JUDGMENT OF THE COURT (SECOND CHAMBER)
14 DECEMBER 1965[1]

Fred Bauer
v Commission of the European Economic Community

Case 12/65

Summary

1. *Officials — Appeals — Expiry of time-limit — Request or complaint within the meaning of Article 90 of the Staff Regulations of Officials — Distinction between a request and a complaint for the purposes of admissibility*

2. *Officials — Appeals — Expiry of time-limit — Request or complaint within the meaning of Article 90 of the Staff Regulations of Officials — Bar to right of action*

3. *Officials — Appeals — Failure to act on the part of the administration — Concept (Staff Regulations of Officials of the EEC, Article 91)*

4. *Procedure — Application for annulment — Judgment — Legal effects — Limited to the parties and to the persons directly concerned by the measure annulled — Judgment constituting a new factor — Concept*

1. Whatever difference there may be between a request and a complaint neither can make available to their author a fresh period of time for filing appeals since they relate to the legality of a measure which he had refrained from contesting within the prescribed period.

2. Cf. paragraph 1, summary in Case 52/64 [1965] ECR.

3. Cf. paragraph 2, summary in Case 52/64 [1965] ECR.

4. Cf. paragraph 4, summary in Case 43/64 [1965] ECR.

In Case 12/65

FRED BAUER, an official of the European Economic Community, assisted by Marcel Slusny, Advocate of the Cour d'Appel, Brussels, Lecturer at the University of Brussels, with an address for service in Luxembourg at the Chambers of Ernest Arendt, avocat-avoué, 6 rue Willy-Goergen,

applicant,

v

COMMISSION OF THE EUROPEAN ECONOMIC COMMUNITY, represented by its Legal Adviser, Louis de la Fontaine, with an address for service in Luxem-

1 — Language of the Case: French.

bourg at the offices of Henri Manzanarès, Secretary of the Legal Department of the European Executives, 2 place de Metz,

defendant,

Application for the classification of the applicant in Grade L/A4, Step 8,

THE COURT (Second Chamber)

composed of: W. Strauß, President of Chamber, A. M. Donner and R. Monaco (Rapporteur), Judges,

Advocate-General: J. Gand
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 is employed in the Language Service of the Commission of the EEC. On 21 December 1962 he was integrated in Grade L/A5, Step 8. By a decision of 23 September 1963 he was classified in Grade L/A4, Step 5, with effect from 1 January 1962. On 30 October 1964 the applicant submitted a complaint to the appointing authority to the effect that he should be classified at Step 8 of Grade L/A4 with effect from 1 January 1962.

By a letter of 13 January 1965 the Director-General of Administration replied that his request was being carefully considered and that he would receive a reply as soon as a decision was reached.

On 26 February 1965 the applicant made this application to the Court.

II — Conclusions of the parties

The *applicant* claims that the Court should:

'1. Annul the decision of the Commission of 23 September 1963 to the extent that it fixes the step at which the applicant must be classified as from 1 January 1962;
2. Annul the implied rejection of his appeal through official channels of 30 October 1964;
3. So far as necessary, annul the decison of 13 January 1965;
4. Rule that the applicant should be integrated in Grade L/A4, Step 8, with effect from 1 January 1962, with all the pecuniary consequences relating thereto, including arrears of salary;
5. Order the defendant to pay the costs of the action'.

In the reply he adds:

'Alternatively, order the defendant to produce:

1. The decision of the Commission of 29 July 1963 containing the definitions of the duties and powers attaching to each post;
2. The letter of 21 September 1960 from Mr Noak, Head of the Language Service of the Council of Ministers, to Mr Gummerer, Head of the Translation Department of the Commission of the EEC;
3. Note PERS/11/63 of 26 July 1963 from the Executive Secretariat of the Commission'.

The *defendant* contends that the Court should:

'dismiss the application as being inadmissible or, alternatively as being unfounded;

order the applicant to bear the costs in accordance with the relevant provisions'.

