JUDGMENT OF THE COURT
(FIRST CHAMBER)
14 DECEMBER 1961[1]

Wilhelmus Severinus Antonie Nannes Gorter v Councils of the European Economic Community and of the European Atomic Energy Community

Case 12/61

Summary

Officials – Contractual basis – Period before the entry into force of the Staff Regulations – Contract of employment – Application of the provisions of the Staff Regulations to the person concerned – Inability to give any guarantee
(EEC Treaty, Article 246(3); EAEC Treaty, Article 214(3)).

Under Article 246(3) of the EEC Treaty and Article 214(3) of the EAEC Treaty the conditions of employment applying between the Communities and their servants employed on a contractual basis under the so-called 'Brussels Rules' do not create any definitive legal link between the parties before the establishment of the Staff Regulations and the rules referred to in Article 212 of the EEC Treaty and Article 186 of the EAEC Treaty. The appointing authority is therefore not able to give servants employed under the 'Brussels Rules' legally valid guarantees as to the subsequent application of the provisions of the Staff Regulations to them.[2]

In Case 12/61

WILHELMUS SEVERINUS ANTONIE NANNES GORTER, residing at 17 Van Montfoort Laan, The Hague,

applicant,

with an address for service in Luxembourg at the Chambers of Alex Bonn, 22 Côte d'Eich, Luxembourg, assisted by Y. H. M. Nijgh, Advocate at the Hoge Raad of the Netherlands

v

COUNCILS OF THE EUROPEAN ECONOMIC COMMUNITY AND THE EUROPEAN ATOMIC ENERGY COMMUNITY, temporarily established in Brussels,

defendants,

1 – Language of the Case: Dutch.
2 – Cf. paragraph 4, summary, judgment in Joined Cases 43, 45 and 48/59 (Rec. 1960, p. 937).

with an address for service at their Secretariat, 3 Rue Lumière, Luxembourg, represented by their Legal Adviser, Raffaello Fornasier, acting as Agent, assisted by Jacques Basiyn, Advocate at the Cour d'Appel, Brussels,

Application for compensation for the loss allegedly suffered by the applicant owing to the need to resign from his Grade A 3 post in the Legal Department of the Secretariat of the Councils,

THE COURT (First Chamber)

composed of: O. Riese, President of the First Chamber, L. Delvaux and N. Catalano (Rapporteur), Judges,

Advocate-General: M. Lagrange
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Summary of the facts

The facts giving rise to the case may be summarized as follows:

Mr Gorter was employed in the Secretariat of the Councils of the European Communities under a so-called 'Brussels Rules' contract by a letter of 4 October 1958, with effect from 1 November 1958, and was assigned to the Legal Department (Grade 3, Category A). Mr Gorter who was a Netherlands official, obtained extraordinary leave of one year from his country in order to take up his post with the Communities.

The work carried out by Mr Gorter was held to be unsatisfactory by the Secretariat and the heads of the Legal Department and he was informed of his superiors' doubts as to the possibility of giving him a permanent post in the Secretariat and of later applying the provisions of the Staff Regulations to him.

Nevertheless Mr Gorter did not tender his resignation.

The Secretary-General of the Councils intervened with the Permanent Representative of the Netherlands to the two European Communities to suggest to the Netherlands Government that it reinstate Mr Gorter in its own department.

After some time Mr Gorter himself asked the Netherlands authorities to examine the possibility of his reinstatement in the national administration.

At the beginning of March 1961 a post equivalent to the one which he had previously occupied was offered to Mr Gorter in the Netherlands. On 13 March 1961 he sent to the Secretary-General of the Councils a letter in which he informed him of this offer and continued:

> 'I refer you to the compensation provided in Article 42 of the Staff Regulations of the ECSC temporarily applicable to officials who are not established in the Communities.
>
> I calculate an amount of 36 times FB 30 345 for this allowance, giving a total

of FB 1 092 420 if my duties cease on 1 May 1971.

