

those on which he relied during previous proceedings, the action represents a new dispute and not a repetition of the previous ones when it concerns a question which has not yet been settled.

2. The duty of the institutions to ensure that officials have complete freedom to choose their representatives in accordance with established rules is not confined to penalizing irregularities already committed or preventing any likely to occur. The institutions have the right to intervene of their own volition if they have doubts as to the regularity of an election. That right extends also to cases where — within the institution — such doubts must be dismissed in order to create conditions of legal certainty.
3. The rules governing elections to the Staff Committee adopted by a general meeting of the staff of an institution remain in force until validly replaced or amended, no later than one month before the end of the term of office of the outgoing committee, in accordance with the

procedure laid down in the implementing provisions adopted by the institution.

4. A provision which requires the general meeting of officials responsible for determining the rules for elections to the Staff Committee to be held no later than one month before the end of the term of office of the outgoing committee aims principally at allowing the voting system to be laid down in such a way as to create the conditions for quiet reflection and thereby make the choice of voting system as objective as possible.

The requirements of legal certainty make it necessary to take, as the date from which the prescribed period is to be calculated, the date of the expiry of the term of office of the outgoing Staff Committee and not that of the elections. Unlike the date of the elections, the date on which the term of office of the outgoing Staff Committee expires is known in advance, so that no doubt can arise as to the time-limit for changes to the electoral rules.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)  
8 March 1990 \*

In Case T-28/89

**Claude Maindix, Raymond Muller and Francis Patterson**, officials of the Economic and Social Committee, residing at Brussels, represented by Jean-Noël

\* Language of the case: French.

Louis, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Yvette Hamilius, 7-11, route d'Esch

applicants,

v

Economic and Social Committee, represented by Detlef Brüggemann, acting as Agent, assisted by Alex Bonn, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 22, Côte d'Eich,

defendant,

APPLICATION for the annulment of the measures organizing elections to the Staff Committee of the Economic and Social Committee in accordance with the 'Supar' ('scrutin uninominal préférentiel avec report de voix' — single transferable vote) voting system,

#### THE COURT (Fifth Chamber)

composed of: H. Kirschner, President of Chamber, C. P. Briët and J. Biancarelli, Judges,

Registrar: H. Jung

having regard to the written procedure and further to the hearing on 24 January 1990,

gives the following

### Judgment

#### The facts to which the application refers

1 By Decision No 1896/75 A of 28 July 1975 the Bureau of the Economic and Social Committee (hereinafter referred to as 'the ESC') adopted provisions on the composition and procedure of its Staff Committee. Article 5 of that decision is couched in the following terms:

*'Article 5 — Term of office*

The members of the Staff Committee shall be elected in accordance with the conditions laid down by the general meeting of officials of the Economic and Social Committee, which must be held not later than one month before the expiry of the term of office of the outgoing committee. The general meeting shall be convened by the outgoing chairman.

The term of office of the members of the Staff Committee shall expire two years from the date of their election. The institution may decide to fix a shorter term of office but such a term may not be less than one year. The term of office of a member of the committee shall also end on resignation or on termination of service. In this case the member concerned shall be replaced by means of a new election. The new member thus elected shall sit for the remainder of the committee's term of office.

The outgoing committee shall continue to function after its term of office has expired, to deal with business in hand, until the new Staff Committee takes office.'

- 2 On 4 March 1983, the general meeting of the staff of the ESC adopted the 'Rules for elections to the Staff Committee' (Document CP 153/83) which set up a proportional voting system known as 'Supar'.
- 3 In 1985, the term of office of the ESC Staff Committee expired on 20 April. On 19 April the general meeting of the staff adopted a different voting system based on the first-past-the-post principle.
- 4 A number of officials of the ESC then brought actions against their institution before the Court of Justice, seeking the annulment of that decision. The applicants in the present case and two other officials of the ESC were granted leave to intervene in those cases in support of the institution's conclusions. The elections to the Staff Committee, due to take place on 14 June 1985 in accordance with the contested decision, were adjourned by an order granting interim measures made by the Court of Justice on 11 June 1985 in Case 146/85 R. *Diezler and Others v ESC* [1985] ECR 1805.

