

formed and the grade which forms the basis of Annex I to the Staff Regulations, as also of Article 5 referring to the definition of duties and powers drawn up by each institution, is on the one hand to avoid inequality of treatment between officials to whom duties of a comparable nature have been validly assigned, and on the other hand to ensure that no official is required to give services which do not fall within

the definition of the duties attaching to his post.

Where, however, independently of the wishes of the appointing authority, a servant performs duties which, according to the scale of posts, relate to a post higher than that which the appointing authority intended to accord to him, this cannot confer upon the servant in question the right to be reclassified in a higher grade.

In Case 102/63

JACQUES BOURSIN, an official of the High Authority of the ECSC, represented and assisted by Marcel Slusny, Advocate at the Cour d'Appel, Brussels, Head of Department at the University of Brussels, resident at Béréldange, 63 rue de Luxembourg (Grandy Duchy of Luxembourg),

applicant,

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, 2 place de Metz, Luxembourg, represented by its Legal Adviser Pierre Lamoureux, acting as Agent,

defendant,

Application for the annulment of decisions relating to the applicant's career,

THE COURT (First Chamber)

composed of: R. Lecourt, President, L. Delvaux and A. Trabucchi (Rapporteur), Judges,

Advocate-General: K. Roemer

Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts

The facts of the case may be summarized as follows:

The *applicant* entered the service of the High Authority of the ECSC on 3 January 1955, and on 1 July 1956 was established under the Staff Regulations in grade A6/1.

In October 1958 he appeared in the detailed list of posts in the Marketing Division as 'Administrator III, Grade A6/2', with career prospects up to Grade A4 (Administrator I). By a decision of 27 July 1960 he was promoted to Grade A5/1 with effect from 1 January 1960.

By a decision of the President of 4 January 1961 the applicant was required to discharge 'for the time being' the duties of a Principal Administrator as from 1 July 1960 in post No 18 of the detailed list of posts in the Directorate-General for Work Problems, Rationalization and Reconversion. Following this appointment, he was granted from 1 September 1960 a supplementary allowance making up his salary to that of Grade A4/1.

On 21 September 1962, a decision of the President of the High Authority dated 5 September 1962 was communicated to the applicant, establishing him with effect from 1 January 1962 in his temporary grade, A4/1. On 23 January 1963 the applicant received a note signed by the Director of Personnel, Mr Jaurant-Singer, informing him that as from that date his position in the administration would be as follows:

'Post (Career bracket): Principal Administrator (category A, *Grades 4 and 5*)

Posting: post No 123 in the detailed list of posts in the General "Work Problems Division" (formerly post 18).'

In a note dated 22 January 1963 addressed to the President of the High Authority, the applicant expressed his dissatisfaction with the career bracket to which he had been assigned, on the ground that it curtailed the career prospects which he had formerly enjoyed. The reply given by the Director of Personnel on 7 February 1963 informed the applicant that as the general list of posts stood at that time it was impossible to alter in any way his position in the administration.

On 18 February 1963 Mr Vinck, Director-General of the directorate to which the applicant was attached, requested in a note conveyed to the Administrative Committee and concerning the detailed list of posts for 1963 to 1964, *inter alia*, that a new post of 'Conseiller' (Adviser) (Grade A3) be created in the Directorate-General, abolishing in consequence the post of Principal Administrator in the Industrial Reconversion Division. According to the note these alterations, considered by Mr Vinck to be necessary in the interests of the service, would have enabled a number of disputes arising from the introduction of the new Staff Regulations, including that of the applicant, to be settled. The Administrative Committee rejected the request at its meeting on 5 March 1963.

In a note dated 13 June 1963 addressed to the Director-General of Administration and Finance, Mr Vinck, referring on this occasion exclusively to Mr Boursin's position in the administration, sought to be informed of the fate awaiting his proposal of 18 February 1963.

The reply to this note, dated 28 June 1963 and signed by Mr Signorini, Director-General of the Administration and Finance Division, confirmed the refusal of the Administrative Committee.

On 29 July 1963 the applicant submitted a complaint under Article 90 of the Staff Regulations to the President of the High Authority and asked that the decision of 18 December 1962 be reviewed, at least in so far as it concerned the career bracket of Principal Administrator, or at the very least that his former personal career prospects — which included Grade A3 — should be preserved. He also referred to the possibility of the conversion of his post of Principal Administrator to the post of Adviser.

In a note of 17 October 1963 signed by the Vice-President of the High Authority, Mr Coppé, the applicant's complaint was rejected.