III — Submissions and arguments of the parties

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

Admissibility

The *defendant* maintains that the application is inadmissible because it is out of time. It points out that the implied decision of rejection of the applicant's complaint was merely a confirmation of the decision as to classification of 23 September 1963. It is against this decision therefore that the applicant should have directed his application within the period prescribed by the Staff Regulations whereas at the time when he submitted his complaint that period had long since expired.

It is pointless to rely on the judgment of 7 July 1964 in Case 70/63 (*Collotti* v *Court of Justice*) as a means of overcoming that bar to the right of action. In fact, that judgment cannot constitute a 'new factor' with regard to the applicant capable of causing time to start to run afresh since it only has effect on the legal relationships on which the Court has given a ruling, that is to say on the legal relationships existing between the parties to the action, and not those between third parties. As the Advocate-General stated in his opinion in Case 43/64, the contrary solution would undermine the stability of administrative positions.

The *applicant* puts forward the following objections:

(a) The letter of 13 January 1965 from the Director-General of Administration shows clearly that at that time the applicant's complaint was still under careful consideration and had not yet been the subject of an implied decision of rejection. On the expiry of the period of two months from submitting the complaint no decision had then been taken confirming the decision of 23 September 1963. The present appeal is therefore against an actual 'failure to take' a decision and was made with the very purpose of avoiding the bar to the right of action arising from Article 91 of the Staff Regulations.

(b) Moreover, the principle that every complaint must be submitted within the period for lodging appeals does not prevent an extension of that period on the occurrence of new circumstances or more exactly a 'new factor'. In this instance the 'new factor' is constituted by the judgment of 7 July 1964 in Case 70/63 when the Court, in exercise of its unlimited jurisdiction, decided to fill a veritable lacuna in the Staff Regulations of officials by supplementing their provisions.

(c) Moreover it was a 'request' and not a 'complaint' which was made to the Commission. Whilst the purpose of a complaint is to change an existing legal situation, and must therefore be lodged within a strict time-limit, it cannot be disputed that since a request may have as its purpose the recognition of a right

it may relate to the future and need not necessarily be submitted within a fixed period of time. Since under the Staff Regulations an official's principal rights are to his salary and to his grade, and since the right to his salary necessarily includes the right to a specified step, the applicant, who is always entitled to require that his salary be calculated correctly, is also entitled to demand that he should be accorded the step necessary to make this possible.

(d) Furthermore the administration is obliged to guarantee its officials the best possible treatment in accordance with the most favourable interpretation of the Staff Regulations. This is a basic legal principle which also corresponds to the requirement of 'maximum efficiency' written into the preamble to the Staff Regulations.

(e) It must moreover be noted that, whatever the Court's decision on the admissibility of the present application, the subject-matter in dispute can be raised again in the future:

— either in connexion with the administrative act which is constituted by the payment of salary, as it is also calculated in accordance with the step (objection of illegality);

— or in connexion with the grant of a new step on 1 January 1966.

(f) Finally, with regard to the need to preserve the stability of administrative positions, the Court has already recognized that the 'classification' of officials may take place after their 'integration'. There is no reason why this separation of operations should not be extended to fixing the step, especially since Article 102 (4) (b), referring to an 'official' in the Language Service and not to a 'servant' (Article 102) (1), of necessity presupposes that the step will only be fixed after the integration procedure. The purpose of observing this stability, moreover, is to prevent the breach of a specified administrative or legal system. The system could also be breached by altering a grade, since every determination of grade affects the budget and fills a specified post. However this is not the case when only the step is altered, since this affects neither the budget nor the number of posts.

The *defendant* replies in particular that the argument that it was a 'request' and not a 'complaint' which was submitted to the Commission is irrelevant, since on the one hand the applicant himself defines his appeal through official channels as a request and a complaint and on the other hand Articles 90 and 91 of the Staff Regulations mention the request and complaint at the same time for the sole purpose of making them subject to the same system.