5 By judgment of 27 October 1987 in Joined Cases 146/85 and 431/85 *Diezler and Others v ESC* [1987] ECR 4283, the Court of Justice annulled the decision of the general meeting of the staff introducing the new voting system on the ground that the interval of one month laid down by the first paragraph of Article 5 of Decision No 1896/75 A, cited above, had not been observed.

6 Following the Court's judgment, the Secretary-General of the ESC sent a note on 5 November 1987 to the Chairman of the Election Board appointed by the general meeting of 19 April 1985, in the following terms:

'Re: Elections to the Staff Committee

Having regard to the judgment of the Court of Justice given on 27 October 1987 in Joined Cases 146/85 and 431/85 *Diezler and Others v Economic and Social Committee*, it is now necessary, pursuant to Article 176 of the EEC Treaty, to elect a new Staff Committee immediately.

The elections to the committee must be held in accordance with the voting system in force on 20 March 1985, namely the "Supar" system.

The Court of Justice allowed the appointment of the Election Board by the general meeting of the staff of 19 April 1985 to stand, so it is for that board, on its own initiative and in implementation of the said judgment of the Court of Justice, to perform the tasks incumbent upon it under the internal rules and to organize the elections without further delay.'

7 The members of the Election Board claimed that they had 'insufficient knowledge and experience' of the system, and resigned on 9 November 1987.

8 The applicants in the present case considered that the Secretary-General's note of 5 November 1987 was not consistent with the judgment of the Court of Justice of 27 October 1987 and, on 20 November 1987, submitted an application for interpretation of that judgment, seeking to establish whether, as a result of the annulment of the decision of the general meeting of the staff of the Economic and Social Committee of 19 April 1985, it was optional or obligatory for a new general

meeting to be convened with a view to the possible adoption of a new voting system on the basis of which the forthcoming elections should be conducted. That application was dismissed as inadmissible by an order of the Court of Justice of 20 April 1988 in Joined Cases 146 and 431/85 — Interpretation (*Maindiaux and Others v ESC and Others* [1988] ECR 2003) on the ground that it did not seek clarification of a point decided by the judgment but sought to obtain from the Court an opinion as to its implementation and consequences.

- 9 On 11 December 1987, a general meeting of the staff convened by the Staff Committee, which had continued to function in accordance with the third paragraph of Article 5 of Decision No 1896/75 A, appointed a new Election Board. The chairman of that board requested 'precise information concerning the voting system to be applied' in reply to which, on 25 January 1988, the Secretary-General of the ESC sent the following note:

'Re: Elections to the Staff Committee

In reply to your note of 8 January 1988, I confirm that, in the opinion of the institution, the abovementioned elections must be held in accordance with the "Supar" system, which was the voting system in force on 20 March 1985. That position was expressed in my note of 5 November 1987 and has been developed by the Committee's Agent in the interpretation proceedings currently pending before the Court of Justice. For your information, I would add that an application for interpretation does not have suspensory effect.'

- 10 On 4 February 1988, the applicants in the present case submitted a complaint against:

'(1) The Secretary-General's decision of 25 January 1988 that the "Supar" voting system should be used for the election — due to be held, apparently, on 15 March 1988 — of the members of the Staff Committee;

(2) In so far as might be necessary, the Secretary-General's decision, communicated in a note of 5 November 1987 to the Chairman of the Election Board, that voting for the replacement of the Staff Committee should be held immediately in accordance with the "Supar" voting system; and

- (3) In so far as might be necessary, the Secretary-General's decision not to act on his own initiative to call a general meeting on the expiry of the Staff Committee's term of office for the purpose of allowing the officials of the ESC to choose the voting system to be used for the election of members of the Staff Committee.'
- 11 The complaint sought the annulment of those decisions and their replacement 'by a decision convening a general meeting of the officials of the ESC having on its agenda the selection of a voting system for the forthcoming elections to the Staff Committee'. In support of their complaint, the applicants claimed that, since there was no express provision in Decision No 1896/75 A for extension of the validity of the voting system by tacit renewal, it was for the general meeting of the staff to choose the voting system for the forthcoming elections to the Staff Committee. In their view, any decision imposing a voting system not expressly chosen by the general meeting held before the expiry of the term of office of the outgoing committee was therefore illegal.
- 12 On 8 February 1988, the Election Board fixed the timetable for the elections to the Staff Committee, which it scheduled for 17 March 1988. At the same time, it informed the staff that, in accordance with the Secretary-General's 'instructions' of 25 January 1988, the elections would be based on the 'Supar' system. On 12 February 1988, the applicants submitted a complaint against the Election Board's decision of 8 February 1988 to hold elections to the Staff Committee on 17 March 1988 in accordance with the 'Supar' voting system and, in so far as might be necessary, the Secretary-General's implied decision not to act on his own initiative to annul that decision, to have a general meeting convened in order to allow the officials of the ESC to choose the voting system to be used and to give the said Election Board instructions to organize the forthcoming elections in accordance with the provisions of the voting system thus adopted.

