ORDER OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
15 June 1993 *

In Joined Cases T-97/92 and T-111/92,

Loek Rijnoudt and Michael Hocken, officials of the Commission of the European Communities, residing respectively in Brussels and Jauchelette (Belgium), represented by Georges Vandersanden, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Alex Schmitt, 62 Avenue Guillaume,
applicants,

applicants,

v

Commission of the European Communities, represented by Gianluigi Valsesia, Principal Legal Adviser, acting as Agent, assisted by Denis Waelbroeck, of the Brussels Bar, with an address for service in Luxembourg at the office of Nicola Annecchino, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of the applicants' salary statements of January 1992 inasmuch as they apply the 'temporary contribution' and establish as from that date an inevitable increase in the applicants' pension contributions, and for a declaration that Council Regulation (ECSC, EEC, Euratom) No 3831/91 of 19 December 1991 amending the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities with a view to introducing a temporary contribution, and Council Regulation (ECSC, EEC, Euratom) No 3832/91 of 19 December 1991 amending the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities with regard to the contribution to the pension scheme (OJ 1991 L 361, pp. 7 and 9 respectively) are unlawful,

* Language of the case: French.

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fourth Chamber),

composed of: C. W. Bellamy, President, A. Saggio and C. P. Briët, Judges,

Registrar: H. Jung,

makes the following

Order

Procedure, forms of order sought and arguments of the parties

1 By application lodged at the Court Registry on 5 November 1992, Mr Loek Rijnoudt, the applicant in Case T-97/92, brought an action against the Commission for the annulment of his salary statement of 15 January 1992. By application lodged at the Court Registry on 21 December 1992, Mr Michael Hocken, the applicant in Case T-111/92, also brought an action against the Commission for the annulment of his salary statement of 15 January 1992.

2 In their applications the applicants claim that the Court should:

— rule that the applications are admissible and well founded;

— annul the applicants' salary statements of January 1992 inasmuch as they provide for the introduction of a 'temporary contribution' and establish as from that date an inevitable increase in the applicants' pension contributions;

— order the Commission to pay the costs.

In support of the forms of order they seek, the applicants plead that Council Regulations (ECSC, EEC, Euratom) Nos 3831/91 and 3832/91 of 19 December 1991, respectively amending the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities with a view to introducing a temporary contribution and amending the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities with regard to the contribution to the pension scheme (OJ 1991 L 361, pp. 7 and 9 respectively) are unlawful.

3 By order of the President of the Fourth Chamber of 18 February 1993, Cases T-97/92 and T-111/92 were joined for the purposes of the written and the oral procedure and the judgment.

4 By application lodged at the Court Registry on 9 March 1993, Mr Cristiano Maria Gambari, an official of the Commission, residing in Waterloo (Belgium), represented by Luc Govaert, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Lucy Dupong, 14 Rue des Bains, applied to intervene in Case T-97/92 in support of the form of order sought by the applicant.

5 The application to intervene was made in accordance with Article 115 of the Rules of Procedure of the Court of First Instance and was submitted pursuant to the second paragraph of Article 37 of the EEC Statute of the Court of Justice which, by virtue of the first paragraph of Article 46 thereof, applies to proceedings before the Court of First Instance.

6 In his application to intervene, Mr Gambari claims, essentially, that he has an interest in the result of Case T-97/92, first, because the judgment on the legality of the temporary contribution and the increase in the pension contribution will directly affect his legal and financial position and, secondly, because he decided in 1989 to abandon the search for a job in the private sector in the legitimate expectation that the crisis levy would be abolished. In December 1991 that possibility was no longer open to him on account of his age and the situation in the labour market.

7 Mr Gambari adds that his decision to apply to the Court only as an intervener is justified by considerations of economy of procedure. He states that on 31 March 1992 he lodged a complaint against his own salary statement of 15 January 1992, but refrained from bringing an action before the Court following the rejection of the complaint.

8 The application to intervene was served on the parties in accordance with Article 116(1) of the Rules of Procedure.

9 By letters of 24 March 1993 the applicants indicated that they had no objection to the application to intervene.

10 By statement lodged on 25 March 1993 the defendant submitted that the application to intervene should be dismissed.

11 The defendant contends, firstly, that the prospective intervener has no interest in the result of the case. The form of order sought by the applicant relates solely to the annulment of his own salary statement and the prospective intervener has no direct, present interest in the success of such a claim. The potential effects of the objection raised indirectly pursuant to Article 184 of the EEC Treaty, alleging that the regulations in issue are illegal, are limited to the applicant and cannot benefit parties who did not bring proceedings at the proper time. The defendant refers in this regard to three judgments of the Court of Justice, Case 20/71 *Sabbatini* v *Parliament* [1972] ECR 345, Case 32/71 *Bauduin* v *Commission* [1972] ECR 363, and Joined Cases 15/73 to 33/73, 52/73, 53/73, 57/73 to 109/73, 116/73, 117/73, 123/73, 132/73 and 135/73 to 137/73 *Schots-Kortner and Others* v *Council, Commission and Parliament* [1974] ECR 177.

12 Secondly, the defendant claims that the application to intervene jeopardizes legal certainty. The prospective intervener, who could have brought an action against his

own salary statement, is now trying to circumvent the time-limit for bringing an action. There is no new fact justifying late intervention. In this context the defendant refers to two judgments of the Court of Justice in Case 799/79 *Bruckner* v *Commission and Council* [1981] ECR 2697, and Case 156/77 *Commission* v *Belgium* [1978] ECR 1881, and an order of the Court of First Instance of 28 November 1991 in Case T-35/91 *Eurosport* v *Commission* [1991] ECR II-1359.

