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 Coal and Steel Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Coal and Steel Community of 21 February 1957 for disputes referred to in Article 58 of the Staff Regulations of the European Coal and Steel Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT (Second Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the parties to bear their own costs.**

Rossi Donner Hammes

Delivered in open court in Luxembourg on 4 April 1960.

A. Van Houtte
Registrar

R. Rossi
President of the Second Chamber

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 17 MARCH 1960[1]

Mr President,
Members of the Court,

It is not necessary for me to examine in detail the factual and legal arguments adduced by the parties to the present case. They are contained in the detailed report prepared by the Judge-Rapporteur to which I refer.

The applicant is an established official in the service of the High Authority under Article 2 (2) of the Staff Regulations. He believes that his lawful rights have been injured by his classification in Grade 9, Step 3 of Category B of the list of posts of the Community. The classification at issue was effected by a letter from the President of the High Authority dated 9 July 1956 whereby the applicant was offered reappointment as an established official with effect from 1 July 1956. It was expressly stated that the applicant had to accept this offer by registered letter before 30 September 1956.

In a letter dated 2 August 1956 to the President of the High Authority the applicant first put forward reasoned representations in which he sought a higher classification in the table of posts. He repeated this request in a letter of 25 September 1956 to the President of the High Authority and at the same time accepted the offer of appointment as an established official with a reservation as

1 – Translated from the German.

to the examination of his classification in the table of posts. In the course of a discussion with competent officials of the internal administration of the High Authority on 5 October 1956 he expressed his request and the reasons for it. The High Authority has not complied with the request but has retained the original classification from 9 July 1956 until the present without making any written reply to the applicant's requests although in a letter of 5 May 1959 to the President of the High Authority the applicant had reiterated his claim.

By his application the applicant claims that the Court should first:

'Annul the decision of the President of the High Authority of 9 July 1956 which proposed the application to the applicant of the provisions of the Staff Regulations of Officials of the Community as an established official in Grade 9, Step 3 of Category B with effect from 1 July 1956 in so far as that proposal placed the applicant in Grade 9.'

In accordance with Article 58 of the Staff Regulations of 1 July 1956 which is applicable to servants of the European Coal and Steel Community the applicant has a right to institute proceedings before the Court. The parties do not however agree as to whether the right is restricted by a time-limit, whether such a time-limit has been complied with and whether the application is consequently admissible.

At the time when the decision of 9 July 1956 was adopted and notified, there only existed the provisions of Article 58 of the Staff Regulations concerning the jurisdiction of the Court and the procedure in disputes involving staff. The Rules of Procedure which were there referred to as 'to be adopted' were established on 21 February 1957 and entered into force on the date on which they were published, 11 March 1957. Before the adoption of the Rules of Procedure no time-limit was prescribed for appeals to the Court of Court of Justice. As the Court is aware, during this period the applicant lodged no application to the Court of Justice.

With the publication of the additional Rules of Procedure on 21 February 1957 a time-limit of two months was introduced for lodging an application (Article 2). Throughout the time that these Rules of Procedure were in force the applicant made no use of his right of action. On 21 March 1959 there came into force the Rules of Procedure of the Court of Justice of the European Communities, Article 110 of which abrogated the Rules of Procedure of 21 February 1957. As is well known the new Rules of Procedure contain no time-limit for the bringing of actions by servants of the institutions. However the questions remains whether the application lodged on 15 July 1959 is nevertheless subject to a time-limit, in other words what effect do the Rules of Procedure of 21 February 1957 have on the applicant's right of action in this respect.

Without any doubt all legal disputes between servants and institutions of the Communities of which the factual cause arose after the entry into force of these Rules of Procedure are subject to the rules as to time-limits contained therein. It remains to be examined whether those rules as to time-limits applied to pending matters in dispute which had arisen before the entry into force of the Rules of Procedure. It is not contested that before 11 March 1957 there existed such a dispute over legal relations between the applicant and the High Authority, namely whether the classification of the applicant was correctly effected by the decision of 9 July 1956 of whether the applicant's request for a higher classification had a legal basis. The view has been put forward that the introduction of a time-limit—to be calculated from the day of notification of a decision to the day when proceedings are initiated—cannot affect the pre-existing legal relations between the parties from the point of view of procedural law. This would mean that the applicant was not bound by the two-month period even during the time when the additional Rules of Procedure of 21 February 1957 were in force.