### Procedure

- 13 Those were the circumstances in which, by an application lodged at the Registry of the Court of Justice on 29 February 1988, Claude Maindiaux and two other officials of the ESC brought an action seeking the annulment of the two decisions of the Secretary-General of the institution, under which the elections to the institution's Staff Committee, due to take place on 17 March 1988, were to be held in accordance with the 'Supar' proportional voting system, the decision of the Election Board to hold those elections in accordance with that system and the

implied decisions of the Secretary-General not to act on his own initiative to have a general meeting of the staff convened in order to choose the voting system to be used in those elections.

- 14 An application for interim measures lodged by the applicants on the same day as the present action, seeking an order suspending the operation of the decision of the Election Board of the ESC of 8 February 1988 to organize elections to the Staff Committee in accordance with the 'Supar' voting system and the postponement of those elections, was dismissed on 15 March 1988 by the President of the Fourth Chamber of the Court of Justice, and the elections took place on 17 March 1988.
- 15 All the stages of the written procedure were completed before the Court of Justice. They followed the normal course although, in accordance with Article 91(4) of the Staff Regulations of Officials, the proceedings were suspended until, on the expiry of the period provided for in Article 90(2) of the Staff Regulations, an implied decision rejecting the complaints was taken.
- 16 By order of the Court of Justice of 15 November 1989 the case was referred to the Court of First Instance, pursuant to the Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities.
- 17 Upon hearing the report of the Judge-Rapporteur, the Court decided to open the oral procedure without any preparatory inquiry. The Court (Fifth Chamber) heard the oral arguments of the applicants and the ESC, and the answers of the parties to the questions put by the Court, at the hearing on 24 January 1990. No Advocate General was appointed for the case, and the President declared the oral procedure closed at the end of the hearing.
- 18 The applicants claim that the Court should:
  - (1) declare the application admissible and well founded;

(2) consequently, annul:

- (a) the Secretary-General's decision of 25 January 1988 that the 'Supar' voting system should be used for the election of 17 March 1988 of the members of the Staff Committee;
  - (b) in so far as is necessary, the Secretary-General's decision, communicated in a note of 5 November 1987 to the Chairman of the Election Board, that voting for the replacement of the Staff Committee should take place without delay in accordance with the 'Supar' voting system;
  - (c) in so far as is necessary, the Secretary-General's decision not to act on his own initiative to call a general meeting on the expiry of the Staff Committee's term of office for the purpose of allowing the officials of the ESC to choose the voting system to be used for the election of members of the Staff Committee;
  - (d) the Election Board's decision of 8 February 1988 to hold elections to the Staff Committee on 17 March 1988 in accordance with the 'Supar' voting system; and
  - (e) in so far as is necessary, the Secretary-General's implied decision not to act on his own initiative to annul that unlawful decision adopted by the Election Board, to have a general meeting convened in order to allow the officials of the ESC to choose the voting system to be used for the forthcoming election of members to the Staff Committee and to give the said Election Board instructions to organize the forthcoming elections in accordance with the provisions of the voting system thus adopted;
- (3) order the defendant to pay the costs pursuant to either Article 69(2) or the second subparagraph of Article 69(3) of the Rules of Procedure, together with the expenses necessarily incurred for the purpose of the proceedings, in particular the costs of establishing an address for service, travel and subsistence expenses and the remuneration of lawyers, pursuant to Article 73(b) of those Rules.



19 The Economic and Social Committee contends that the Court should:

(1) dismiss the application as inadmissible, alternatively as unfounded; and

(2) order the applicants to pay the costs.

