JUDGMENT OF THE COURT
OF 8 OCTOBER 1974 [1]

Syndicat Général du Personnel des Organismes européens v Commission of the European Communities

Case 18/74

Summary

Officials — Staff associations — Capacity and entitlement to institute proceedings — Limits

(EEC Treaty, Article 173 and 179; Statute of the Court, Article 37; Staff Regulations, Article 24a, 90 and 91)

The freedom of trade union activity recognized under Article 24a of the Staff Regulations means not only that officials and servants have the right without hindrance to form associations of their own choosing, but also that these associations are free to do anything lawful, especially by using the right of action, to protect the interests of their members as employees.

Thus a staff association which fulfils the required conditions is entitled, by virtue of the second paragraph of Article 173 of the EEC Treaty, to institute proceedings for annulment against a decision addressed to it and, under the conditions set out in Article 37 of the Statute of the Court, to intervene in disputes submitted to the Court.

On the other hand a direct action by a staff association cannot be entertained under the procedure of complaint and appeal established by Articles 90 and 91 of the Staff Regulations.

In Case 18/74

SYNDICAT GENERAL DU PERSONNEL DES ORGANISMES EUROPEENS, (Official English title: General Union of Personnel of European Organizations) of Luxembourg, represented by its President M. Metge, assisted by R. Badinter, Advocate before the Cour d'Appel of Paris, with an address for service in Luxembourg at the Chambers of J. Welter, 11 B, avenue de la Porte-Neuve,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser,

1 — Language of the Case: French.

J. Griesmar, with an address for service in Luxembourg at the office of P. Lamoureux, Legal Adviser of the Commission, 4, boulevard Royal,

defendant,

in the matter, at the present stage of the procedings, of the admissibility of the action for annulment of 'the decision of 21 September 1973 in which the Commission ordered a deduction from the salary for October or November 1973 of officials and other servants of the Commission who took part in the strikes of November and December 1972',

THE COURT

composed of: R. Lecourt, President, A. M. Donner and M. Sørensen (Rapporteur), Presidents of Chambers, R. Monaco, J. Mertens de Wilmars, P. Pescatore, H. Kutscher, C. Ó Dálaigh and Lord Mackenzie Stuart, Judges,

Advocate-General: A. Trabucchi
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The facts and arguments developed by the parties in the course of the written procedure may be summarised as follows:

I — Facts and procedure

1. A so-called 'warning' strike of the staff of the institutions of the European Communities took place during the afternoon of 30 November and on 1 December 1972. This strike was followed by a so-called 'proper' strike on 11 to 15 December 1972.

These strikes arose from the fact that the Council had adopted a Regulation concerning an increase of remuneration to compensate for the rise in the cost of living which, being based on considerations set out in the Council's decision of 20 and 21 March 1972, was not in accordance with the proposal of the Commission.

On 28 March 1973 the following announcement from Mr Borschette, the member of the Commission responsible for staff matters, was published by informaphone:

'I wish to inform staff of the Commission that, at its meeting on

21 March, the Commission decided to arrange for a deduction to be made from the salary of officials who took part in the strikes which took place in December last year.

I should like to explain the reasons for this decision and give you some general information. It must first of all be remembered that, as long ago as 16 December 1970, the Commission decided that non-payment for days on strike was an accepted principle which it was its responsibility to apply.

As regards the strikes of December 1972, the principle of making a deduction from salary had been adopted for the first time by the previous Commission at its meeting on 20 December. Subsequently, at its meeting on 25 January 1973, the Commission instructed its Secretary-General to try to reach agreement with the representatives of the other institutions on a common policy regarding the deductions to be made.

In the light of the outcome of these discussions, the Commission decided at its meeting on 28 February 1973 to arrange for a deduction to be made from the salaries of officials who had gone on strike, making an 'exception' in respect of three days of the strike, regardless of date.

On 1 March 1973, I met the trade unions and staff associations to inform them of the Commission's discussions on the subject. On 7 March, after informing the Commission of the outcome of our meeting with the CLOSP, the President, Mr Ortoli, and I had a second meeting with the staff representatives.

