

JUDGMENT OF THE COURT (FIRST CHAMBER)
10 DECEMBER 1969¹

Giuseppe L. V. Grasselli
v Commission of the European Communities

Case 32/68

Summary

1. *Officials — Disputes with the Administration — Measure adversely affecting an official — Concept*
(*Staff Regulations of Officials of the EEC, Article 91*)
 2. *Officials — Disputes with the Administration — Unlimited jurisdiction of the Court — Its restriction to cases covered by the first sentence of Article 91(1) of the Staff Regulations of Officials*
1. Only measures capable of directly affecting a specific legal situation may be considered as having an adverse effect.
2. The first sentence of Article 91(1) governs the second so that this provision only confers unlimited jurisdiction on the Court where there is a dispute within the meaning of the first sentence.

In Case 32/68

GIUSEPPE L. V. GRASSELLI, an official of the Commission of the European Communities, residing at 25 Via Bembo, Cemona, represented by Marcel Grégoire, Advocate at the Cour d'Appel, Brussels with an address for service in Luxembourg at the Chambers of Tony Biever, 83 boulevard Grande-Duchesse-Charlotte,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its legal Adviser, Pierre Lamoureux, acting as Agent, with an address for service in Luxembourg at the Chambers of Emile Reuter, 4 boulevard Royal,

defendant,

Application for the annulment of a decision of the defendant communicated to the applicant as a schedule to the memorandum dated 16 September 1968, signed by Ch. Reichling, Director-General for Personnel and Administration

¹ — Language of the Case: French.

IX, Luxembourg, in the form of an explanatory table of the applicant's rights as from the termination of his service, in so far as it envisages the application of Article 34 of the Staff Regulations of the ECSC and, in that event, applies a reduction coefficient to the pension due to the applicant and refuses him the dependent child allowance,

THE COURT (First Chamber)

composed of: R. Monaco, President of Chamber, A. M. Donner (Rapporteur) and J. Mertens de Wilmars, Judges,

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

gives the following

JUDGMENT

Issues of fact and of law

I—Summary of the facts

The facts which are the subject matter of the proceedings may be summarized as follows:

The applicant, who was engaged by the High Authority of the European Coal and Steel Community on 5 October 1961, was as from February 1963 attached to the Directorate-General (ECSC) which consequent upon an amalgamation of the Executives became the Directorate for Steel in Directorate-General III of the single Commission. He was an official in Grade A6, with the title of Administrator.

On 8 April 1968, the applicant submitted a request that his service be terminated, based on the provisions of Article 4(3) of Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 (OJ No L 56, 4. 3. 1968).

At its meeting on 20 June 1968, the defendant took a decision in favour of this with effect from 1 October 1968.

This decision was notified to the applicant by letter of 21 June 1968 from the Directorate-General for Personnel and Administration.

At that time the applicant was asked to opt between a pension and the immediate settlement of his rights and, further, if he chose a pension, to opt between the application to him, for the purpose of determining his remuneration, of Article 5 of Regulation No 259/68 or of Article 34 of the former Staff Regulations of the ECSC (cf. Article 7 of Regulation No 259/68).

By a memorandum dated 16 September 1968 and signed by Mr Reichling, a table was forwarded to the applicant explaining his rights as from the date of the termination of his service, under the alternatives of applying Article 5 of Regulation No 259/68 or Article 34 of the former ECSC Staff Regulations.

On 27 September 1968 the applicant submitted an appeal through official channels to the President of the Commission.

He pointed out that it was wrong that in the event of his opting for Article 34 of the former Staff Regulations of the ECSC a reduction coefficient should be applied to his pension and that he should be refused entitlement to the dependent child allowance.

He asked for a revision of the decision to be taken on the basis of the said table.

On the same date the applicant wrote to Mr Reichling informing him:

- (a) that he was in agreement with the date—1 October 1968—of termination of his service;
- (b) that he had decided to opt for the pension in conformity with the provisions of Article 6 of Regulation No 259/68;
- (c) that he was holding in abeyance his decision on the choice available to him under Article 7 of Regulation No 259/68 until after a decision had been reached on his appeal through official channels a copy of which was enclosed.