### **The first and second heads of claim**

#### *Admissibility*

20 The ESC raises three objections of inadmissibility: first, lack of interest in bringing proceedings; secondly, absence of any act adversely affecting the officials; and, thirdly, infringement of Article 90(1) of the Staff Regulations.

21 First, the ESC claims that the applicants have no interest in bringing proceedings because their application is no more than a duplication of the claims they unsuccessfully argued first as interveners in Joined Cases 146/85 and 431/85 and then in their application for interpretation of the judgment given in those cases on 27 October 1987.

22 The applicants maintain that there is no reason why they should not rely, in support of their submissions in the present case, on arguments which they have already put forward in a previous case. At the hearing they stressed, moreover, that the parties to the present case are not the same as those in Joined Cases 146 and 431/85 since, in those cases, the applicants in the present case intervened in support of the ESC's conclusions.

23 The Court of Justice has considered that the fact that two actions are between the same parties, have the same purpose and are based on the same submissions is a criterion for declaring an action inadmissible on the ground that its subject-matter is identical to that of a previous case (order of 1 April 1987 in Joined Cases 159/84 and 267/84, 12/85 and 264/85 *Ainsworth and Others v Commission* [1987] ECR 1579). As the Court of Justice pointed out in its judgment of 27 October

1987 in Joined Cases 146/85 and 431/85, cited above, the act whose annulment is sought is an essential element of the subject-matter of an action. The present action is directed against acts other than those contested in Joined Cases 146 and 431/85, so the two actions cannot be considered to have the same subject-matter.

24 The applicants are right, moreover, in relying on the order of 20 April 1988 (Joined Cases 146/85 and 431/85 — Interpretation, cited above) which dismissed as inadmissible the application for interpretation of the judgment of 27 October 1987 which they had submitted. It is clear from that order that the question of the voting system to be applied following that judgment has not yet been settled. It follows that, although the arguments on which the applicants in the present case rely are in part identical to those on which they relied during the previous proceedings, the present case represents a new dispute and not a repetition of the previous ones.

25 It must therefore be held that the present case is not inadmissible either on the ground of lack of interest in bringing proceedings or by reason of *res judicata* as a result of the previous proceedings.

26 Nor have the applicants lost their interest in bringing proceedings because they did not contest the elections of 17 March 1988 within the framework of the rules governing electoral disputes, that is to say, as the Court of Justice held in its judgment of 29 September 1976 in Case 54/75 *De Dapper and Others v European Parliament* [1976] ECR 1381, in accordance with Articles 90 and 91 of the Staff Regulations.

27 In that connection, the applicants asserted at the hearing that the question of the interpretation of Article 5 of Decision No 1896/75 A raised in the present case is still currently of importance in the light of the forthcoming election of a new Staff Committee, since the term of office of the present committee, which was elected in 1988, will shortly expire.

28 Although, generally, interest in contesting irregularities in an electoral process is co-extensive with interest in ensuring that the results of the elections have not been affected, that is not true in the present case. The Court's assessment of the validity of the measures organizing the elections of 17 March 1988 will resolve the dispute

between the parties with regard to the voting system to be used in the absence of a decision adopted by the general meeting of staff in accordance with Article 5 of Decision No 1896/75 A. It will thus remove the legal uncertainty at present prevailing in that regard, which could affect future elections pursuant to the contested provision. It follows that the question of the validity of the measures organizing the elections of 17 March 1988 is still of consequence, regardless of the result of those elections.

- 29 In its second objection of inadmissibility, the ESC claims that since the question of the voting system to be used in the forthcoming elections was finally settled by the judgment of 27 October 1987, the acts of its Secretary-General contested by the applicants are not decisions against which proceedings may be brought, but merely opinions expressed with a view to the implementation of the judgment of the Court of Justice, in accordance with Article 176 of the EEC Treaty.
- 30 The applicants maintain that the acts of the Secretary-General of the ESC were decisions of a binding nature taken by the institution in the exercise of its right, or even its duty, recognized by the Court of Justice in its judgment of 29 September 1976 in Case 54/75, cited above, to take steps to ensure the regularity of elections to the Staff Committee. In the applicants' submission, those acts are formal instructions addressed to and carried out by the Election Board.
- 31 In answer to a question put to it at the hearing, the ESC, while acknowledging its duty to supervise the proper conduct of the elections, specified that it considered that the administration is obliged to take decisions of a binding nature only in order to prevent or penalize manifest irregularities and that it must, on the contrary, avoid any such interference with staff rights when the electoral bodies follow the proper procedure in accordance with the information given to them by the administration.
- 32 The legal nature of the measures taken by the Secretary-General of the ESC with a view to implementing the judgment of the Court of Justice must be assessed in the light of the institution's duty to ensure the regularity of elections to staff representative bodies. Contrary to the defendant's argument, the administration's supervisory powers in that field are not confined to a right to intervene in situ-