The allowance in place of the retirement pension on the basis of the principles contained in the same article is, according to my calculations, approximately 30 (months)×3×2 168, (my own monthly contribution), giving a total of FB 195 120.

The resettlement costs under the second paragraph of Article 12(b) of the General Rules amount to FB 60 690. The grand total is FB 1 348 230.'

In conclusion, Mr Gorter asked for a rapid reply as the Netherlands Government had asked him to reply to its offer as quickly as possible.

Discussions followed, following which an allowance equal to three months' salary was offered to the applicant, as the Secretary-General of the Councils decided that such compensation was in conformity with the rules set out in the case-law of the Court.

However, relying on the decision taken on 25 January 1958 by the Councils of the Communities, in particular provision No 6 (Rectius No 8), Mr Gorter considered that the nature of his duties justified a higher allowance.

Nevertheless, he accepted his reinstatement in the Netherlands administration.

Finally, on 21 March 1961 the Secretary-General of the Councils informed the applicant that:

(a) the experience of the two and a half years of service seemed to show that it was no longer probable that he would be able to adapt to the work of the Secretariat and that in any case it was not possible to give him any guarantee of having the provisions of the Staff Regulations applied to him;

(b) he had no intention of compensating for any alleged loss but was prepared to envisage an administrative arrangement to enable him, as far as this was compatible with the provisions in force, to leave the Secretariat in circumstances to his benefit.

By letter of 30 March 1961 Mr Gorter informed the Secretary-General of the Councils that he had accepted the offer of a post made by the Netherlands Government and that he was therefore tendering his resignation, to take effect from 1 May. In addition, he observed that he had accepted this offer in view of the fact that on March 17 1961 the Secretary-General of the Councils had formally declared his intention of terminating his duties but that subsequently on 21 March the Secretary-General had refused to release him from his duties immediately. Consequently he alleged that the Secretary-General had forced him into a difficult situation or had taken advantage of the situation, contrary to the general principles of proper administration.

In a letter of 22 April 1961 the Secretary-General of the Councils informed Mr Gorter that he had taken note of his letter of resignation and that he would take all steps possible to pay the sums due to him under the rules in force at the time.

Meanwhile, by an action dated 17 April 1961 and entered in the Registry of the Court of Justice on the 20 April, Mr Gorter brought Application No 12/61 before the Court.

II — Conclusions of the parties

In his application the *applicant* 'respectfully asks the Court of Justice of the European Communities to rule that in the present case he is entitled to compensation from the defendant Communities, to fix such compensation at FB 1 348 230, or at any less amount which the Court sees fit, and to order the defendants to pay the costs'.

In his reply, he reduced his claim concerning his pension rights by FB 130 040 which he had meanwhile received from the Secretariat and 'as to the rest . . . he persists in his conclusions'.

The *defendants* contend that 'the Court of Justice should rule that the applicant's request is without foundation both as to the main and the subsidiary request, consequently reject the action and order the applicant to pay the costs'.

III — Submissions and arguments of the parties

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

A — The causes of the injury

1. The *applicant* states that his personal situation had become extremely difficult. In support of this he puts in evidence a number of facts:
the work given to him was not of sufficient quantity to allow of judgment of his skills and in some cases had even been withdrawn from him;
the attitude of Mr Mégret, one of the two heads of the Legal Department was entirely 'negative' towards the applicant;
the Secretary-General only obtained information as to the skills of the applicant from Mr Mégret and placed full reliance on this; moreover he had almost never 'heard the applicant';
insufficient account was taken of the applicant's work; nevertheless the applicant had given evidence of his qualifications for the post and linguistic knowledge in carrying out the work given to him.

The *defendants* emphasize the applicant's tendency to bring the debate down to a personal level and they point out that the Secretary-General heard the opinions of both the directors of the Legal Department as to the ability of the applicant and that both directors were in agreement.
Moreover, the allegations made against the Secretary-General and Mr Mégret are based on an individual conception of the hierarchical system and the organization of work within an administrative department.

