JUDGMENT OF THE COURT (SECOND CHAMBER)
4 APRIL 1960[1]

Raymond Elz
v High Authority of the European Coal and Steel Community

Case 34/59

Summary

1. Rules of procedure — Replacement — Effects on periods for instituting proceedings

2. Periods — Expiry

1. The entry into force of new rules of procedure of the Court of Justice affects neither the rights of action accrued before this date nor the extinguishment of rights during the time when the former rules were in force.

2. An application relating to the consequences of a decision which the applicant may no longer contest is out of time and therefore inadmissible.

In Case 34/59

RAYMOND ELZ, an official of the High Authority of the European Coal and Steel Community, residing at 169 rue de Soleuvre, Differdange, assisted by Alex Bonn, Advocate of the Luxembourg Bar, residing at 22 rue de la Côte d'Eich, Luxembourg, with an address for service at the offices of Alex Bonn,

applicant,

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by its Legal Adviser, Raymond Baeyens, acting as Agent, assisted by Cyr Cambier, Advocate of the Cour d'Appel, Brussels, with an address for service at its offices at 2, place de Metz, Luxembourg,

defendant,

THE COURT (Second Chamber)

composed of: R. Rossi, President, A. M. Donner (Rapporteur) and Ch. L. Hammes, Judges,

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

gives the following

1 — Language of the Case: French.

JUDGMENT

I – Summary of facts

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

By a letter of 9 April 1954 the applicant was appointed on a temporary basis for three months as a 'comptable analyste' (bookkeeper engaged in statistical work) with the High Authority; this posting was subsequently extended to 31 December 1955. On that date his contract was renewed for one year.

When the Staff Regulations for Officials of the Communities were established, the President of the High Authority, in a letter of 9 July 1956, made an offer to the applicant that the provisions of the Staff Regulations of Officials of the Community would be applied to him as an established official with effect from 1 July 1956 in Grade 9, Step 3, of Category B. The applicant was requested to give his reply before 30 September 1956 otherwise his contract with the High Authority would terminate on the date provided for.

By a letter of 2 August 1956 the applicant informed the President of the High Authority that in his opinion classification in Grade 9 did not correspond to the functions for which he had been engaged and sought his reclassification after his position had been re-examined. Nevertheless on 25 September 1956 he accepted the offer made to him by the President of the High Authority on 9 July 1956 while maintaining his complaint. In addition on 5 October 1956 in the presence of the Assistant Director of the Personnel and Administration Department he signed a declaration whereby he accepted the offer contained in the letter sent to him by the President on 9 July 1956; nevertheless he insisted on crossing out from that declaration the words 'without reservation'.

By letter of 5 May addressed to the President of the High Authority the applicant reiterated his complaint seeking his classification in a higher grade. As he received no reply to this letter the applicant made the present application on 15 July 1959.

II – Conclusions of the parties

The *applicant* claims that the Court should:

'1. 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;

2. 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;

3. Rule on its own initiative that the responsibilities of 'comptable analyste' for which the applicant was employed by the High Authority are such as to place him in Category B, Grade 7, or in the alternative, in Category B, Grade 8;

   Rule consequently that the applicant comes within Grade 7, Step 3, of Category B, or failing that in Grade 8, Step 3, of Category B, as from 1 July 1956; rule that he is entitled to the emoluments and advantages of this grade as from 1 July 1956;

   Refer the matter for action by the High Authority;

4. In the alternative, and in so far as is necessary, commission an expert's report in order to decide in what grade in the table of posts of staff of the European Coal and Steel Community the duties of 'comptable analyste' should be placed taking account, where necessary, of the qualification and professional abilities of the applicant;

In this case, order the necessary arrangements to be made;

5. Order the High Authority to bear the costs including lawyers' fees.'

The *defendant* contends that the Court should:

'1. Rule that the application is out of time and therefore inadmissible;

2. In the alternative, rule that the Court has no jurisdiction to adjudicate upon the third and fourth heads of the application and declare that the action is inadmissible;

3. Further in the alternative, dismiss the application as being without foundation with the ensuing legal consequences.'

III – Submissions and arguments of the parties

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

A – Objections

1. As to the extinguishment of the right of action

The *defendant* alleges first that the application is out of time and is therefore inadmissible.