ations where the electoral bodies have already infringed, or are actually threatening to disregard, the electoral rules. The institution's duty to ensure that officials have complete freedom to choose their representatives in accordance with established rules, recognized in the judgment of 29 September 1976 in Case 54/75, cited above, is not confined to penalizing irregularities already committed or preventing any likely to occur. The Court of Justice has recognized the right of the institutions to intervene of their own volition if they have doubts as to the regularity of an election. That right extends also to cases where — within the institution — such doubts must be dismissed. It is essential to the proper conduct of the elections that the institution's responsibility should also include the duty to create conditions of legal certainty and to settle doubtful questions in a binding manner, without it being necessary for the institution to wait for a more serious conflict, which could delay the holding of the elections, to arise. The powers which the institutions possess by virtue of their duty to ensure the regularity of elections include, therefore, the power to take preventive measures.

33 It is, moreover, clear from an examination of the two notes in issue that the ESC's argument cannot be accepted. The contents of those notes are clear, and do not show an absence of intent to adopt acts having binding legal effect at the time of their drafting. In the first note, the Secretary-General stated that the elections 'must be held in accordance with the . . . "Supar" system'. In the second note, the Secretary-General confirmed that 'in the opinion of the institution, the abovementioned elections must be held in accordance with the "Supar" system'. The Secretary-General was therefore issuing binding instructions in order to ensure that the elections took place in accordance with the 'Supar' system; he left no discretion to the Election Board. The fact that the second note contains the word 'opinion' does not contradict that finding, since the word was not used to describe the legal status of the communication, the binding nature of which is confirmed by the fact that it constitutes the administration's answer to a request from the Election Board for 'precise information concerning the voting system to be applied'.

34 Consequently, the addressees of the two notes, namely the successive Election Boards, were entitled to consider, as indeed they did, that they were bound by those notes in the performance of their duties.

- 35 It must therefore be held that the Secretary-General of the ESC issued two decisions of a binding nature.
- 36 The ESC, in its third objection to the admissibility of the application, claims that actions concerning electoral disputes relating to the appointment of the Staff Committee are admissible only if they are directed against a decision of the appointing authority refusing to take action in response to a request by the applicant as provided for in Article 90(1) of the Staff Regulations. In the institution's submission, that is a consequence of the fact that this dispute is governed by the provisions relating to actions brought by officials, in particular by Articles 90 and 91 of the Staff Regulations. The ESC considers that the requirement of a prior request was confirmed by the judgment of the Court of Justice of 27 October 1987 in Joined Cases 146/85 and 431/85, cited above. The ESC asserts that the applicants did not submit such a request.
- 37 In refutation of that submission, the applicants maintain that no such condition for admissibility may be inferred from that judgment of the Court of Justice, and that electoral disputes are not governed by any special procedural rules. They consider that they have satisfied the conditions of admissibility laid down in the Staff Regulations inasmuch as they submitted complaints against the two acts of the Secretary-General imposing the use of the 'Supar' system, the first of which they describe as a decision adopted of the institution's own volition, and the second as adopted at the request of the Election Board.
- 38 It should be pointed out that the first and second heads of claim are directed against positive acts of the Secretary-General of the ESC. The institution is therefore wrong in insisting on the use of the procedure prescribed in Article 90(1) of the Staff Regulations.
- 39 Since the applicants submitted on 4 February 1988 a complaint against the decisions which they contest, they have complied with the requirements of Article 91(2) of the Staff Regulations in respect of the first two heads of claim.
- 40 The first two heads of claim must therefore be declared admissible.