2. The applicant states that he was in fact forced to resign. The interview granted to the applicant on 21 March 1961 by the Secretary-General and the initiative which he took with the Netherlands authorities to obtain the reinstatement of the applicant in his national administration led the applicant to conclude that his days as an official of the Communities were numbered.

The facts set out above and the atmosphere in which the applicant was forced to work made his resignation inevitable.
The *defendants* reply that, in a legal context, the problem is whether Mr Gorter was subject to pressure in order for them to obtain his resignation. The facts alleged in no way prove that such pressure existed. Moreover, if there had been pressure, it would be necessary to prove further that this had a decisive influence. It is possible that Mr Gorter deduced from certain conversations and attitudes — which, moreover, he reports in a tendentious manner — that they sought to leave him no alternative but to resign, whereas in fact no more was done than to inform him that his failure to adapt to the duties of the Secretariat meant that it was impossible to give him any guarantee that he would have the provisions of the Staff Regulations applied to him and that it should moreover be pointed out that such a guarantee could not in fact have been given in any valid way legally.
The initiative taken by the Secretary-General with the Netherlands authorities is no more than an action in favour of the applicant and is not undeniable proof of the intention to dismiss him: there is no link of cause and effect between the two events.

B — The right to compensation

1. The *applicant* argues that he has a right to compensation because:
The administration's conduct towards him is contrary to the general principles of proper administration; this is sufficiently shown by the facts set out above.
The administration's conduct is not in 'good faith'; This means that, where there exist no reasoned criticisms given by their superior, officials employed on a contractual basis may expect to be integrated as soon as the Staff Regulations are brought into force, since for some years they have relinquished their posts in their national administration and their reinstatement in that administration may be confronted with serious factual and legal difficulties; the purpose of the provision that contracts concluded between the administration and officials before the entry into force of the Staff Regulations can

only be of limited duration is to be interpreted as avoiding the situation of purely contractual provisions remaining in force after the adoption of the Staff Regulations. It must not be interpreted as authorizing the Communities to put an end arbitrarily to posts assigned by contract.

The facts set out above may equally well be infringements of the principle of good faith, or of the general principles of administrative law or of the contract of employment itself.

The *defendants* reply that the first sentence of Article 246(3) of the Treaty establishing the European Economic Community (the first sentence of Article 214(3) of the Treaty establishing the European Atomic Energy Community) and the very wording of the contract concluded with the applicant in the terms of the letter sent to him by the Secretary-General on 4 October 1959 should be borne in mind; in addition, they refer to the judgments of 16 December 1960 (Case 44/59, *Fiddelaar* v *Commission of the European Economic Community,* Rec. 1960, p. 1077) and of 15 July 1960 (Joined Cases 43, 45 and 48/59, *Eva Von Lachmüller, Bernard Peuvrier and Roger Ehrhardt* v *Commission of the European Economic Community,* Rec. 1960, P. 933). Moreover, the Secretary General could not disregard the opinion to be given by the 'Establishment Board' provided for in Article 90(1) (c) of the draft of the Staff Regulations, when it could not be presumed at all that the opinion of that board would necessarily be favourable to the applicant.

The administration cannot be accused of having acted in bad faith or of having failed to observe the rules of administrative law in respect of the applicant because he was not able to become integrated in the Secretariat; moreover, he himself realised this and finally handed in his resignation.

2. The *applicant* relies on provisions which in his opinion provide for his right of compensation:

The first sentence of Article 246(3) of the Treaty establishing the European Economic Community (the first sentence of Article 214(3) of the Treaty establishing the European Atomic Energy Community) must be interpreted as providing security for officials.

Article 42 of the Staff Regulations of Officials of the European Coal and Steel Community, applicable to the applicant because of his grade, specifically provides for his right to compensation and also regulates it; the Staff Regulations are applicable to non-integrated officials of the Community by virtue of the decision of 25 January 1958 adopted by the Councils of the Communities (No. 8). This provision could have been applied to the applicant from 13 to 21 March 1961, since at that time there was nothing to prevent removal from his post in the interests of the service.