The Rules of 21 February 1957 regulate for the first time the procedure of the Court for a particular type of legal dispute, that is, disputes under Article 58 of the Staff Regulations. The Rules of Procedure of the Court

of Justice of 21 March 1959 govern the organization of the Court and generally regulate all proceedings in respect of which jurisdiction has been assigned to the Court of Justice of the three Communities including spheres of jurisdiction and proceedings under the law of the European Coal and Steel Community and its Staff Regulations.

In the laws of the Member States of the Communities it is recognized that law relating to the administration of justice and procedural law, that is, the rules which the legislature prescribes for procedure in its courts, is directly applicable in so far as any transitional provisions of the legislature do not provide otherwise. The principle of the direct applicability of procedural law is uniformly recognized in the jurisprudence of the Member States and in the case-law of the highest national courts. Against this it is not possible to argue with any success that the Rules of Procedure of 21 February 1957 have no retroactive effect. The question of retroactive effects of new procedural law is disputed in both jurisprudence and case-law. My own view is that no retroactive effects can be attributed to the change in procedural legislation. However, the principle of the direct effects of the new procedural rules does apply. The just and logical solution to this disputed question must be that from the publication of the Rules of Procedure of 21 February 1957 a time-limit of two months began to run for the applicant.

Evidently a provision to this effect could have been expressely contained in the Rules of Procedure. In view of the principles set out above, a judge has the power to fill a gap in procedural law with a logically correct, just and equitable interpretation so long as this interpretation does not conflict with recognized legal principles.

If one assumed that the Rules of Procedure of 21 February 1957 were still in force today, and if it were accepted that the provision of a time-limit in these Rules was of no application to the applicant, there would result substantial inequality between the legal position of the applicant in these proceedings, whose application is based on facts which arose exclusively before the entry into force of these Rules, and any applicants who sought to bring before the Court of Justice matters which arose during the time when the Rules of 21 February were in force and could only be made the subject of an application within the two-month period for bringing actions.

Differences in the procedural law for the same category of officials would be contrary to a legal principle of administrative law recognized in the Member States of the Community and also contrary to Community law namely the principle of the equality before the law of all those subject to the law. The principle of equality thus requires that the provision of a time-limit in the Rules of 21 February 1957 should also be applied to the applicant.

By its very nature, the time-limit for taking proceedings is a time-limit for acting, a period for taking valid procedural steps. This view is recognized in both the French and German legal systems. The calculation of the time-limit is determined by legal rules which the judge in principle has no power to vary. Within this time-limit—and only within this time-limit—an applicant can effectively undertake the procedural legal step of submitting an application. In view of the nature of the period it must be assumed that if no steps are taken before it expires the applicant loses the opportunity to institute proceedings. The applicant in the present case failed to lodge the first head of his conclusions within two months from the entry into force of the Rules of Procedure of 21 February 1957 and has thus lost his right of action.

The abrogation of these Rules of Procedure and their replacement by the Rules of Procedure of 21 March 1959 can no longer have any effect on the legal position, that is the fact that the applicant has lost the right of action. The new Rules of Procedure do not have retroactive effect and the right of action which has expired cannot be revived.

It is of some interest that there exists an express legal provision in a law relating to officials in the Federal Republic of Ger-

many where the need arose to regulate in a uniform and direct manner for the territory of the Federal Republic the procedural steps for actions relating to the position of officials after the law had become fragmented as a result of the war. The law creating a framework for provisions relating to officials (Beamtenrechtsrahmengesetz) of 1 July 1957 which came into force on 1 September 1957 provides in Article 137:

'The procedure prior to the institution of proceedings, legal remedies and the procedure before the courts shall be determined according to the provisions of the previous law, if a period of limitation for the institution of proceedings started to run before the entry into force if this Act. If at this time a period of limitation under the provisions of the previous law had expired, then this fact shall not be altered by the present Act.'

Thus the applicant can no longer have the dispute which arose from the decision of 9 July 1956 concerning classification in the table of posts examined and adjudged by the Court of Justice. An application which, notwithstanding this, has nevertheless been lodged containing the above-mentioned first head of claim, as in the present case, can as regards this head of claim, only be considered by the Court within the bounds of an examination on the question of admissibility. As it must be regarded as inadmissible, the application must be dismissed.

