

JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber)
27 June 2001

Joined Cases T-164/99, T-37/00 and T-38/00

Alain Leroy and Others
v
Council of the European Union

(Decision 1999/307/EC – Integration of the Schengen Secretariat into the
General Secretariat of the Council – Action for annulment)

Full text in French II - 617

Full text in all languages in ECR, Section II

Application for: in Case T-164/99 – annulment of Council Decision 1999/307/EC of 1 May 1999 laying down the detailed arrangements for the integration of the Schengen Secretariat into the General Secretariat of the Council (OJ 1999 L 119, p. 49) and – in Cases T-37/00 and T-38/00 – annulment of Decision 1999/307, of various decisions of the Council appointing other persons to posts within that institution, and of the implied decisions of the Council not to appoint the applicants to any of those posts, and for damages.

Held: The actions are dismissed. In Case T-164/99 the applicant is ordered to bear his own costs and pay those incurred by the Council. The intervener is ordered to bear its own costs. In Cases T-37/00 and T-38/00, the parties are ordered to bear their own costs.

Summary

1. Council – Power of internal organisation – Integration of the Schengen Secretariat into the General Secretariat of the Council – Detailed arrangements (Merger Treaty, Art. 24(1), 2nd subpara.; Protocol integrating the Schengen acquis into the framework of the European Union, Art. 7; Council Decision 1999/307)

2. Community law – Interpretation – Methods

1. Nothing prevents Article 7 of the Protocol integrating the Schengen *acquis* into the framework of the European Union, under which the Council is to ‘adopt the detailed arrangements for the integration of the Schengen Secretariat’ into its own General Secretariat, from being interpreted by the Council as authorising it to integrate the staff of the former Schengen Secretariat.

As regards the detailed arrangements for this integration, that Protocol, which has the status of primary law, did not require the Council to follow a particular procedure. The second subparagraph of Article 24(1) of the Treaty establishing a single Council and a single Commission of the European Communities, far from itself establishing a recruitment system of general application, does no more than empower the Council to adopt the Staff Regulations of Officials of the European Communities and the Conditions of Employment of other servants of the European Communities, without laying down guiding rules or principles for that purpose.

The Council was therefore authorised, under Article 7 of the Protocol, to establish a recruitment scheme independent of the provisions of the Staff Regulations of Officials of the European Communities and the Conditions of Employment of other servants of the European Communities for the purposes of integrating the former members of staff of the Schengen Secretariat, in order to ensure continuity of application of the Schengen *acquis* within its own General Secretariat. Moreover, the Staff Regulations and the Conditions of Employment do not constitute an exhaustive body of rules prohibiting the employment of persons otherwise than within the framework of those rules.

(see paras 60-62)

See: C-249/87 *Mulfinger and Others* [1989] ECR 4127, para. 10, and the case-law cited

2. A provision of secondary Community law must, as far as possible, be given an interpretation consistent with the provisions of the Treaty and the general principles of Community law. That method of interpretation may legitimately be applied to the constituent documents of the procedure for creating an act of secondary Community law, where the question is whether that procedure complied with the primary law on the basis of which the act was adopted.

(see para. 80)

See: C-98/91 *Herbrink* [1994] ECR I-223, paragraph 9, and the case-law cited