13 Pursuant to the third subparagraph of Article 116(1) of the Rules of Procedure, the President of the Fourth Chamber referred the application to intervene to the chamber.

Findings of the Court

14 Pursuant to the second paragraph of Article 37 of the EEC Statute of the Court of Justice, the right to intervene in cases before the Court is open to any person establishing an interest in the result of the case.

15 In its order of 25 November 1964 in Case 111/63 *Lemmerz-Werke* v *High Authority* [1965] ECR 716, concerning a decision of the High Authority relating to the equalization scheme for imported ferrous scrap, the Court of Justice dismissed an application to intervene on the ground that the intervener was unable to establish a direct, existing interest in seeing the forms of order sought in the application granted, since the sole interest which the prospective intervener claimed concerned the success of certain of the applicant's arguments. However, in its order of 15 July 1981 in Case 45/81 *Moksel* v *Commission* (unreported), in the context of an application for the annulment of a Commission regulation temporarily suspending the advance fixing of export refunds for certain agricultural products, the Court of Justice allowed an application to intervene on the ground that the intervener, although unable to establish a direct interest in the forthcoming judgment, could none the less have an interest in the result of the case, at least as regards the grounds on which it was to be based.

16 Faced with those two apparently divergent approaches in two cases in different contexts it is for the Court to determine the principles to apply in a case such as the present, where the application to intervene is made by an official who argues that he is in the same situation as another official who, for his part, has brought an action against a Community act under Article 179 of the EEC Treaty and Articles 90 and 91 of the Staff Regulations of Officials of the European Communities ('the Staff Regulations').

17 The subject-matter of the dispute in Case T-97/92 is the annulment of the salary statement of the applicant, Mr Rijnoudt. The Commission is therefore right in asserting that the prospective intervener has no present, direct interest in the annulment of the salary statement of another official such as Mr Rijnoudt.

18 Furthermore, the prospective intervener had made a complaint concerning his own salary statement which was implicitly rejected by the Commission. He therefore had the opportunity to bring an action before the Court himself. However, in his application to intervene he has offered no explanation as to his reason for failing to do so.

19 Even assuming that, in the present case, the result may affect the prospective intervener's position in so far as the judgment could have repercussions on the way in which the administration applies the rules in question to all officials, the question arises whether, in the context of an action under Article 179 of the EEC Treaty and Article 91 of the Staff Regulations, an official acting on his own behalf, such as the prospective intervener, can establish an interest in the result of the case within the meaning of the second paragraph of Article 37 of the EEC Statute of the Court of Justice.

22 In such a context, the concept of an interest in the result of a case within the meaning of that provision must be construed as an interest in the decision on the claims relating specifically to the act whose annulment is sought.

21 Were that not so, any official able to show that his situation could be affected in an unspecified manner by the Court's ruling on an indirect objection of illegality concerning a Council regulation could establish an interest in the result of the case. Such a situation would not be consistent with the requirements of economy of procedure or with the system of remedies established by Articles 90 and 91 of the Staff Regulations, particularly in view of the time-limits provided for therein.

22 It is therefore necessary to draw a strict distinction in the present case, as the Court of Justice did in its order in *Lemmerz-Werke* v *High Authority*, cited above, between prospective interveners establishing a direct interest in the ruling on the specific act whose annulment is sought and those who can establish only an indirect interest in the result of the case by reason of similarities between their situation and that of one of the parties.

23 Furthermore, if a prospective intervener has had the opportunity to bring an action himself within a certain time-limit, the fact that he is refused leave to intervene in another case involving a situation similar to his own cannot prejudice his own right to avail himself of the remedies which were open to him.

24 That approach does not conflict with that taken by this Court in *Eurosport* v *Commission*, cited above. In that case, although it had not itself brought an action at the proper time, an undertaking to which the Commission had addressed a decision finding a breach of the competition rules of the EEC Treaty was given leave to intervene in an action for annulment brought by another party to whom the same decision was addressed. However, it is clear from the order that the Court had

regard in particular to the fact that an action for damages, based on the Commission's finding in its decision that there had been a breach, had been brought against the prospective intervener before a national court. Furthermore, the decision was addressed to the prospective intervener by name, and it thus established a direct interest in the result of the case.

25 The foregoing considerations are also compatible with the case-law of the Court of First Instance and the Court of Justice to the effect that trade unions and professional organizations, which represent a fairly high percentage of officials and/or servants of the Community institutions and which cannot themselves bring an action on the basis of Article 91 of the Staff Regulations, may be given leave to intervene where the parties' pleas raise questions of principle relating to the organization of the European civil service. Such interventions do not interfere with the proper course of the procedure before the Court, whereas multiple individual interventions by officials in similar situations to that of an applicant would, if they were permitted, compromise not only the system of remedies established by Articles 90 and 91 of the Staff Regulations, but also the effectiveness of the procedure before the Court.

26 In the light of all the foregoing considerations, the application for leave to intervene must be dismissed.

Costs

27 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. However, Article 88 of those Rules provides that in proceedings between the Communities and their servants the institutions are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby orders:

1. The application for leave to intervene is dismissed.

2. The parties shall bear their own costs relating to the application to intervene.

Luxembourg, 15 June 1993.

H. Jung — Registrar

C. W. Bellamy — President