The *defendant* ends by adverting to the judgment of the Court in Joined Cases 50, 51, 53, 54 and 57/64.

The substance of the case

1. Infringement of Article 102 (1) of the Staff Regulations of Officials

The *applicant* maintains that, before the Staff Regulations were applied to him, he had by implication been accorded Grade L/A4, Step 7, because of the nature of his duties. Consequently, he is entitled to retain this classification after his integration, in accordance with Article 102 (1) of the Staff Regulations, and to be accorded an extra step under paragraph 4 (b) of the same Article. His classification in Grade L/A4, Step 5, which was made on 23 September 1963, is thus contrary to the Staff Regulations of Officials.

The *defendant* objects that, since the applicant is in the Language Service, the provisions applicable to him are not those of Article 102 (4) (b).

Furthermore, the applicant's classification in L/A5, Step 8, was fully in accordance with paragraphs (1) and (4) (b) of the said Article 102 which relates to the integration procedure. The reclassification in L/A4 on the other hand does not form part of that procedure. The basic post of 'Head of the Trans-

lation Section' was only created by the Staff Regulations. Before those Regulations entered into force, the applicant held the post of 'Reviser' and he was integrated in L/A5, Step 8, on the basis of that post.

It was by a second operation of reclassification, distinct from that of his integration, that the applicant was accorded Grade L/A4 by decision of 23 September 1963, because the duties of 'Head of the Terminology Section' which he carried out had to be treated as equivalent to those of the 'Head of the Translation Section' within the meaning of Annex I to the Staff Regulations. Therefore no infringement of Article 102 (1) of the Staff Regulations was committed in this instance.

After replying that both paragraph (1) and paragraph 4 (b) of Article 102 of the Staff Regulations apply to officials of the Language Service, the *applicant* observes that the duties which he carried out during the period before the Regulation entered into force were not those of a 'Reviser', but those of a 'Head of the Terminology Section', which is much more closely related to an L/A4 post than to an L/A5 post.

In these circumstances, it is thus incorrect to allege that the applicant's classification in L/A4 does not come under Article 102 of the Staff Regulations, all the more so since:

— the decision as to classification in L/A4 was taken with retroactive effect to 1 January 1962, the date when the Staff Regulations entered into force;

— the Staff Regulations do not provide for transfer to a higher grade otherwise than as a result of promotion, competition or classification under Article 102 (1);

— no decision common to the institutions has been taken in connexion with standardizing practice, so that the reclassification referred to by the defendant cannot be justified on the basis of such a decision.

2. Infringement of the principles applicable to the revaluation of a post

The *applicant* contends that, since he was classified in L/A4, in pursuance of Article 102 of the Staff Regulations, he was entitled to receive, in his new grade, the same step which he had in his former grade, taking account of the provisions of Article 102 (4) (b).

The *defendant* on the other hand is of the opinion that the reclassification in dispute did not arise from a revaluation of the post, since the criteria arising from the judgment in Case 70/63 with regard to steps were inapplicable to the case in point. That judgment in fact relates to a case of revaluation of a post, whilst in the case in question a mere evaluation is involved, as no post within the meaning of the Staff Regulations existed—with regard to servants, such as the applicant, who were engaged by contract—before the entry into force of the Staff Regulations. Moreover, although it is perfectly admissible that, as in Case 70/63, the new classification of posts introduced by the Staff Regulations had a more or less indirect retroactive effect on the officials of the ECSC, this argument cannot be sustained with regard to servants who, before the entry into force of the Staff Regulations, were engaged on a contractual basis.

In these circumstances, the only rule applicable to the calculation of the step to be accorded the applicant is that of ordinary law which appears to emerge from the body of the relevant provisions of the Staff Regulations and which tends to avoid, so far as is possible, any breach in the continuity of an official's salary structure throughout his career.

The *applicant* replies that, even in the matter brought before the Court for its consideration in Case 70/63, it is not certain that the duties performed by Mr Collotti corresponded to a specific post in the Language Department.