By his letters of 2 August and 25 September 1956, the applicant formally submitted a request to the President of the High Authority to amend the decision relating to his classification in the table of posts and to classify the applicant in such a way that he could receive higher remuneration. As these requests were not complied with and received no answer they must be regarded, according to the general rules of administrative law and according to Community law, as having been rejected. The question then arises whether the applicant would have been entitled to institute proceedings for failure to act on the basis of this rejection. In this connexion doubts might arise as the object of the application would have been identical with the aim of the action which the applicant could have brought against the express decision of the President of the High Authority of 9 July 1956. However, it is not necessary for me to give my opinion on this question since, in the period before the adoption of the Rules of Procedure of 21 February 1957 and during the period which was still validly in force under them, the applicant in fact did not lodge an application on the ground of a failure to act with regard to the rejection of his requests of 2 August and 25 September 1956.

After the entry into force of the Rules of Procedure of the Court of Justice of the European Communities of 3 March 1959 on 21 March 1959, thus after the Rules of Procedure of 21 February 1957 had been abrogated, the applicant sent in a letter of 5 May1959 a further request to the High Authority in which he stated that his rights had been detrimentally affected by his classification in the letter of 9 July 1956 and in which he sought an amendment of this classification to his advantage. In this letter he expressly referred to the similar request of 2 August 1956. The High Authority also failed to answer this request. In this case too the silence must be regarded as a rejection. It is on these facts that the applicant bases his second head of claim, namely that the Court should:

'Annul the implied rejection to be inferred from the failure of the High Authority to reply to letters from the applicant of 2 August 1956, 25 September 1956 and 5 May 1959.'

The question arises whether this head of claim is admissible.

In the first place it must be remembered that even if the application is in the form of an action on the ground of a failure to act, its aim is identical to that of the first head of claim. An action against a decision of rejection by the authority, which decision is to be deduced from the failure to act on the part of that authority, is made available to the person concerned for the purposes of contesting conduct on the part of the administration which is of importance on the legal plane and which was not the object of

an express decision. However, we can see that the contested legal situation had already been declared with binding effect in the decision of 9 July 1956. We can also see that this decision was not contested in a manner which was legally effective as it was not done in good time. The loss of the right of action by the expiry of the limitation period, a time-limit for acting, without use having been made of it, cannot be made good by subsequently setting in motion proceedings for failure to act and lodging an application founded on a failure to act. From this point of view it appears that the second head of claim, which is to be regarded as an action for failure to act, is also inadmissible without its being necessary to examine particularly whether the request of 5 May 1959 was in any event not such as could constitute the essential prerequisite of a failure to act as similar written requests which remained unanswered had been submitted on 2 August and 25 September 1956 and as the right of action derived from them had been extinguished by expiry of the limitation period.

The complaint of the infringement of his rights alleged by the applicant and which he supports by a series of arguments existed, if it was well founded, up to the date of the lodging of the application and indeed still continues to exist today. The question is raised whether this situation cannot supply an argument in favour of the justification of the request of 5 May 1959 and thus provide the necessary prerequisite for an action founded on a failure to act. However this argument cannot succeed since considerations relating to the question of the relevance and merits of the application cannot revive a right to bring an action before the Court which is limited in time and which has been extinguished. The purpose of the limitation periods is to set a term to litigation and, in the interests of public administration and those subject to it, to allow a legal question to remain in the uncertain state of dispute only for the time stipulated by the legislature. If the matter is brought before a court within the time for acting then it is the task of the court to examine the disputed legal position and where appropriate to settle it. Where no proceedings are brought before the court the legal uncertainty must be terminated at the end of the limitation period by the extinguishment of the right to bring an action. The second head of claim remains inadmissible.

In view of this judgment on the admissibility of the action it is no longer necessary to examine the third and fourth heads of claim whereby the applicant requests the Court of Justice to replace the contested part of the decision of the High Authority, namely classification in Grade 9, Step 3, of Category B, by another classification to be declared in the judgment. A precondition for these heads of claim is that either the first or second head of claim is *well founded* and that the Court of Justice should make an order for annulment.

Accordingly the application must be dismissed in its entirety as being inadmissible. As regards the costs, I submit that Article 70 of the Rules of Procedure is applicable.