The main subject of the application is a decision of the President of the High Authority of 9 July 1956; in addition the application seeks the annulment of the implied refusal to be inferred from the failure of the defendant to reply to the applicant's letters dated 5 August and 25 September 1956; further the application seeks the annulment of an implied decision refusing to reconsider a previous decision which is to be inferred from the failure of the High Authority to reply to the letter of 5 May 1959.

(a) The *defendant* maintains in the first place that the applicant had a right of action against the decision of 9 July 1956. The applicant failed to make use of it within the period set out in Article 2 of the Rules of Procedure of the Court of 21 February 1957.

It argues that the abrogation of the Rules of 21 February 1957 by the Rules of 3 March 1959 cannot retroactively confer on the applicant a right of action which had become extinguished under the previous rules.

For his part the *applicant* relies on the fact that the Rules of Procedure of the Court of 3 March 1959 do not fix a time-limit for actions by servants of the Communities. From the time of the entry into force of these Rules of Procedure, Article 110 thereof abrogated the prior Rules of Procedure of 21 February 1957. The action was brought on 15 July 1959, that is when the new Rules of Procedure of the Court were in force. As the Rules of Procedure of 21 February 1957 had been abrogated they can consequently not be applied to the present case.

(b) Secondly, with regard to the refusal to reclassify the applicant to be inferred from the defendant's failure to answer his letter of 5 May 1959, the *defendant* denies that this refusal had the effect of setting in motion a new period for appealing against the decisions of 1956. The letter of 5 May 1959 constitutes nothing more than representations which cannot set in motion new limitation periods enabling contentious proceedings to be instituted, especially as the letter merely repeats the objections raised in 1956.

The *applicant* claims that the purpose of his letter of 5 May 1959 was not so much to repeat the objections formulated against the decisions of 1956 as to raise again the question of classification which remains as ill-justified in 1959 as in 1956.

2. The lack of jurisdiction of the Court

The *defendant* alleges that the third and fourth heads of the application refer to decisions the examination of which does not fall within the jurisdiction of the Court of Justice. The Court cannot substitute itself for the administration; it cannot undertake a new classification of the applicant and still less order an expert's report to establish the exact classification of particular functions

in the table of grades and posts. This objection would hold good even if one accepted the applicant's view that actions brought by servants of the Communities as provided for by Article 58 of the Staff Regulations are not actions for annulment but actions in which the Court has unlimited jurisdiction.

While the *applicant* claims that an action relating to administrative matters is an action in which the Court of Justice has unlimited jurisdiction and deduces from this that the Court may substitute a new decision for the decision which it annuls and that it may 'issue orders directed against one party', the *defendant* is of the opinion that even in actions brought by servants of the Communities, the Court of Justice does not itself have the power to take decisions which it regards as justified but that it must confine itself to examining the contested decisions without involving itself in the exercise of the powers of the administration.

3. As to the admissibility of the action

Finally the *defendant* pleads that the action is inadmissible arguing that the applicant is in fact invoking the contract concluded before his establishment in order to argue that his classification in the contested decision of 9 July 1956 had affected him to his detriment. However, this reasoning cannot be accepted since, by accepting his establishment which had in the meantime taken place, the applicant renounced his rights under the original contract. These considerations are evident from the text of Article 60 of the Staff Regulations:

'Appointments on a definitive or probationary basis carried out in implementation of these transitional provisions shall take effect from the date set out in the decision appointing the official. Officials retain the benefits of the seniority acquired from the date of their entry into the service of the Community.

Application to the person concerned of the provisions of the Staff Regulations pursuant to these transitional provisions shall entail the renunciation by the persons concerned of the benefit of the provisions of their contract and of the provisional rules for staff of the institution.

Servants must agree to this renunciation in writing.

This renunciation cannot be applied to the detriment of servants in respect of the reimbursement of expenses already incurred or in the course of being incurred.'

The applicant's reference to his letters of 2 August and 25 September 1956 and the fact that he obliterated by hand a passage in the declaration of 5 October 1956 in his attempt to establish that he never intended to renounce his position before the entry into force of the rules are of no effect; the intentions of the applicant are of little importance as the only point at issue here is the correct interpretation of a clear provision of objective law.

For his part the *applicant* believes that it is relevant to know whether the duties which he continues to carry out even after the Staff Regulations came to be applied to him are correctly classified in accordance with the table of posts.

In reply to this the *defendant* states that this attitude is tantamount to relying on the title of 'comptable analyste' which was only used in the first exchange of letters in 1954.