By letter dated 18 October 1968, but posted in Brussels on 6 November 1968, which reached him in Montecatini on 13 November 1968, Mr van Gronsveld, Director-General for Personnel and Administration informed the applicant that his letter of 27 September 1968 to the President of the Commission had been carefully examined but that for the reasons set out therein his arguments could not be accepted.

By an application dated 13 December 1968 and lodged at the Court Registry on 16 December 1968 the applicant referred the matter to the Court.

II—Conclusion of the parties

The *applicant* claims that the Court should:

- ‘—annul the disputed decision, communicated as a schedule to the memorandum dated 16 September

1968, signed by Ch. Reichling in the form of an explanatory table of the applicant’s rights as from the termination of his service in so far as it envisaged the application of Article 34 of the former version of the Staff Regulations and, in that event, denied the applicant a right to a dependent child allowance and the right to a full pension without applying a reduction coefficient;

- in exercise of its unlimited jurisdiction to rule that in the event of his opting for Article 34 of the former Staff Regulations, the provisions of Article 5 (8) of Regulation No 259/68 will also be applicable;
- in any event to order the defendant to pay the costs.’

The *defendant* contends that the Court should:

- ‘—reject the application in its entirety as inadmissible or unfounded;
- 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—Admissibility

According to the *defendant* in its statement of defence the admissibility of the application gives rise to serious doubts. Whilst it relies on the wisdom of the Court in this matter it sets out the following facts in connexion with the problem:

1. It is a question of the interpretation of provisions and not their application; moreover an official notice published in the Staff Courier of 16 April 1968 issued a reminder that it was ‘for the purposes of information only and not binding on the Commission’.
2. The applicant has an interest in obtaining an authentic interpretation of the provisions in question.

3. If explanatory tables such as those in dispute are regarded as having the scope of decisions capable of being contested on their notification to the officials to whom they are addressed the period for lodging an appeal must start to run.

The *applicant* states in his reply that the application is admissible, and in particular:

1. Since the contested measure emanates from the Commission and determines precisely the applicant's position with regard to the two possibilities put forward for his choice, it constitutes a decision in accordance with the case-law of the Court.
2. Since the contested measure affects the applicant's right to exercise an option, it adversely affects him.
3. The inadmissibility of an appeal such as the present one would mean that the official might lose the right of appeal against the actual application of the provisions in question, owing to his failure to take action within the appropriate period against their interpretation as notified to him by the Commission.

According to the *defendant* in his rejoinder, it is clear from a reading of the applicant's arguments that in reality the present proceedings do not constitute an application for the annulment of a decision but an endeavour to make an application for the interpretation of a provision, an application which is not provided for in Community law.

Moreover, the measure in question does not constitute the final adoption of a position as was the position in the cases quoted by the applicant.

It follows that the application is admissible.

B — *The substance of the case*

In his application the *applicant* states that the contested decision is illegal in that it expressly infringes the provisions of Article 7(1) and of Article 5(7) and

(8) of Regulation No 259/68 and by implication, if reference is made to the reply given to the appeal through official channels, of the provisions of Article 4(2) of Regulation No 259/68.

In this connexion he states that the option between Article 5 of Regulation No 259/68 and Article 34 of the former Staff Regulations of Officials of the ECSC only refers to remuneration and not to the rights 'pertaining to the social security scheme' which in any event remain governed by Article 5 (cf. Article 7(1) of Regulation No 259/68).

Moreover, the second subparagraph of Article 4(2) of Regulation No 259/68, upon which the Commission relies in its reply to the appeal through official channels, only refers to Article 41(3) in the context of a measure conferring non-active status, which is precluded in this case.