II — Conclusions of the parties

The *applicant* lodged an appeal at the Court Registry on 27 November 1963, claiming that the Court should:

'I — declare null and void:

1. the refusal of the High Authority contained in its note of 17 October 1963 to grant the applicant's request that his administrative career be regularized, and especially that his career prospects, altered by the definition of duties and powers attaching to basic posts contained in Annex I to the Staff Regulations, should remain unaltered, at least for him personally;
2. as far as is necessary, the Staff Regulations themselves, especially Article 5 (4) and Annex I to the Regulations;
3. the decision of the Committee of Presidents refusing the request of the High Authority for the career prospects of the applicant to be allowed to remain as they were under the former Staff Regulations at least for him personally;

II — Declare that the defendant parties named in 1 and 2 must allow the applicant's career prospects to remain as they were

under the former Staff Regulations at least for him personally;

III — As a subsidiary claim, declare null and void,

1. the refusal of the High Authority contained in the note of 17 October 1963 to grant the applicant's request that his administrative career bracket be regularized, with the aim of obtaining a classification in Grade A3, which he had by implication attained prior to becoming subject to the Regulations;
2. the integration of the applicant under the Staff Regulations in so far as it places him in Grade A4;

IV — Declare that the applicant must be regarded as established in Grade A3 with effect from 1 January 1962 at the step in that grade to which he is entitled, and with all the consequences in law as regards salary and all other advantages accruing from the Staff Regulations;

in any case,

V — order the defendant parties referred to at 1 and 2 to pay the applicant non-material damages of, provisionally, one franc, reserving the right to amend this figure as he deems necessary in the course of the proceedings;

VI — order the defendant parties mentioned at 1 and 2 to bear the entire costs of the proceedings.'

In its statement of defence of 30 January 1964 the *defendant* contends that the Court should:

'dismiss the application in its entirety as being inadmissible or unfounded; order the applicant to pay the costs of the action, the costs incurred by the High Authority, however, being paid by the latter in accordance with Article 70 of the Rules of Procedure.'

In his reply dated 10 May 1964 the *applicant* submits further subsidiary claims that the Court should:

'order the defendant parties to pro-

duce the following:

1. The minutes of the High Authority relating to the adoption of the Staff Regulations of officials dating from 1955 (apparently, 21 December 1955) and 1956;
2. A note from the President of 16 June 1958, signed by Messrs Dehnen, Rollman and Vinck (all three Directors in the Marketing Division), concerning the promotions for 1 July 1958;
3. A note from Mr F. Vinck of 22 December 1959, concerning Mr J. Boursin on the subject of: Assessment of the work and duties of Mr J. Boursin with a view to possible promotion (Schedule to Annual Report);
4. Internal memorandum No 200 (High Authority No 6874/61 f, dated 2 January 1962, signed G. Signorini) on the subject of: Publication of Articles 10, 11, 13 and 15 of the Regulations;
5. The minutes relating to the adoption of the new Staff Regulations by the High Authority in its meeting on 14 February 1962;
6. A note addressed to the Director-General of Work Problems of 15 March 1962 from Mr Signorini on the subject of: Introduction of new career bracket. Main subjects concerned — "Conditions of employment" and "Social security";
7. A note of 29 May 1962 from Mr Vinck to Mr G. Signorini, on the subject of: Establishment report on Mr Jacques Boursin;
8. Preliminary report from I.S.I.D.A. (HA document No 7276/62 f) of October 1962 on the subject of: Organization of the Directorate-General for Work Problems, Rationalization and Reconversion of the ECSC (if necessary, extracting pp. 34 to 38 regarding the Industrial Reconversion Department);
9. A note of 19 December 1962 from Mr Signorini to Mr F. Vinck regarding the new career brackets;
10. A staff communication (HA document No 8585/62 f Schedules I, II, III) of 20 December 1962, signed by Mr G. Signorini on the subject of: Introduction of the new career brackets;
11. A note of 7 January 1963 from Mr G. Signorini to Mr F. Vinck on the subject of: Introduction of the new career brackets;
12. A note addressed to Mr G. Signorini, dated 5 August 1963, from Mr F. Vinck on the subject of: Complaint by Mr Boursin under Article 90 of the Regulations — Administrative position of Mr Boursin and Mr Will;
13. A note of 21 October 1963 from Mr G. Signorini to Mr Vinck on the subject of: Complaint by Mr Boursin under Article 90 of the Regulations;
14. A note to the High Authority from Mr Krawielicki regarding the applicant's appeal;

Allow the applicant's request to call the following witnesses:

1. Mr Spiegleer,
as to the fact that, probably in September 1961, and in any event on 8 January 1962, Mr Spiegleer assured the applicant that his appointment to Grade A4 had been made on the basis of the old Regulations, either following a purely formal competition, or by promotion;
2. Mr F. Vinck,
as to the circumstances in which Mr Boursin came to be his immediate assistant, and to exercise for him in particular those duties which Mr Vinck considered as properly belonging to the post of Adviser,
as to the representations made by Mr Vinck to the administration in

order to have the applicant's position in the administration regularized.'