After this meeting and receiving a report on it, the Commission confirmed its previous decision and instructed the Directorate-General of Personnel and Administration to arrange for deduction from the salaries of officials and other servants who had taken part in the strike.

This decision was communicated to the representatives of the trade unions and staff associations.'

On 21 September 1973 the following announcement from the Directorate-General of Personnel and Administration appeared in the Staff Courier:

Following the strikes which took place in December of last year, the Commission, at its meeting on 21 March 1973, confirmed its decision to arrange for a deduction to be made from the salaries of officials and other servants who took part, and the Directorate-General of Personnel and Administration was made responsible for putting the decision into effect.

However, the Commission made an 'exception' in respect of three days of the strike regardless of date.

As everyone will be aware, the Commission's decision was brought to the general notice of staff by Mr Borschette's message of 28 March 1973.

Arrangements for implementation of the decision have now been completed and are informed that the deduction will be made from salary for the month of October 1973 in the case of staff working at Brussels and, at latest from salary for November in the case of staff working at Luxembourg.

The deduction will consist of 1/30 of remuneration for each day on strike and will be itemized as follows on pay slips: . . .'

2. On 19 October 1973 the applicant lodged a complaint pursuant to Article 91 (2) of the Staff Regulations of officials in which he sought annulment of 'the decision of the officials in which he sought annulment of 'the decision of the Commission to deduct three and a half days' pay from salaries for October 1973 . . .'. The complaint was signed by the President and the General Secretary of the applicant union.

3. As there was no answer to the complaint, the present appeal was lodged on 5 March 1972 and registered at the Court on 6 March 1974. Expressing the view that the admissibility of its action is beyond challenge, the applicant asked the Court

'to annul the decision of 21 September 1973 in which the Commission of the Europeen Communities ordered a deduction from the salary for October or November 1973 of officials and other servants of the Commission who took part in the strikes of November and December 1972'. The main grounds of action are the hesitant and indecisive attitude of the Commission, the lateness of the decision, its lack of legal basis, the fact that action taken because of the strike is contrary to the provisions of Articles 60 and 86 of the Staff Regulations of officials, the improper means adopted to establish which officials were absent from duty and the discrimination underlying the fact that the decision to make the deduction referred only to officials of the Commission although the strike also involved the staff of the Council, the Parliament and the Court.

4. By written submission of 5 April 1974, the Commission put in a plea of inadmissibility and requested the Court, under Article 91 of the Rules of Procedure, to rule on this plea without going into the merits.

The applicant claimed that the plea should be dismissed.

5. By order of 20 March 1974, the Court (Second Chamber), decided to refer the case to the Court under Article 95 of the Rules of Procedure.

After hearing the Judge-Rapporteur and the opinion of the Advocate-General, the Court in plenary session decided to open oral proceedings on the plea without any preparatory inquiry.

II — Submissions and arguments of the parties on the admissibility of the application

A — 1. The *Commission* goes first into the question whether the applicant has the capacity to bring an action, contends that the applicant has no such capacity and claims that the application must, therefore, be dismissed.

(a) The Commission states that under Luxembourg law, to which the rules of the union are subject, the union does not possess that legal personality which the law confers.

The Commission recalls that the applicant, whose rules were published in a special edition of the Mémorial Luxembourgeois (Official Gazette) containing the notices provided for under the law of 21 April 1928 on non-profit-making association (association sans but lucratif, ASBL), expressed its intention of forming an ASBL under Luxembourg law, but, after extensive inquiries, the Commission has established that neither before nor after publication of the union's latest rules in the Gazette of 26 November 1973, has the applicant fulfilled the conditions laid down under Luxembourg legislation which would entitle it to be granted legal personality. The Commission draws special attention to failure to comply with the requirements of Articles 2, 3, 9, 10 and 11 of the law of 1928 on the subject of notices and formalities.

The Commission contends that the applicant union has no right of action in the courts of Luxembourg. Under comparative private international law, people's status and right of action are determined by the law of the country to which they are subject; this rule is also applied in foreign courts and, in the Commission's view, it must *a fortiori* also apply as regards the requirements of general Community law. In no document which forms part of Community law has the Commission found even an indirect reference to any other point of view. And nowhere in the decisions of the Court has it discovered any suggestion that the Court would be willing, in defiance of the national law applicable at the place where the entity is based, to grant it a legal personality which its own national law ould deny it.