B – The substance of the case

The applicant alleges that his functions are those of a 'comptable analyste' according to the contract of 1954 and he further argues that from the time of his appointment they have remained the same.

It is true that the post of 'comptable analyste' is in itself mentioned nowhere. The table of posts distinguishes between:

(a) Accounting officer, special class, classified in Grade 6;

(b) Accounting officer, classified in Grades 7 and 8;

(c) Assistent accounting officer, classified in Grades 9 and 10.

The *applicant* was never an assistant accounting officer; he must be regarded as an accounting officer having special duties; this specialization is an argument in favour of his classification in Grade 7 rather than in Grade 8.

The *defendant* replies that the applicant's reasoning is such as to once again place importance on his position before the entry into force of the Staff Regulations and that, in spite of the fact that his appointment by contract may render him eligible to have the provisions of the Staff Regulations applied to him, a distinction must be made between application of the provisions of the Staff Regulations and classification and it is thus scarcely possible to talk of a right to a particular classification. On the contrary, having had the provisions of the Staff Regulations applied to him, the applicant may not derive from his previous position any rights other than those constituted by the application to him of the provisions of the Staff Regulations. After having the provisions of the Staff Regulations applied to him, he cannot invoke against the defendant rights capable of restricting the powers of the latter in respect of classification. The High Authority was acting in exercise of these powers in classifying the applicant in Grade 9.

The *applicant* alleges further that the table of posts is intended to guide the High Authority in organizing its departments and moreover to guarantee the rights of various officials. In the present case we must examine whether these purposes have been folowed as regards the applicant.

The *defendant* replies that the post of 'comptable analyste' has not been inserted in the table of posts and if the reasoning of the applicant was adopted one would be entitled to deduce that the post has been abolished. However for a precise criterion reference may be made to remuneration. The applicant received identical remuneration before and after the application to him of the provisions of the Staff Regulations.

IV – Procedure

The procedure followed the normal course.

Grounds of judgment

The admissibility of the action

In this case it is established, and it is in fact common ground as between the parties, that in so far as it relates to the decision of the President of the High Authority of 9 July 1956 and the refusal implied from the failure to reply to the letters of 5 August and 25 September 1956 addressed to him, the present application was not made within the time-limit prescribed in Article 2 of the Rules of Procedure of the Court of 21 February 1957 for disputes referred to in Article 58 of the Staff Regulations of the European Coal and Steel Community.

The applicant argues that these rules were abrogated and replaced by the Rules of Procedure of the Court of 3 March 1959 which no longer provide any time-limit for actions by servants of the Communities and he further states that the present proceedings were instituted on 15 July 1959 under the terms of the new Rules of Procedure.

Nevertheless it is not necessary to examine the consequences of the failure to provide a time-limit for actions – the Court does not intend to undertake such an examination in the context of this case1 – as this failure cannot be such as to revive a right of action for the bringing of which the period prescribed in the former rules had expired long before the entry into force of the new Rules of Procedure. On the contrary, the entry into force of the new Rules of Procedure affects neither the rights of action accrued before that date nor the extinguishment of rights during the time when the former rules were in force.

In the course of the oral proceedings the applicant further alleged that as the contested decisions occurred before the entry into force of the Rules of Procedure of 21 February 1957 he had acquired an unlimited right of action.

This view must be rejected since one of the main purposes of the rules of 1957 was precisely to fill in the substantial gap existing in the Staff Regulations of Officials by placing an exact time-limit upon the rights of action of servants of the Communities.

The applicant secondly claims that his action is also directed against the implied refusal to be inferred from the failure to reply to his letter of 5 May 1959.

However, this letter merely reiterates the objections already formulated by the applicant during 1956 and is directed against the fact that the consequences of the decision taken at that time still persist in 1959.

Accordingly, the action against the implied refusal referred to in practice constitutes nothing more than an attempt to acquire a fresh right of action against a decision which the applicant was no longer able to contest.

For the abovementioned reasons the action must be ruled inadmissible as being out of time.

Costs

The applicant has failed in his application and must therefore be ordered to pay the costs.

Article 70 of the Rules of Procedure of the Court provides that in actions referred to in Article 95 costs incurred by the institutions shall be borne by them and therefore the order that the applicant shall bear the costs does not include the costs incurred by the defendant.

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 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.