*Substance*

- 41 The applicants' first submission is based on an infringement of Article 5 of Decision No 1896/75 A, cited above.
- 42 The applicants consider that that article, which makes no express provision for extending the validity of a specific voting system adopted by the general meeting, must be interpreted as requiring the voting system for elections to the Staff Committee to be determined on each occasion by the general meeting on the expiry of the term of office of the outgoing committee. Since the decision of the general meeting of 19 April 1985 was annulled by the Court of Justice, only a new general meeting could, in their view, have validly determined the voting system for the election of 17 March 1988.
- 43 The applicants maintain that their interpretation, which differs from the solutions adopted in other institutions, is justified in the specific case of the ESC because of the relatively small size of the institution and the mobility of its staff. In those circumstances, in the applicants' submission, tacit renewal of the voting system would deprive officials currently employed of a real choice, unfettered by the decisions of their predecessors who had already left the institution, as to the rules governing their representation.
- 44 According to the institution, it follows from the judgment of the Court of Justice of 27 October 1987 in Joined Cases 146/85 and 431/85, cited above, that the delayed elections to the Staff Committee were necessarily to be held in accordance with the voting system previously in force and not yet validly replaced by any other.
- 45 It must be borne in mind that the first paragraph of Article 5 of Decision No 1896/75 A constitutes the implementation within the ESC of the second paragraph of Article 1 of Annex II to the Staff Regulations. That paragraph empowers the general meeting of officials to determine the rules governing elections of the Staff Committee and thus complete, within each institution, the legislative framework established by the Staff Regulations with regard to staff representation. The Staff Regulations have, therefore, given the general meeting of officials the power to lay down rules governing elections which must be observed by both the institution and its officials. The Staff Regulations have thus conferred on the general meeting of officials a legislative power in that regard. The legis-

lative nature of that power is not affected by the fact that in the present case, as is clear from the judgment of the Court of Justice of 27 October 1987 in Joined Cases 146/85 and 431/85, its exercise is conditional upon compliance with the provisions of Decision No 1896/75 A, adopted by the institution in accordance with Article 9(2) of the Staff Regulations.

- 46 Legal rules validly adopted by a body having legislative power remain in force, subject to any provisions to the contrary, until validly amended or repealed. There is nothing in either Annex II to the Staff Regulations or Decision No 1896/75 A which places a time-limit on the validity of rules governing elections adopted by a general meeting of the staff of the ESC. It follows that electoral rules adopted by a general meeting of the staff remain in force until validly replaced or amended by a subsequent general meeting in accordance with the procedure laid down in the first paragraph of Article 5 of Decision No 1896/75 A.
- 47 Furthermore, the interpretation put forward by the applicants, that the general meeting of staff can adopt electoral rules for only one term of office at a time, is incompatible with the first paragraph of Article 5 of Decision No 1896/75 A, which provides that the adoption of the electoral rules by the general meeting must take place not later than one month before the expiry of the term of office of the outgoing committee. Such an interpretation would mean that there would be no electoral rules, and thus no possibility of electing a new staff committee, when the general meeting had not adopted the necessary measures within the period laid down for that purpose by the provision in issue.
- 48 Contrary to the applicants' argument, such an omission cannot be rectified after the expiry of the period laid down in Article 5 of Decision No 1896/75 A by a further decision of the general meeting of staff adopting electoral rules. As the Court of Justice held in its judgment of 27 October 1987, the mandatory character of the abovementioned time-limit means that the general meeting of staff cannot validly adopt a voting system once the prescribed period has expired.
- 49 That result is not contrary to the principle of the independence of the general meeting of officials with regard to the election of the Staff Committee, the importance of which is stressed by both sides. Article 5 of Decision No

1896/75 A, which confirms that independence in accordance with the second paragraph of Article 1 of Annex II to the Staff Regulations, also determines the procedural rules which the general meeting must observe when exercising it.

50 The applicants are wrong in maintaining that the Court of Justice accepted that it would be sufficient, for the purpose of complying with that provision, to provide a period of one month between the adoption of the voting system and the election. Although, when explaining the grounds for the mandatory character of the period in question, the Court of Justice referred to its purpose, which is to ensure that the choice of the voting system is made a certain time in advance of the elections, it also considered that it was necessary to observe the tenor of the provision in issue, in accordance with which that period expires one month before the end of the term of office of the outgoing Staff Committee. It is clear from the analysis of the scope of Article 5 of Decision No 1896/75 A made by the Court of Justice when annulling the decision of the general meeting of 19 April 1985, that it is for that reason that the expiry of the prescribed period is not dependent on the date on which the elections to the new Staff Committee are to be held, with the result that the illegality arising out of the infringement of that provision cannot be expunged either by initially fixing the elections for a date more than one month after the adoption of the electoral rules or by deferring them to such a date.