(b) The Commission goes on to state that the practice in administrative courts

has sometimes been to recognize *de facto* groups which have no legal personality as having a right of action. In such cases they are legally recognized as having the power to act in a clearly identified field. The exceptional character of this power to act and the strict limits within which it is applied are generally recognized.

The Commission considers the law in the old Member States and above all in Luxembourg from this point of view. It refers, for example, to the Luxembourg law of 12 June 1965 on the collective agreements on terms of employment to which trade unions of manual or non-manual workers may be party and states that, under this law, these unions 'may exercise all the legal rights which their members acquire under this agreement, without need of a mandate from the latter, provided that they have been notified and have raised no objection'. The Commission maintains that this validly given power to act is conservatively interpreted. As these groups lack legal personality, they would, in any other context, be refused any general right of action under any circumstances.

The Commission maintains that, under Community law, the applicant union is not legally recognized as having a power to act which would enable it to bring proceedings in its own name. It emphasizes that while, under Article 179 of the EEC Treaty, the Court 'shall have jurisdiction in any dispute between the Community and its servants within the limits and under the conditions laid down in the Staff Regulations', Article 91 of the Staff Regulations circumscribes the scope of this jurisdiction: the Court has no jurisdiction in this context if the applicant is not a 'person' covered by the Regulations and if the act reported to the Court is not an 'act adversely affecting him'.

Though, as a trade union to which the defendant's servants may belong, the union is referred to by the Staff Regulations (Article 24a), there is nothing specific in the Regulations about its own legal position. The Regulations do not endow it with obligations and rights whose non-observance adversely affects it and which it can bring before the Court as an act adversely affecting a person to whom the Staff Regulations apply.

The Commission also points out that the total opposition of the Council, as a legislative body, to granting trade unions the right to appear before the Court in matters relating to the Staff Regulations is demonstrated by its refusal to adopt an amendment, proposed by the Assembly, to Article 24a of the Staff Regulations in the following terms: 'In disputes before the Court of Justice between the Community and any person to whom this present Regulation applies, the trade union or staff association to which that person belongs may intervene in the dispute if the general interest of staff so requires'.

(c) The Commission asks whether, on the basis of the reality theory of legal personality, the applicant could claim that the Court's discretion should be exercised so as to treat it as having a legal personality recognized in law. In the Commission's view a comparison of Belgian and French law is not without value in helping to define the scope of previous decisions of the Court on this subject.

In the Commission's opinion, the applicant union would certainly not be recognized as having a right of action in a Belgian court. The applicant union would be no more likely to have a right of action in a French court than under Belgian law because its lack of legal personality under relevant French law would defeat its claim. The Commission draws particular attention to the judgments of the Cour de Cassation of 28 January 1954 (D. 1954 J. 217) and of 25 January 1965 (Droit social 1965, p. 508). In the first case, the Court refused to recognize a union which had not registered its rules as having personality and the corresponding capacity to move for annulment of staff committee

elections; the earlier judgment does not have the absolute significance which has been attributed to it. In recognizing works committees as having a personality, in reality the Court based its decision on the fact that the law itself required the committee to look after collective interests, that it endowed it with the same qualities as the central committee (though to a lesser extent), and that it had therefore implicitly recognized it as having a personality.

The Commission refers to decisions of this Court and particularly its orders of 24 October 1962 in Case 16 and 17/72 (Rec. 1962, p. 939), of 14 November 1964 in Case 15/63 (Rec. 1964, p. 100) and of 11 December 1973 in Case 41/73 *et seq.* (not yet published). The Commission maintains that it would be one thing to prove that the intervener had, in the words of Article 37 of the Statute of the EEC Court, established an 'interest in the result of the case' but quite another to prove that the act contested in the main action is really 'of direct and individual concern' to the applicant in the main action or 'directly affects' his own legal rights.

Moreover, in the Commission's view, it must be remembered that in those few cases where the Court has allowed applicants without legal personality to intervene, these were entities created by the law and about whose possession or otherwise of a personality recognized by the law the silence of the relevant legislation did not in any case permit the conclusion to be drawn that a personality had been formally denied to them by the law.

