

JUDGMENT OF THE COURT (FIRST CHAMBER)
17 NOVEMBER 1965¹

Umberto Collotti
v Court of Justice of the European Communities

Case 20/65

S u m m a r y

Officials — Appeal against a measure confirming an earlier decision — Expiry of period for lodging appeal against that decision — Loss of right to appeal (Staff Regulations of officials, Article 91)

Cf. paragraph 2 of summary in Case 55/64.

In Case 20/65

UMBERTO COLLOTTI, Advocate of the Turin Bar, residing in Turin, assisted by Fernand Probst, Advocate of the Luxembourg Bar, with an address for service in Luxembourg at the Chambers of his Counsel, 26 avenue de la Liberté,

applicant,

v

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES, represented by its Registrar, Albert Van Houtte, acting as Agent, with an address for service in Luxembourg at the Court, 12 rue de la Côte-d'Eich,

defendant,

Application for the annulment of the measure notified to the applicant by letter from the Registrar of the Court of Justice dated 18 February 1965 and for the revision of the applicant's retirement pension, on the basis of his classification in Grade L/A 3, Step 8, as from 1 January 1962;

THE COURT (First Chamber)

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

Advocate-General: K. Roemer

Registrar: H. J. Eversen, Assistant Registrar

gives the following

¹ — Language of the Case: Italian.

JUDGMENT

I — Facts

The facts may be summarized as follows:

The application was lodged on 9 April 1965. It claims the annulment of the 'measure notified to the applicant by the Registrar's letter No 46 965 of 18 February 1965' for the classification of the applicant in Grade L/A3, Step 8, as from 1 January 1962, and the corresponding adjustment of his retirement pension.

Letter No 46 965, contested by the application, communicates to the applicant the detailed statement of his pension rights made up to 1 February 1965 and informs him that the amount of his pension will be paid to him for the first time at the end of February.

The administration's calculations are based on the operative part of the judgment given on 7 July 1964 (Rec. 1964, p. 905) in the case of *Collotti v Court of Justice*, fixing the applicant's classification in Grade L/A3, Step 7, with effect from 1 January 1962.

In this respect the applicant claims that the grounds of that judgment clearly indicate that subsequent administrative action must be taken to amend this classification by adding an additional step to it.

II — Conclusions of the parties

A. In his application the *applicant* claims that the Court should:

1. 'Annul the measure communicated to the applicant by the Registrar's letter No 46 965 of 18 February 1965;
2. Order the administration of the Court to classify the applicant in Grade L/A3, at Step 8, as from 1 January 1962, with all the financial consequences arising therefrom;
3. Order the administration to draw up a new detailed statement of account

of his retirement pension, taking as the basis his salary during the last three years of service amended on the basis of head 2 above, with all the financial consequences arising therefrom;

4. Order the administration of the Court to pay the costs and expenses'.

B. In its application on a procedural issue the *defendant* contends that the Court should:

'Give a decision on the preliminary objection of inadmissibility raised by this application, as a procedural issue, under Article 91 of the Rules of Procedure; Declare the main application inadmissible and consequently dismiss it, and order the applicant to pay his own costs'.

C. In his observations on the application on a procedural issue the *applicant* submits that the Court should:

'Dismiss the claim of the defendant as unfounded and order the defendant to pay the costs and expenses; Alternatively, reserve its decision until judgment on the substance of the main application, and reserve the costs'.

III — Submissions and arguments of the parties

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

A. The *applicant* alleges that the letter of 18 February 1965 must be considered as a final measure (acte définitif) adopted by the Court as an institution and that the Registrar acted as an agent of the Court in his capacity of head of the administration.

He says, however, that although the operative part of the judgment delivered on 7 July 1964 (Rec. 1964, p. 905) in Case 70/63 is limited to declaring that

the applicant must be classified in Grade L/A3, at Step 7, with effect from 1 January 1962, on the other hand the grounds of that judgment clearly show that a subsequent *administrative amendment* must be made to the applicant's classification by adding one step to it, either on the grounds of the two years' seniority at the step which the applicant had under the ECSC system or under paragraph (4) (b) of Annex X to the Staff Regulations of officials of the ECSC.

The applicant concludes from this that the letter of 18 February 1965 is illegal because it did not correctly apply the Staff Regulations, in particular Annex X thereto, in accordance with the interpretation which the Court gave them in its judgment in the said Case 70/63.

B. On 8 May 1965, the *defendant* lodged an application on a procedural issue under Article 91 of the Rules of Procedure, contending that the main application was inadmissible because it was out of time.

In support of that objection the defendant claims that the judgment in Case 70/63 was notified to the applicant on 7 July 1964 and implemented by the defendant on 21 July 1964 by paying the arrears of salary ordered by the judgment.

The defendant states that the period of time of three months provided for in Article 91 of the Staff Regulations consequently began either on the date of notification of the judgment or on the date of payment and had thus expired, at the latest, on 22 October 1964.

With regard to the letter of 18 February 1965, contested by the main application, its aim is not to quantify the *remuneration* determined by the judgment but only the amount of the *pension*, in accordance with the Staff Regulations in force.

The defendant subsequently produces, in a schedule to its application, a letter of 9 December 1964 addressed by the applicant to the President of the Court. It refers to the following passages:

'please . . . consider whether . . . the administration should not once again review my classification . . .' and 'it is not my intention hereby to make an administrative appeal or even a formal complaint'.

It observes that the Court considered that no action should be taken on this letter (extract from the minutes of the administrative meeting of 15 December 1964).

It concludes that it arises from the foregoing that 'the applicant knew his classification and was satisfied with it'.

