defendant.

By order of 3 March the First Chamber of the Court rejected these requests.

By order of 28 April 1966, the First Chamber decided to hear the following witnesses:

(1) Walter Funck, Director-General, Head of the Directorate-General for Administration and Personnel of the Commission of Euratom;

(2) Eduard von Geldern, Director-General, Head of the Directorate-General for Industry and Economy of the Commission of Euratom;

(3) Theodor Vogelaar, Director-General, Head of the Euratom Division of the joint Legal Department of the Executives of the European Communities.

At the hearing on 5 October 1966, the First Chamber heard the evidence of these witnesses on the following questions:

(1) Walter Funck was heard on the first question:
'Why was the applicant's post not included in those reclassified in the last few years in Grade A 3?'

(2) Eduard Von Geldern was heard on the second question:
'What were the duties, tasks and responsibilities of the applicant on his appointment?'

(3) Eduard Von Geldern was heard on the third question:
'At that time what were the position and duties of the administrative unit directed by the applicant within the Directorate-General for Industry and Economy and what was its relationship with the Legal Department of the Commission?'

(4) Eduard Von Geldern was heard on the fourth question:
'What is the present position on all these points? What considerations have

determined any changes which have occurred in the meantime?'
Theodor Vogelaar was heard on the subject of the relationship between the administrative unit in question and the joint Legal Department.

The parties submitted their oral observations at the hearing on 10 November 1966.
The Advocate-General, K. Roemer, delivered his opinion at the hearing on 22 November 1966.

Grounds of judgment

Admissibility

In its oral submissions the defendant maintained that, as the applicant held Grade A 5, he could not have been transferred to his present post if it had been one in Grade A 3.

The question whether the applicant has and interest in an application which, if successful, would result in his losing his present post must therefore be considered.

If, as the applicant maintains, this post were to be classified in Grade A 3, his appointment to this post would lose all legal basis, as a transfer can only be made within the same grade.

However, if this were so, the applicant might possibly be entitled to bring a claim for compensation for any damage suffered on the grounds that the appointing authority had required him to perform duties of a higher level than those of Grade A 5 which he held under the Staff Regulations.

Thus, independently of the existence of a right to be classified in a higher grade, the applicant has a legally valid interest in bringing this application.

The defendant maintains that its decision of 3 March 1965 which is contested in the present application, merely confirms its decision of 13 February 1964 concerning the applicant's assignment to his present post and that it is therefore the validity of the latter decision which the applicant is contesting. For this reason the application is inadmissible as it is out of time.

On the other hand, the applicant maintains that the decision of assignment of 13 February 1964 and the decision of the Commission of 3 May 1963, on which the Vacancy Notice for the post in question was based, contain no precise information on the classification of this post.

In support of his argument the applicant refers in particular to the proposal of 4 April 1963 by the Director-General for Administration and Personnel to classify this post provisionally in A 5–A 4 and states that this proposal has by implication been accepted by the Commission.

This interpretation is confirmed both by the general policy followed by the Commission regarding the reclassification of certain posts in Grade A 3 and by undertakings to this effect given to the applicant's predecessor, Mr Bauer.

The communication from the Director-General for Administration and Personnel to the Commission cannot alone constitute evidence that the Commission has accepted his recommendations as the Commission is in no way bound by proposals made by its departments and the silence of the minutes on this point cannot be interpreted as acquiescence.

However, when considered in the light of the fact that a member of the Commission was able to give undertakings of classification in Grade A 3 to the applicant's predecessor and that the Commission has subsequently reclassified certain posts in this grade, this proposal may give rise to doubts as to the real scope of the decision on which the present classification of the applicant's post is based.

A measure containing a specific decision made without any reservations must be regarded as final in the absence of material factors clearly and consistently indicating the contrary.

The results of the measures of inquiry conducted by the Court do not support the argument that the measures adopted by the Commission on 3 May 1963 concerning the classification of the applicant's present post were provisional.

In particular, it has not been shown that when the post in question was classified the Commission was uncertain as to the assessment of the duties corresponding thereto.

In these circumstances any possible subsequent decision assessing the post differently would be, not a measure completing the earlier decision, but a new and independent decision changing the legal situation created by the earlier one.

This is confirmed by the fact that the decisions taken by the Commission after 1963 concerning the reassessment in Grade A 3 of posts already classified in A 5–A 4 are not for the most part retroactive.

For this reason, the decisions on which the former classification was based must be recognized as final.

This also applies in this instance.

The applicant also maintains that the amendment in relation to several officials of various legal arguments formerly put forward by the Executives following certain

judgments given by the Court on questions of classification constitutes a new factor in the light of which the Commission is required to review its earlier decisions.

In fact, when the Commission acts on the basis of judgment of the Court, it is less the measure adopted by the administration than the judgment itself which might be presented as a new factor.

However, without prejudice to the general consequences drawn by the administration form a judgment in a particular case, judgments of the Court given in adversary cases and involving the annulment of a measure produce legal effects which concern only the parties to the case and the persons directly affected by the measure which is annulled.

The applicant does not claim to have been directly affected by the measures annulled by these judgments.

Such judgments cannot, therefore, constitute a new factor as regards the applicant.

The applicant's request essentially challenges the validity of the decision of 3 May 1963, by which the Commission classified the post in question in career bracket A 5–A 4, and the decision of 13 February 1964 which draws the consequences of this classification by awarding Grade A 5 to the applicant.

Moreover, protection of the certainty of legal positions and relationships implies that the existence of decisions of Community authorities governing such positions and relationships cannot for ever be called in question, unless there are new and serious reasons for doing so.

When the application was lodged, the period for making an application to annul the abovementioned decisions had already expired.

It must therefore be concluded that the present application was submitted outside this period and must for this reason be declared inadmissible.

Costs

The applicant has failed in his application.

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

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

Moreover, under the terms of the first subparagraph of Article 69 (3), where the circumstances are exceptional the Court may order that the parties bear their own costs in whole or in part.

The circumstances which preceded the appointment of the applicant to his present post may have led him to mistake the Commission's real intentions regarding the classification of his post and, therefore, regarding the final nature of the decision made in this respect on 3 May 1963.

For this reason, it is appropriate to order the defendant to pay half the costs incurred by the applicant.

As the witnesses were heard in their capacity as officials of the Commission of the EAEC, their travel expenses must be borne by the defendant.

On those grounds,

Upon reading the pleadings and the results of the measures of inquiry;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to the Protocol on the Statute of the Court of Justice of the European Atomic Energy Community;
Having regard to Article 152 of the Treaty establishing the European Atomic Energy Community;
Having regard to the Staff Regulations of Officials of the European Atomic Energy Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT (First Chamber)

hereby:

1. **Dismisses Application 34/65 as inadmissible;**
2. **Orders the defendant to bear its own costs and one half of those incurred by the applicant;**
3. **Orders the defendant to pay the travelling expenses incurred by the witnesses.**

Trabucchi Delvaux Lecourt

Delivered in open court in Luxembourg on 15 December 1966.

A. Van Houtte
Registrar

A. Trabucchi
President of the First Chamber