2. The Commission passes on to general grounds of inadmissibility.

(a) It contends that, insofar as it is based on Article 173 of the EEC Treaty, the application is inadmissible for a number of reasons.

In the first place, as it was lodged on 7 March 1974 against an alleged 'Commission decision' on 21 September 1973, it is out of time.

Secondly, it is *a fortiori* out of time as it was directed against an act whose substance is to confirm a previous decision, publicized on 28 March 1973, and stating that the strike of November-December 1972 was to be followed by a deduction from pay. As the 'new things' in the Communication of 21 September 1973 represented nothing more than a general description of the way in which a previous decision which could not be challenged would be implemented, and merely gave advance details of the way in which it would be applied, they could not be made the subject of an appeal.

The third ground on which the Commission contends that the application is inadmissible is that, contrary to the requirements of Article 173, the decision under challenge is not addressed to the applicant nor is the decision 'of direct and individual concern' to it.

Fourthly, the Commission questions whether the President of the Union is the correct authority under its rules to represent it. The possibility that he may not be so arises from the fact that, under Article 9 II of the union's rules, it is its executive committee which 'shall alone speak and act on behalf of the union in its relations with its members, outside persons and bodies, and in all legal matters'. The effect of this is that the authority granted by the President of the Union on his own account empowering his lawyer to represent the union in the action may be regarded as having been conferred by a component part of the union other than that with the authority to do so.

(b) The action is, in the Commission's view, equally inadmissible insofar as it is based on Article 91 of the Staff Regulations of officials. The Commission states that the grounds of inadmissibility already mentioned have the same force in this context.

In addition it maintains that the action should be declared inadmissible because it did not follow a preliminary complaint, validly filed in the name of

the applicant as required by Article 90 (2) of the Regulations. No complaint had been lodged by the executive committee, the body competent to do so under the union's rules.

3. The Commission concludes by analyzing 'the status of the applicant in an action of collective interest and the conditions necessary to establish the requisite interest to bring an action'.

The Commission pays particular attention to French case law, the only one to which the applicant referred. The Commission recalls that French case law has been developed over several decades on the basis of conditions laid down and clarified by the legislature itself which, in the trade union field, has adopted measures of a remarkably liberal character. However, even if account is taken only of French precedents, it is by no means certain that, measured against the qualifications laid down by the courts for the right to act, the present action would be deemed admissible.

As regards the conditions on which the action for annulment is admissible before the Court of Justice, the Commission points out that the draftsmen of the EEC Treaties required that the decision should be addressed to the applicant or that a decision addressed to another person should be of direct and individual concern to him (Article 173 EEC). The Commission refers to the *Plaumann* judgment (Case 25/62, Rec. 1963, p. 197) in which the concept of applicant 'individually concerned' was specifically defined and contends that the applicant does not possess the qualification which under Article 173 of the Treaty would entitle it to bring an action for annulment.

Still less does it possess the qualification which, under Article 91 of the Staff Regulations of officials, would entitle it to bring an action under that Article: the disputed act in no way 'directly' affects its particular legal situation and represents no danger whatever to its rights or responsibilities. The Court has laid down that an action will lie against an act adversely affecting the applicant and has defined it as an act which directly affects identified legal rights.

B. — The *General Union* contends that the Commission's arguments represent a retrogressive statement of Community law. It is retrogressive not only when compared with the principles of international law but also when viewed in terms of national law in countries which more and more widely recognize the unions' right to bring proceedings, if for no other reason than to enable them to carry out their essential task and protect their members' interests as employees.

The union recalls that, although Community law recognizes the existence of trade union organizations, it has not yet defined their legal status. The absence of such a definition has produced the paradoxical result that, while the unions operating within the Communtiy must base themselves on the law in the countries concerned, they have dealings only with the institutions; disputes arising out of contracts of employment can only be brought before the Court of Justice and, consequently, settled only on the basis of Community law.

The union emphasizes that under Community law officials have been expressly granted freedom of association. In Article 24 a of the Regulations the responsible authority recognized the existence of the unions and therefore the legality of their activities. And an essential condition of these activities is the right to bring proceedings in defence of their members' conditions of employment.