51 That interpretation of the provision in issue is justified by its purpose, as acknowledged by the Court of Justice. As was held in the judgment of 27 October 1987, it aims principally at allowing the voting system for the Staff Committee to be laid down by a staff meeting held at least one month in advance of the elections, so as to create the conditions for quiet reflection and thereby make the choice of voting system as objective as possible. A period of one month is the minimum necessary in order to ensure that the important and delicate decision as to the choice of the electoral rules is not affected by any tension to which the holding of new elections might give rise.

52 The requirements of legal certainty make it necessary to take, as the date from which the prescribed period is to be calculated, the date of the expiry of the term of office of the outgoing Staff Committee and not that of the elections. Unlike the date of the elections, the date on which the term of office of the outgoing Staff Committee expires is known in advance, so that no doubt can arise as to the time-limit for changes to the electoral rules. Moreover, that solution enables candidates and voters to be accurately informed, by that date at the latest, of the electoral rules which will be applied.



- 53 The Secretary-General of the ESC applied Article 5 of Decision No 1896/75 A correctly, therefore. It follows that the first submission must be dismissed.
- 54 In their second submission, the applicants claim that the institution failed to implement correctly the judgment of the Court of Justice of 27 October 1987. They consider that it was not for the Secretary-General to impose on the staff of the ESC the use of the voting system adopted in 1983. In their submission, the decision as to the inferences to be drawn, with regard to the voting system, from the judgment of the Court of Justice should have been taken by a general meeting of staff convened for that purpose, subject to the subsequent intervention of the Secretary-General if he should consider that decision to be illegal.
- 55 As has already been pointed out in connection with the second objection of inadmissibility raised by the ESC, the duty of the institutions to ensure the regularity of elections to staff representative bodies implies a power on their part to take preventive measures if necessary.
- 56 In those circumstances, the Secretary-General interpreted the judgment of the Court of Justice correctly. He was justified in taking the decisions entailed by the implementation of the judgment of the Court of Justice of 27 October 1987, and this Court has already ruled on the legality of those decisions when considering the first head of claim. It follows that the second submission must also be dismissed.
- 57 It follows from the foregoing that the first and second heads of claim are unfounded.

### **The third, fourth and fifth heads of claim**

- 58 Since the remaining heads of claim are based on the same submissions, they could not succeed even if they were admissible. They must therefore be dismissed, without there being any need to rule on their admissibility.

**Costs**

59 The ESC requests that, contrary to the provisions of Article 70 of the Rules of Procedure of the Court of Justice, which apply *mutatis mutandis* to the Court of First Instance by virtue of the Council Decision of 24 October 1988, cited above, the applicants should be ordered to pay the costs in accordance with Article 69(2) of the Rules of Procedure. It considers that an exception to the rule whereby institutions bear their own costs in staff cases is justified by the fact that the multiplicity of the court proceedings brought by the applicants can no longer be regarded as a normal exercise of the right of appeal under the Staff Regulations.

60 Article 70 of the Rules of Procedure allows such an exception only in the cases envisaged in the second subparagraph of Article 69(3) of the rules, where costs are caused unreasonably or vexatiously. Even if it is accepted that the ESC intended to avail itself of that provision, the present action is not of an unreasonable or vexatious nature. The question of the inferences, with regard to the electoral rules to be applied, to be drawn from the judgment of the Court of Justice of 27 October 1987 was not settled in that judgment nor, as is clear from the order of the Court of Justice of 20 April 1988 in Joined Cases 146/85 and 431/85 — Interpretation, can it be resolved by means of an application for interpretation.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

**(1) Dismisses the application;**

**(2) Orders the parties to bear their own costs.**

Kirschner

Briët

Biancarelli

Delivered in open court in Luxembourg on 8 March 1990.

H. Jung  
Registrar

H. Kirschner  
President of the Fifth Chamber