The *defendants* reply:

Article 246 of the EEC Treaty cannot be interpreted as though officials employed on a contractual basis do in fact receive the benefits of the Staff Regulations; such a conclusion would be unacceptable.

Article 42 of the Staff Regulations of Officials of the ECSC is in any event inapplicable, whether directly or by analogy, to an official in the position of the applicant. The Councils' decision referred to by the applicant is not intended to make the whole of the Staff Regulations of the ECSC applicable to servants employed on a contractual basis but to provide a scale for the competent authorities to enable them, while awaiting the establishment of the Stafl Regulations of the EEC and EAEC, to fix the amounts of salaries, allowances and pensions for servants employed on a contractual basis.

To assign any other scope to the decision in question would infringe Article 246 of the EEC Treaty (Article 214 of the EAEC Treaty) which expressly excludes security of employment prior to the adoption of Staff Regulations. In particular, it must be pointed out that the provisions of Article 42 are intended to compensate for the loss of employment for officials who did in fact have the right to security by virtue of their position under the Staff Regulations. The Secretariat, which in practice referred to the provisions in force of the ECSC, nevertheless never disregarded the fact that

the provisions of the Staff Regulations of the ECSC, which are specifically based on the rule of security of employment, could not be transposed in their entirety for the benefit of staff of the EEC and EAEC Communities employed on a contractual basis who do not have such stability as specifically provided for by the Treaties of Rome.

C —Assessment of the injury

In his application the applicant seeks compensation of FB 1 348 230.
This claim relies on the circumstances already set out by Mr Gorter in his letter of 13 March 1961 quoted in the summary of the facts.
In his reply the applicant deducts from the amount of his claim FB 130 040 which he had in the meantime received from the Secretariat in settlement of his pension rights; nevertheless he states that this only covers half of the contributions paid to the Provident Fund by the administration.
In the course of the oral procedure the applicant stated that in the meantime he had been given complete satisfaction in this respect.
The defendants recall that Mr Gorter was reinstated in his original administration in a post equivalent to that which he had previously occupied; therefore the only loss he had suffered was the possibility of remaining in the employment of the Communities and he has therefore suffered no injury.
The basis of the action brought by the applicant is a resignation, the consequences of which must be borne by the applicant; there is no link of cause and effect between this resignation and possible compensation for dismissal.
Article 42 of the Staff Regulations of Officials of the ECSC cannot be applied to an official employed on a contractual basis by the EEC; moreover, Article 12 (b) of the General Rules of the ECSC is not applicable to servants employed on a contractual basis by the EEC, as the applicant is not a temporary official; finally, a claim based on this provision is contradictory to the claim brought under Article 42 of the Staff Regulations.

IV — Procedure

The procedure followed the normal course.

Grounds of judgment

The application was brought in the prescribed form and within the prescribed time-limits.

The defendants have raised no objection as to the admissibility of the application.

The applicant bases his claim for compensation, first, on Article 246(3) of the EEC Treaty and Article 214(3) of the EAEC Treaty and, secondly, on Article 42 of the Staff Regulations of Officials of the ECSC in conjunction with No 8 of the decision of 25 January 1958 adopted by the Councils of the EEC and EAEC.

The case referred to in the above-mentioned Article 42 is that of retirement in the interests of the service, that is, a measure taken by the appointing authority.

However, in the present case the applicant himself tendered his resignation.
Nevertheless, he claims that he was forced by moral pressure to resign by reason of

the conduct of the Secretary General of the Councils and he therefore argues that in law the situation leading to the termination of his contract is equivalent to the retirement in the interests of the service mentioned above.

It must first be examined whether the applicant's contention is correct.

In the absence of unlawful pressure on the applicant, the argument based on Article 42 of the Staff Regulations of Officials of the ECSC would be without foundation, irrespective of the question whether this provision is also applicable to officials employed under the 'Brussels Rules' for contracts.

The fact that the Secretary-General of the Councils did not conceal from the applicant that application of the provisions of the Staff Regulations to him was doubtful cannot be regarded as constituting unlawful pressure on the applicant.