1. The union deals first with the question of its right of action.

(a) The union states that the Commission has placed the wrong interpretation on the Council's refusal to approve the proposition submitted by the Parliament. The Council was not against the unions' right to intervene but against the fact that the right might be

left to the discretion of an authority which was not the Court.

(b) After referring to the fact that the present action was brought under Articles 90 and 91 of the Staff Regulations of officials, the union states that Article 91 requires that an action brought before the Court must be brought against the Community by a person to whom the Regulations apply. This means that the Community must be a party to the action and that the other party must be someone covered by the Regulations. These two conditions have been fulfilled. According to the union a reference to the applicant in the Regulations is all that is required. The inescapable conclusion of the reference to trade unions in Article 24 a of the Staff Regulations is that the unions exist and that they should be in a position to carry out their specific function.

The third condition is that the applicant should be 'a person'. The union submits that this term should be given the widest possible interpretation. It recalls the precedents established by the Court as regards the meaning of the expression 'any person' in Article 37 of the Statute of the Court.

(c) Before going into the various interpretations suggested for these words, the union denies that any reference should be made to Luxembourg law in deciding whether it should have the right to bring an action. If Community law accepts the principle of such a reference, the Court will find itself called upon to interpret a national law. Moreover, the Commission's contention rests on principles derived from private international law on the status of foreigners. The union regards it as strange to argue that Luxembourg and its citizens should be 'foreigners' so far as the European Economic Community is concerned. Finally, as it is recognized that the international officials' right of association must be protected and that the rules governing the administrative activities of an international authority must be developed by international courts, the Court must recognize the union as having a 'Community personality' and therefore the right to bring an action under the aegis of the Community.

The union contends that in any case Luxembourg law recognizes its legal personality. It refers to a letter of 22 July 1971 from the Luxembourg Minister of Justice from which it is clear that the Syndicat Général fulfils all the requirements of Luxembourg law. Due regard must also be paid to the law of 10 February 1958 by which Luxembourg ratified Convention No 87 of the ILO on the freedom of trade unions and the protection of their rights. Article 7 of the Convention, which covers public officials, provides that the unions' entitlement to a legal personality shall not be subject to conditions which endanger the right of workers and employers to form trade unions as they see fit and put at risk their freedom of action.

(d) The union then considers the first of the two alternatives suggested for the interpretation of the word 'person' in Article 91, viz. that the right to bring an action is subject to the possession of personality or the basic elements thereof.

It refers to the requirements of ILO Convention No 87, to which the Court must have regard; in its view, to hold that legal personality depends on whether Luxembourg law recognizes it or that legal personality can exist only on the basis of recognition under an enactment is virtually to prevent legal personality from being recognized at all.

The applicant contends that these two conditions lack any valid basis. The union maintains that the Community authorities have, by word and deed, expressly recognized it as being a valuable intermediary.

The union contends that the maxim 'pas de personnalité sans loi' has, in terms both of theory and of established precedents, been increasingly invalidated. For example, there is no basis for the

interpretation placed by the Commission on the judgment of the French Cour de Cassation in 1954, and French legal opinion does not regard the judgment of the same court in February 1965, referred to by the Commission, as a departure from precedent.

In the absence, therefore, of legislation recognizing the unions' legal personality, the Court can recognize it. But this does not mean that legal personality can be accorded to anybody. Three qualifications are necessary and sufficient: legitimate interests, worthy of protection by society and of recognition by the law; a definite connection between these interests, bringing them together on common ground and enabling them to share the same objectives and to adopt the same methods to achieve them; and ability to do or say whatever is necessary for the furtherance of those interests. These factors represent the basic elements of legal personality. Explaining its structure and rules, the applicant union contends that it possesses these elements of legal personality. It claims, moreover, that its representative capacity is beyond challenge, among other reasons because it is the oldest and most important of the European officials' unions in Luxembourg.