Moreover, with regard to the distinction

between the system under the Staff Regulations and the contractual system before the Regulations entered into force, servants engaged by contract really came under a system of regulations from which they were unable to demand particular derogations. On the one hand, the applicant himself was the subject of a certain number of administrative measures within a system substantially resembling that of the Staff Regulations; on the other hand, the integration procedures applied to the officials of the ECSC and the contractual servants of the EEC were substantially identical.

In any event, the very fact that the applicant's reclassification was decided upon with retroactive effect as from the entry into force of the Staff Regulations proves that, from the point of view of the defendant as well, this reclassification constitutes a revaluation of the post.

IV — Procedure

The written procedure followed the normal course.

On the basis of the report of the Judge-Rapporteur and after hearing the Advocate-General, the Court (Second Chamber) decided that there was no necessity for a preparatory inquiry.

The parties presented oral argument at the hearing on 7 October 1965.

The Advocate-General delivered his opinion on 10 November 1965.

Grounds of judgment

Admissibility

The applicant has referred to the Court the Commission's failure to take a decision with regard to his request or complaint of 30 October 1964, relating to the classification accorded him by the decision of 23 September 1963.

According to the defendant, the application is really directed against the decision of 23 September 1963 and is consequently inadmissible because it is out of time. Under Article 91 (2) of the Staff Regulations of Officials appeals to the Court shall be filed within three months from the date of notification of the disputed decision to the person concerned. A request or complaint through official channels which has not been submitted within the said period cannot therefore avoid the time-bar resulting from the expiry of this period. In the present case the decision as to classification of 23 September 1963 was notified to the applicant on 30 September 1963 at the latest. His request or complaint of 30 October 1964 was thus submitted after the expiry of the period of three months prescribed by Article 91 (2) of the Staff Regulations.

The applicant maintains that he submitted to the Commission not a complaint, but a request 'the purpose of which was the recognition of a right'. He emphasizes that it is not necessary for such a request to be submitted within a prescribed period.

It is not necessary to go into the distinction which the applicant makes between the two terms employed by Article 90 of the Staff Regulations. In fact neither a complaint nor a request on behalf of the person submitting it is capable of causing the period for lodging an appeal to start to run afresh, when such a complaint or request relates to the legality of a measure which he has refrained from contesting within the prescribed period.

The notification to the applicant that his request or complaint was under consideration is not of such a nature as to cause the period to start to run afresh under Article 91. In fact such an interim reply amounts to a failure to give a decision, within the meaning of Article 91.

It therefore does not cause the time for bringing an appeal to the Court to start to run afresh.

The applicant relies on the new factor constituted, according to him, by the judgment of 7 July 1964 in Case 70/63 in a dispute between the Court and one of its servants.

This judgment annulled an individual decision concerning the classification of the said servant.

The only persons concerned by the legal effects of a judgment of the Court annulling a measure taken by an institution are the parties to the action and those persons directly affected by the measure which is annulled. Such a judgment can only constitute a new factor and cause the periods for bringing appeals to run afresh as regards these parties and persons.

As this is not the case in this instance, the application is therefore inadmissible.

Costs

The applicant has failed in his application.

Under Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs. However, under Article 70 of the Rules of Procedure, in proceedings commenced by servants of the Communities, institutions shall bear their own costs;

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to the 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 Economic Community and of the European Atomic Energy Community, especially Articles 90 and 91;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Articles 69 and 70;

THE COURT (Second Chamber)

hereby:

1. **Rules that Application 12/65 is inadmissible;**

2. **Orders the applicant to pay the costs of the action, with the exception of those incurred by the defendant.**

Strauß Donner Monaco

Delivered in open court in Luxembourg on 14 December 1965.

A. Van Houtte
Registrar

W. Strauß
President of the Second Chamber

OPINION OF MR ADVOCATE-GENERAL GAND

(See Case 52/64, p. 988)