Under Article 246(3) of the EEC Treaty and Article 214(3) of the EAEC Treaty the conditions of employment applying between the Communities and their servants employed on a contractual basis under the so-called 'Brussels Rules' do not create any definitive legal link between the parties before the establishment of the Staff Regulations and the rules referred to in Article 212 of the EEC Treaty and Article 186 of the EAEC Treaty.

It is for the appointing authority to assess the skills and abilities of officials with a view to the possible application of the provisions of the Staff Regulations to them on the entry into force of those Regulations.

Therefore, at the present time the appointing authority is not able to give to servants employed under the 'Brussels Rules' legally valid guarantees as to the subsequent application of the provisions of the Staff Regulations to them.

In these circumstances the Secretary-General of the Councils acted in conformity with both the provisions in force and the principle of good faith in, refusing on the one hand, to make such guarantees to the applicant and, on the other hand, in informing him of the reasons which could, in his opinion, be an obstacle to the subsequent application of the provisions of the Staff Regulations to him.

In the present case there is no need to examine whether those reasons were well founded. In fact, in order to bring this matter before the Court the applicant should have waited either for a decision of dismissal or a decision refusing to apply the provisions of the Staff Regulations to him.

On the other hand, the information given to the applicant by the Secretary General of the Councils and the approaches made by him to the Netherlands authorities

may be regarded as measures in favour of the applicant who was thus enabled to take such measures as he saw fit in good time and in full knowledge of the reasons.

The facts alleged by the applicant in no way prove that his resignation was tendered because of moral pressure.

On the contrary, it must be held that the applicant freely chose to resign in order to take advantage of the possibility offered to him by the Netherlands Government to return to its service.

The fact that he decided to follow this course through fear of subsequent refusal to apply the provisions of the Staff Regulations of Officials of the European Communities to him when they entered into force does not mean that he did not take his decision freely, as he most probably thought that it was in his interests to avoid the risks which he would undergo remaining in the service of the Councils.

The applicant's claim for compensation for the injury which he claims to have suffered following his resignation is therefore unfounded.

In his reply the applicant put forward a subsidiary argument which effectively accuses the defendants of an administrative error or a breach of contract.

This allegation is entirely without foundation for the reasons set out above, and the claim for compensation must therefore be rejected without having any need to examine the further arguments put forward by the applicant.

The claim for reimbursement of contributions to the Provident Fund is now without purpose as the applicant has received complete satisfaction in this respect.

Costs

The applicant has failed in his application.

He shall therefore be ordered to pay the costs.

Pursuant to Article 70 of the Rules of Procedure of the Court the costs incurred by the Councils shall be borne by them.

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 Protocols on the Statute of the Court of Justice of the European Economic Community and of the European Atomic Energy Community;
Having regard to Articles 179, 212, 215 and 246(3) of the Treaty establishing the EEC and Articles 152, 186, 188 and 214(3) of the Treaty establishing the EAEC;
Having regard to Article 42 of the Staff Regulations of Officials of the ECSC;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT (First Chamber)

hereby

1. **Dismisses Application 12/61;**

2. **Orders the applicant to bear his own costs while the costs incurred by the defendants are to be borne by them.**

O. Riese L. Delvaux N. Catalano

Delivered in open court in Luxembourg on 14 December 1961.

A. Van Houtte
Registrar

O. Riese
President of the
First Chamber

OPINION OF MR ADVOCATE-GENERAL LAGRANGE DELIVERED ON 23 NOVEMBER 1961[1]

Mr President,
Members of the Court,

This action appears to be extremely simple. Mr Gorter, a Netherlands official, was employed at the Secretariat of the Councils of the Communities under the so-called 'Brussels Rules' by a letter of 4 October 1958, with effect from 1 November 1958. He was employed in the Legal Department. The work carried out by the applicant was held to be unsatisfactory by the Secretariat and the heads of the Legal Department, in particular by one of them of French nationality.
Following approaches made by the Secretary General of the Councils and later an application made by Mr Gorter himself

1 – Translated from the French.