(e) The union then deals with the possibility that the right to bring proceedings is subject to no particular condition based on the status of the applicant. The union lays particular stress on the fact that Article 91 of the Regulations does not specify that the 'person' to which it refers must of necessity possess legal personality, and on the fact that unions without legal personality have the right to initiate proceedings in most countries of the Community in cases where the subject-matter of the action is of collective interest based on the employer-employee relationship. This 'limited' form of personality is justified by the vital need to ensure that the unions, whose essential purpose is to safeguard their members' conditions of employment, are provided with the means to pursue it.

Another reason why the applicant union should be recognized as having the capacity to bring an action is that the Community regards it as a valuable intermediary. It would be quite incongruous for the Court to refuse to recognize, *de jure*, a trade union situation which is recognized *de facto*.

2. The union then goes into the question of the admissibility of the application, having regard to the scope of the act in dispute, and points out that, under Article 91 of the Staff Regulations, the appeal must be concerned with the legality of an act adversely affecting the applicant. The union rejects the Commission's interpretations of this requirement and with the help of a reference to the Advocate-General's opinion in Case 35/72 *(Kley v Commission,* Rec. 1973 p. 693), contends that the requirement

1. is of a procedural character,
2. acts as a filter for the sole purpose of determining the admissibility of applications and
3. represents no more than a preliminary examination of the applicant's interest in bringing the action on the assumption that, in order to make the application admissible, the interest must be worthy of judicial protection.

Thus, even if it were necessary for the disputed decision to be 'one which directly affects the legal situation' of the union, this requirement does not in the present case represent any obstacle to the admissibility of the application.

There can be no dispute that the decision is of a kind which affects the exercise of the right to strike and constitutes, therefore, a direct threat to the applicant union 'itself, individually' and to its freedom of action.

The admissibility or otherwise of the application should not, however, depend

on the existence of a threat to a subjective right. The union reviews the law in various Member States and claims that, in most of the countries of the Community, the trade unions can bring an action in cases where a collective interest is involved. The present case is concerned with the effects of a concerted stoppage of work on calculation of the officials' remuneration and, therefore, with the extent and significance of a collective right of fundamental importance.

The union states that established precedents in French and Belgian law are clearly in favour of recognizing the right of unions to bring proceedings against decisions even if only a fraction of their membership is involved.

Finally, the union states that 2 600 officials are affected by the decision in dispute.

Again, even if the decision being challenged related to an individual, this would not prevent the union's application from being accepted in French and Belgian law on the ground that it could affect the legal situation of all the staff. The union draws attention to, *inter alia,* a judgment of the Belgian Conseil d'Etat of 12 July 1967 laying down the principle that 'a decision by authority, even though relating to an individual, may nevertheless harm not only individual interests but also the collective interests of a whole group: for this to be so, the decision need only be of such a nature as to entail inescapable consequences, albeit in the future, for a number of unidentified individuals forming part of the group'.

3. The union then considers the admissibility of the application in the light of the other requirements of Community law. It does so within the framework of Articles 90 and 91 of the Staff Regulations of officials.

(a) The union states that the Commission is wrong in arguing that the decision of 21 September 1973 cannot be the subject of an appeal on the ground that it represents nothing more than confirmation of a previous decision publicized on 28 March 1973. The purpose of the earlier decision was to inform staff that the Commission had approved the principle of a deduction. The operative decision was taken only six months later. How, therefore, could the staff of the Commission have read into the announcement of 28 March anything more than a 'threat of some kind'? The union recalls that similar measures have been announced on various occasions, for example in December 1970 and in December 1972, without ever having been put into effect. For an appeal to be admissible, something more is required than apprehension of being threatened by a decision which may be taken; the applicant must be the subject of a decision which has, in fact, been taken.

Moreover the decision of 21 September must be viewed in its entirety. The union states that what makes the decision a concrete development is the detail it contains on the way in which it is to be carried out.

The union stresses that it reacted against a deduction from salary which, as stated in the decision announced, was put into operation in October and November 1973, which is more than a year after the strikes took place.

(b) As regards the question of authority to speak on its behalf, the union agrees that the appeal should have been filed on behalf of the union by its General Secretary as well as by its President. But, the union states, it is a principle of the law of procedure that an act not carried out in proper form can be regularized if it is ratified 'within the prescribed time-limit' i.e., if the right of action is subject to a prescribed time-limit, before it expires. In the event, the act was ratified. In an affidavit of 22 April 1974 the President and General Secretary of the union have in fact certified 'that at all times and at all stages of the proceedings which eventually led to submission of the

application before the Court of Justice of the European Communities, the executive committee of our union unanimously approved the steps taken by its President'.