With regard to the application of a reduction coefficient, the *defendant*, in its statement of defence, states that this application is in accordance with the provisions referred to and that:

1. The pension rights form part of the remuneration referred to in Article 7(1) of Regulation No 259/68, as that provision refers not only to Article 34 of the former Staff Regulations of the ECSC but also to Article 50 of the Rules and Regulations of the ECSC.
2. Since the abovementioned Article 34 expressly provides for the payment of a proportional pension and in this connexion refers to the conditions laid down in the pension scheme, it must be deduced that the pension payable on early retirement is affected by the reduction normally applicable, as is laid down in Article 59 of the Rules and Regulations of the ECSC and re-enacted in Article 9 of Annex VIII to the Staff Regulations of Officials of the European Communities.
3. It is clear from the fourth subparagraph of Article 5 (7) of Regulation No 259/68 (in particular: 'At the

end of such period . . .') that this provision is applicable only to officials who, having opted for the ECSC system, are not entitled to receive the grant provided for in Article 5(1) during the period provided for in Article 5(2).

4. In fact a derogation from the general rule, that is to say the application of a reduction coefficient to the pensions payable on early retirement, is envisaged only in the cases expressly referred to.

The Commission recognizes moreover that an error in the explanations given to the applicant slipped into the reply to the appeal through official channels since confusion resulted in connexion with non-active status.

With regard to the dependent child allowance, the phrase 'in application of these provisions' in Article 5(8) of Regulation No 259/68 clearly refers to the provisions of that article. It follows that the officials who have opted for the ECSC system are excluded from the benefit provided for in Article 5(8).

In his reply, the *applicant* states first of all that the expression 'remuneration' can only be understood by excluding other rights, in particular those pertaining to social security. Consequently he replies to the defendant's arguments by alleging in particular:

A — As to the reduction coefficient

1. That the fact that Article 7(1) of Regulation No 259/68 refers solely to Article 34 of the Staff Regulations of the ECSC and Article 50 of the Rules and Regulations of the ECSC shows that the intention was to exclude the application of the other provisions, such as Article 59 in particular.
2. The figures given by the two interpretations put forward show that, contrary to the applicant's interpretation, that proposed by the defendant renders the option provided for by Article 7 of Regulation No 259/68

pointless, since the sums to be paid under the ECSC system are always lower than those resulting from the application of Article 5 of Regulation No 259/68.

3. The 'period' mentioned in the fourth subparagraph of Article 5(7) of Regulation No 259/68 refers to the indemnity period which is also found in the ECSC system, just as Article 5(9) and (10) is applicable to the two systems.

B — As to the dependent child allowance

4. Article 34 of the Staff Regulations of the ECSC and Article 50 of the Rules and Regulations of the ECSC make no provision with regard to family allowances which remain governed by Article 5 of Regulation No 259/68.
5. The words 'these provisions' appearing in Article 5(8) include all the provisions of Chapter II of Regulation No 259/68.

According to the *defendant* in its rejoinder the concept of 'remuneration' involves a distinction with regard to rights which do not relate to a sum of money. On the other hand, the Commission states, with examples given in support, that its interpretation by no means excludes the fact that in various instances the outcome of the application of the ECSC system may be more advantageous than that resulting from the application of Article 5 of Regulation No 259/68.

The fact that Article 7(1) of Regulation No 259/68 only refers to Article 34 of the former Staff Regulations of the ECSC and Article 50 of the Rules and Regulations of the ECSC does not justify the applicant's conclusions. In fact, since the former Staff Regulations of the ECSC and the Rules and Regulations of the ECSC were no longer in force, it was indeed necessary to provide that remuneration should be determined in accordance with the abovementioned Articles 34 and 50 and the reference by Article 34 to the 'pension scheme' of necessity refers to the present pension

scheme (Annex VIII to the present Staff Regulations of Officials of the European Communities). Article 9 of this Annex contains almost exactly the same provisions as Article 59 of the Rules and Regulations of the ECSC.

The defendant further states that Article 5 of Regulation No 259/68 by itself constitutes a complete and independent scheme which neither refers to other schemes nor requires to be combined with other pre-existing schemes. This complete new scheme constitutes one of the options provided for by Article 7 of Regulation No 259/68. In fact, there can be no question of using the option to obtain the advantage both of the former and of the new schemes and to avoid their disadvantages.

The defendant then disputes the applicant's argument based on Article 5(9) and (10) of Regulation No 259/68. In fact, those provisions merely stipulate for the persons covered by Article 5 rights normally provided for by the Staff Regulations of Officials of the European Communities. On the other hand, the fourth subparagraph of Article 5(7) abovementioned confers a special benefit on those whose situation is governed by the scheme of Article 5.