C. (1) The *applicant* replies that the defendant's 'application on a procedural issue' is in fact a 'preliminary objection on the ground of inadmissibility' based on Article 91 of the Rules of Procedure.

In the official German text of the Rules of Procedure of the Court the words 'procedural issue' ('incident') and 'preliminary objection' ('exception') appearing in Article 91 are translated by 'Zwischenstreit' and 'Prozeßhindernde Einrede'. This latter term, which literally means 'objection raising an impediment to the proceedings', is taken from paragraph 274 of the German Code of Civil Procedure ('Zivilprozeßordnung'), which is still in force, by virtue of the reference made to it in paragraph 173 of the German Code of Procedure before the Administrative Court (Verwaltungsgerichtsordnung). The preliminary objection on the ground of filing proceedings out of time does not appear among the seven provided for in Article 274.

The applicant concludes from this that within the Community system of procedure there is thus doubt as to whether the defendant's application is *admissible*.

(2) The applicant next alleges that the defendant's application on a procedural issue is *unfounded*.

The dates of 7 July or 21 July 1964 cannot be used as points of departure for a period of time which applies to the bringing of an application. In fact

the documents sent on these dates were sent without signature and without an accompanying letter, simply as information.

Moreover, these documents concern the implementation of the *operative part* of the judgment in Case 70/63 and not the application of principles of interpretation which might be deduced from its grounds.

Finally, the fact that the applicant *accepted his salary without reservation* for several months cannot constitute *acquiescence* giving rise to the forfeiture of his rights in the present action. The Court has stated this directly in the Mirossevich case, and indirectly in many cases involving officials who had with-

out reservation accepted for many months the salary of the grade assigned to them and had this grade amended by the Court.

IV — Procedure

The procedure followed the normal course. At its hearing on 8 July 1965 the First Chamber of the Court decided, on the basis of the preliminary report of the Judge-Rapporteur and after hearing the Advocate-General, to open the oral procedure without a preparatory inquiry. The parties gave their oral explanations at hearing on 6 October 1965. On 21 October 1965 the Advocate-General delivered his opinion.

Grounds of judgment

I — Admissibility

In its objection based on Article 91 of the Rules of Procedure, the defendant contends that the main application is inadmissible because it is out of time.

The sole condition required by Article 91 of the Rules of Procedure for making an application under that Article is that the decision requested shall be on a 'preliminary objection or . . . procedural issue' ('que la Cour statue sur une exception ou un incident sans engager le débat au fond').

Failure to observe a time-limit entails the loss of the actual right to bring an action, that is to say, of the opportunity to bring the facts forming the subject of the action before the Court for examination of the substance of the case.

It appears that the application, apparently made against the note of 18 February 1965 containing the statement of the retirement pension, in fact aims at the revision of the applicant's classification as at 1 January 1962, as it arises from the operative part of the judgment of 7 July 1964 in Case 70/63. In this connexion the applicant invokes certain of the grounds of the said judgment.

Under Article 91 (2) of the Staff Regulations of officials, appeals shall be filed within three months of notification of the act adversely affecting the

official in question. In this instance the applicant received on 21 July 1964 from the administration of the Court a detailed statement of the sums to which he was entitled both as regards the past and the future, on the basis of the judgment in Case 70/63. This statement showed clearly the consequences which the administration drew from the said judgment.

If the applicant disagreed with these consequences, to safeguard his rights he had a period of three months in which to make either an administrative complaint or to bring an appeal before the Court. The applicant only reacted on 9 December 1964, when he addressed a letter to the President of the Court wherein moreover he stated clearly that it did not constitute an administrative complaint. Thus the applicant has lost the right to bring an appeal before the Court on the implementation of the judgment in Case 70/63 and its consequences.

Furthermore, the note of 18 February 1965 containing the statement of the applicant's retirement pension merely confirms the statement of 21 July 1964 and cannot revive a cause of action already extinguished. In fact, the note of 18 February 1965 aims solely at clarifying the pension rights, as a matter of accountancy, on the basis of the judgment delivered in Case 70/63 and the implementation of that judgment as it emerged from the statement of 21 July 1964.

It follows from the foregoing that the application in Case 20/65 is inadmissible because it was made after the expiry of the period of time fixed by Article 91 (2) of the Staff Regulations of officials.

II—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 Treaty establishing the European Coal and Steel Community;
Having regard to the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community;
Having regard to the Staff Regulations of officials of the European Coal and Steel Community, especially Articles 90 and 91;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT (First Chamber)

hereby:

1. Dismisses Application 20/65 as inadmissible;
2. Orders the parties to bear their own costs.

Delvaux

Trabucchi

Lecourt

Delivered in open court in Luxembourg on 17 November 1965.

H. J. Eversen
Assistant Registrar
for the Registrar

L. Delvaux
President of the First Chamber

OPINION OF MR ADVOCATE-GENERAL ROEMER
DELIVERED ON 21 OCTOBER 1965¹

*Mr President,
Members of the Court,*

After the entry into force of the new Staff Regulations, the applicant, then the Head of our Language Department, considering that he had not been classified in accordance with these Regulations, commenced an action against the Court of Justice (Case 70/63) and obtained from it a judgment (7 July 1964) which decreed that the improvement in his classification which he sought in his conclusions should be granted. The administration of the

Court implemented the operative part of the judgment: it amended the applicant's classification in the scale of salaries of the Staff Regulations of officials with retroactive effect from 1 January 1962 and it paid him the corresponding arrears of salary (21 July 1964).

Shortly after tendering his resignation (which the Court, by letter of 4 November 1964, accepted with effect from 1 February 1965), the applicant on 9 December 1964 addressed a letter to the President of the Court (wherein he formally denied that it was in the

¹ — Translated from the German.