The preliminary complaint signed by the President and by the General Secretary of the union was also unanimously approved by the executive committee.

Finally, the union points out that, in its explicit decision rejecting the complaint, the Commission did not plead that the application was inadmissible.

At the hearing on 2 July 1974, the parties expanded on their written submissions.

The Advocate-General delivered his opinion at the hearing on 10 July 1974.

Law

1 By application submitted on 6 March 1974, the General Union of Personnel of European Organizations (official English title) asked the Court to annul a decision of the Commission of the European Communities on 21 September 1973 arranging for a deduction to be made from the salary of officials and other servants of the Commission who took part in the strikes in November and December 1972.

2 The application was submitted under Article 91 of the Staff Regulations and Article 173 of the EEC Treaty but during the course of proceedings the applicant withdrew the plea based on the Treaty.

3 By written submission of 5 April 1974, the defendant Commission raised a plea of inadmissibility and asked the Court to rule on it without entering into the merits.

4 The Commission claims, firstly, that the applicant union lacks capacity to institute proceedings.

5 Under Article 24 a of the Staff Regulations officials enjoy the right of association and, in particular, may be members of trade unions or staff associations of European officials.

6 The applicant union is an association organizing a substantial number of officials and servants of the Community institutions and component bodies established in Luxembourg and there is no reason to doubt its representative character.

7 Under its rules, its constitutional structure is such as to endow it with the necessary independence to act as a responsible body in legal matters.

8 The Commission officially recognizes it as a negotiating body on questions involving the collective interests of the staff.

9 It is, therefore, impossible to deny the applicant union's capacity to institute proceedings.

10 Under the general principles of labour law, the freedom of trade union activity recognized under Article 24 a of the Staff Regulations means not only that officials and servants have the right without hindrance to form associations of their own choosing, but also that these associations are free to do anything lawful to protect the interests of their members as employees.

11 The right of action is one of the means available for use by these associations.

12 Under the Community legal system, however, the exercise of this right is subject to the conditions determined by the system of forms of action provided for under the Treaties establishing the Communities.

13 Thus a staff association which fulfils these conditions is entitled, by virtue of the second paragraph of Article 173 of the EEC Treaty, to institute proceedings for annulment against a decision addressed to it within the meaning of that provision.

14 On the other hand, the bringing of a direct action is inadmissible under the arrangements provided under Articles 90 and 91 of the Staff Regulations for proceedings to be brought before the Court, insofar as these provisions give effect to Article 179 of the EEC Treaty and the corresponding Articles of the ECSC and the EAEC Treaties.

15 Though Article 179 is available as a basis on which arrangements may be made for settlement by the Court of collective as well as individual disputes between the Community and its servants, this does not alter the fact that the procedure for complaint and appeal established by Articles 90 and 91 of the Staff Regulations is designed to deal exclusively with individual disputes.

16 This means that the channel of appeal provided for under Article 91 is available only to officials or servants.

17 Under the second paragraph of Article 37 of the Statute of the Court, the right to intervene is, on the other hand, open to any person establishing a legitimate interest in the result of any case submitted to the Court, including those coming under Article 91 of the Staff Regulations.

18 In the circumstances of this case, therefore, as to the facts and to the law, the Court has no jurisdiction to entertain a direct action brought by a staff association under Article 91 of the Staff Regulations.

19 The application must therefore be dismissed as inadmissible.

Costs

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

21 In view, however, of the general interest of the issue which has been raised, each party should bear its own costs.

On those grounds,

THE COURT

hereby:

1. Dismisses the application as inadmissible,

2. Orders each party to bear its own costs.

Lecourt Donner Sørensen Monaco Mertens de Wilmars
Pescatore Kutscher Ó Dálaigh Mackenzie Stuart

Delivered in open court in Luxembourg on 8 October 1974.

A. Van Houtte
Registrar

R. Lecourt
President