With regard to the dependent child allowance, the defendant alleges that Article 34 of the former Staff Regulations of the ECSC and Article 50 of the Rules and Regulations of the ECSC do not deal with this question and

consequently ordinary law is applicable. Consequently this allowance is in fact included in the 'remuneration' and in the option provided for by Article 7 of Regulation No 259/68.

Moreover, as the provisions of Article 5(7) and (8) of Regulation No 259/68 clearly constitute an entity, the argument based by the applicant on the said paragraph (8) is false.

In the oral procedure the defendant again summarized its interpretation of the disputed provisions in the light of the subsequent rules and regulations governing the position of the officials of the European Communities. It follows from this that the sole aim of Article 7 of Regulation No 259/68 is not to deprive the former officials of the ECSC of the rights or advantages which were entailed by the continuation of the ECSC system, but at the same time not to add new advantages.

IV — Procedure

The written procedure followed the normal course. On hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the First Chamber of the Court decided to open the oral procedure without any preparatory inquiry. The parties presented oral argument at the hearing on 11 November 1969. The Advocate-General delivered his opinion at the hearing on 27 November 1969.

Grounds of judgment

- ¹ By an application lodged on 16 December 1968, the applicant requested the annulment of 'the defendant's decision notified to the applicant as a schedule to the memorandum dated 16 September 1968 signed by Mr C. Reichling, Director-General for Personnel and Administration, in the form of an explanatory table of the applicant's rights as from the termination of his service, in so far as it envisages the application of Article 34 of the former version of the Staff Regulations and, in that event, applies a reduction coefficient reduction to the pension due to the applicant and refuses him the dependent child allowance'.

- ² The defendant has raised the question of the admissibility of the application on the ground that the explanatory table in dispute does not constitute a decision.
- ³ Pursuant to Article 91(1) of the Staff Regulations, the Court of Justice of the European Communities shall have jurisdiction in any dispute between the Communities and any person to whom those Staff Regulations apply regarding the legality of a measure adversely affecting such person.
- ⁴ Only measures capable of directly affecting a specific legal situation may be considered as having an adverse effect.
- ⁵ The contested communication has the object neither of determining the applicant's rights in a specific legal situation nor of binding the appointing authority with regard to determining those rights in the future.
- ⁶ In fact, in an official notification published in the 'Staff Courier' of 16 April 1968, the Commission recalled that the data provided at the request of the persons concerned in the application of Regulation No 259/68 were for the purposes of information and not binding on the Commission.
- ⁷ Consequently information such as that at issue in this case cannot be recognized as having an effect adverse or otherwise on the legal position of officials.
- ⁸ The application for annulment is thus inadmissible.
- ⁹ In his application the applicant secondly asks the Court, 'in exercise of its unlimited jurisdiction to rule that in the event of his opting for Article 34 of the former Staff Regulations, the provisions of Article 5(7) and (8) of Regulation No 259/68 will also be applicable'.
- ¹⁰ The first sentence of Article 91(1) governs the second so that this provision only confers unlimited jurisdiction on the Court where there is a dispute within the meaning of the first sentence.
- ¹¹ It follows from the foregoing that *ipso facto* the Court lacks jurisdiction to give the ruling requested.
- ¹² Moreover Article 7, as opposed to other provisions of the regulation relating to options, does not limit to any period the exercise of the right in question so that the applicant retains the power of postponing his choice until a later date.
- ¹³ Consequently the request for a ruling is inadmissible.

14 The application must therefore be dismissed as inadmissible.

C o s t s

15 The applicant has failed in his application.

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

17 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 Treaties establishing the European Communities;

Having regard to the Protocol on the Statute of the Court of Justice;

Having regard to the Staff Regulations of Officials of the European Communities, especially Article 91;

Having regard to Regulation No 259/68, especially Article 7;

Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT (First Chamber)

hereby:

1. Dismisses the application as inadmissible.

2. Orders the parties to bear their own costs.

Monaco

Donner

Mertens de Wilmars

Delivered in open court in Luxembourg on 10 December 1969.

A. Van Houtte

Registrar

R. Monaco

President of the First Chamber