JUDGMENT OF THE COURT (SECOND CHAMBER)
14 DECEMBER 1965[1]

Edith Kalkuhl
v European Parliament

Case 47/65

Summary

1. Officials — Appeals — Expiry of time-limit — Request or complaint within the meaning of Article 90 of the Staff Regulations of officials — Bar to right of action

(Staff Regulations of officials of the EAEC, Article 91)

2. Officials — Appeal against a measure confirming an earlier decision — Expiry of period for lodging appeal against that decision — Loss of right to appeal

(Staff Regulations of officials of the EAEC, Article 91)

3. Procedure — Judgment granting annulment — Legal effects — Limited to the parties and to the persons directly concerned by the measure annulled — Judgment constituting a new factor — Concept.

1. Cf. paragraph 1, Summary, in Case 52/64.
2. Cf. Summary in Case 20/65.
3. Cf. paragraph 4, Summary, in Case 43/64.

In Case 47/65

EDITH KALKUHL, an official of the European Parliament, residing at 5, Cité Holleschbierg, Hesperange, represented and assisted by Fernand Probst of the Luxembourg Bar, with an address for service in Luxembourg at the Chambers of her said counsel, 26 avenue de la Liberté,

applicant,

v

EUROPEAN PARLIAMENT, represented by its Secretary-General, Hans Robert Nord, and by Jacques Fayaud, acting as Agents, with an address for service in Luxembourg at the Secretariat-General of the European Parliament, 19a rue Beaumont,

defendant,

Application for the grant of a specific step on classification,

1 — Language of the Case: French.

THE COURT (Second Chamber)

composed of: W. Strauß, President of Chamber, A. M. Donner (Rapporteur) and R. Monaco, Judges,

Advocate-General: J. Gand
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The applicant is a head of section in the language service of the European Parliament. On 20 December 1962 she was established in Grade L/A4, Step 2, with effect from 1 January 1962. On 30 March 1965 she submitted a complaint under Article 90 of the Staff Regulations of officials with the object of obtaining a revision of her administrative position.

When on 9 April she received a negative reply, the applicant made the present application which was lodged at the Court Registry on 8 July 1965.

On 14 July 1965 the Second Chamber of the Court arranged to examine of its own motion the admissibility of the application.

By order of 13 August 1965 the Second Chamber of the Court joined Case 47/65 to Cases 42/65, 43/65 and 45/65 for the purposes of procedure and of the decision on admissibility.

By order of 4 October 1965, the order joining Case 47/65 to Cases 42/65, 43/65 and 45/65 was rescinded.

The parties presented their observations on the question of inadmissibility at the hearing on 7 October 1965.

At the hearing on 10 November 1965 the Advocate-General delivered his opinion proposing that the application be dismissed as inadmissible and that the applicant be ordered to pay the costs.

II — Conclusions of the parties

In her application, the *applicant* claims that the Court should:

'declare that the present application is admissible;
rule also that it is well founded;
consequently, rule that the applicant's classification as determined on 20 December 1962 is incorrect by reversing the decision of refusal of the President of the European Parliament;
rule that the applicant is to be classified in Grade L/A4, Step 5, with seniority in that step with effect from 1 January 1962, together with arrears of salary as from 1 January 1962;
order the defendant to pay the costs'.

In her observations on the examination of admissibility, undertaken of its own motion by the Second Chamber of the Court, the applicant claims that the Court should declare the application admissible.

The *defendant* relies on the wisdom of the Court with regard to the examination of the question of inadmissibility.

III — Submissions and arguments on admissibility

The *applicant* claims that appeals are admissible under Article 90 of the Staff Regulations of officials, as that provision does not lay down any period of limitation.

Further, the judgment in the Collotti case can be considered to be a new factor as a result of which the decision taken on the applicant's complaint is to be considered as a fresh decision.

In various judgments the Court has asserted that 'apart from the actual parties in proceedings before the Court, the only persons concerned by the legal effects of a judgment of the Court annulling a measure are the persons directly affected by the measure which is annulled'.

In this case, on the entry into force of the new Staff Regulations the method of integrating servants was adopted by common agreement between all the institutions, which fact guaranteed uniformity in individual appointments. One can therefore maintain, according to the applicant, that all decisions concerning classification and appointment thereby become decisions common to the institutions and that, consequently, each of them directly concerns all the institutions.

Following the judgment in the Collotti case, fresh consultations took place between the institutions and, yet again, a common decision was adopted capable of identical application in individual cases in the various institutions.

Therefore, it is alleged, one can deduce therefrom that all the institutions were directly affected by the measure disputed in the Collotti case.

The applicant further maintains that, since the judgment in the Collotti case declared that the interpretation of the provisions of the Staff Regulations on which the decisions of appointment of December 1962 were based was incorrect, good faith requires that the right of appeal against these decisions may be revived, even after the expiry of the three months following the notification of the said decisions.

During both the written and oral procedures the *defendant* relied on the wisdom of the Court with regard to the question of inadmissibility.

Grounds of judgment

The admissibility of the application

By an application of 8 July 1965, the applicant contested before the Court the refusal of the President of the Parliament of 9 April 1965 to give a favourable reply to her complaint of 30 March 1965 relating to the classification given to her by a decision of 15 June 1962, notified to the applicant on 20 December 1962.

By order of 14 July 1965 the Court decided to examine the admissibility of the application of its own motion.

Under Article 91(2) of the Staff Regulations of officials appeals to the Court must be filed within a period of three months from the date of notification to the person concerned of the decision in dispute.

Therefore a request or complaint through official channels which is not made within this period cannot revive the time-limit.

In this instance the decision was notified to the applicant on 20 December 1962 and her complaint through official channels, which was submitted on 30 March 1965, thus occurred more than two years later, that is, more than two years after the expiry of the period of three months laid down in Article 91(2) of the Staff Regulations.

That complaint did not therefore revive the time-limit.

No factor can be found in the reply given to the complaint on 9 April 1965 by the appointing authority capable of causing the period laid down in Article 91 to start to run afresh.

In fact that reply merely confirmed the decision of 20 December 1962.

It could not, therefore, reopen the period for bringing an appeal to the Court.

The applicant refers to the new factor which, according to her, is constituted by the judgment of the Court of 7 July 1964 in Case 70/63, a case which one of its servants, Mr Collotti, brought against its administration.

The only persons concerned by the legal effects of a judgment of the Court annulling a measure taken by an institution are the parties to the action and those persons directly affected by the measure which is annulled. Such a judgment can only constitute a new factor and cause the periods for bringing appeals to start to run afresh as regards those parties and persons.

As this is not the case in this instance the application is inadmissible.

Costs

The applicant has failed in her application.

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

However, under Article 70 of the Rules of Procedure, in proceedings 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 Staff Regulations of officials, especially Articles 90 and 91;
Having regard to the Rules of Procedure of the Court of Justice, especially Articles 69 and 70;

THE COURT (Second Chamber)

hereby:

1. **Dismisses Application 47/65 as inadmissible;**

2. **Orders the applicant to pay the costs of the action, with the exception of those incurred by the defendant institution.**

Strauß Donner Monaco

Delivered in open court in Luxembourg on 14 December, 1965.

A. Van Houtte
Registrar

W. Strauß
President of the Second Chamber

OPINION OF MR ADVOCATE-GENERAL GAND

(see Case 52/64, p. 988)