It its rejoinder of 24 July 1964 the *defendant* repeats the conclusions in the statement of defence, and,

'leaves entirely to the discretion of the Court the question whether it is possible, having regard to the questions of law raised by the applicant's conclusions, to order the appearance as witnesses of persons who can only have acted in a private capacity or who at least, as the applicant well knows, did not exercise functions such as could confer on them a power which could supplant that of the High Authority or the appointing authority.'

III — Submissions and arguments of the parties

The submissions and arguments of the parties may be summarized as follows:

The ECSC and the Committee of Presidents named as parties

In his originating application the *applicant* named as defendants:

1. The ECSC;
2. The High Authority of the ECSC;
3. If necessary, the Committee of the four Presidents mentioned in Article 78 of the ECSC Treaty.

In its statement of defence, the *High Authority* declares that within the limits of its powers it represents the ECSC in accordance with the third paragraph of Article 6 of the Treaty.

The Committee of the four Presidents, in a letter from its Chairman dated 27 January 1964, states that since it is not an institution referred to by Articles 6 and 7 of the ECSC Treaty it has no capacity to be a party to legal proceedings.

As regards the naming of the ECSC as defendant, the *applicant*, while emphasizing that Article 91 of the new Staff

Regulations of officials of the ECSC speaks of appeals by officials against the Community, leaves the matter to the discretion of the Court.

As for the Committee of the four Presidents the naming of which as defendant in the proceedings is justified by the facts of the case, the applicant states that the Committee, while admittedly not one of the institutions referred to by Articles 6 and 7 of the Treaty, is nevertheless a Community organ, the powers of which are disputed in the proceedings. It refers to Belgian law, which allows in such cases an appeal to the Conseil d'Etat against organs of the commune, such as the 'Collège des bourgmestres et échevins', which do not themselves have legal capacity.

Admissibility of the applicant's claims

I — 1. Annulment of the refusal to keep open the applicant's career prospects

(a) The *defendant* maintains that this request is inadmissible on the ground that neither the note from the President dated 17 October 1963, nor any previous communication whatsoever from the High Authority could have contained a refusal to uphold the applicant's vested rights relating to a career within bracket A3, because he never had any. The applicant was in fact established in the post of Principal Administrator which he occupied from 1 January 1962, that is to say, a date when the career of Principal Administrator no longer included Grades A4/A3, but only Grades A5/A4. Thus, since the applicant was never established in career bracket A4/A3, no career prospects nor *a fortiori* any right attaching to career bracket A3 could have vested in him or, as a result, have been withdrawn.

The *applicant* replies that the promotion necessary in order to be established in the post of Principal Administrator and thus to benefit from career prospects

including Grade A3 should be regarded as having been acquired under the former Regulations. Consequently the defendant could not reply to the applicant's request by alleging a failure to act on his part. The defendant itself had acknowledged in the past that the applicant's career prospects covered career bracket A3 and expressed its regret that it was unable to uphold them owing to the attitude of the Committee of the four Presidents.

Furthermore the note from the Vice-President of 17 October 1963 was indeed a refusal, and whether or not that refusal was justified or not is a question concerning not admissibility but rather the substance of the case.

The *defendant* states in its rejoinder that:

1. No right to promotion exists until a positive decision to that effect has actually been taken by a competent authority;
2. The applicant having already been promoted to Grade A5 with effect from 1 January 1960, could not be given a new promotion before 1 January 1962, by virtue of the first paragraph of Article 39 of the ECSC Staff Regulations, and the second paragraph of Article 2, Annex IV of the High Authority to those Regulations.

However, the defendant concedes that the question whether or not the note of 17 October 1963 amounted to an expression of intention to refuse to maintain the applicant's career prospects extends somewhat beyond the field of admissibility. Nevertheless, it is a question which must precede any discussion of the actual substance of the case. If the High Authority expressed the wish that career prospects should be preserved for those who had them, its intention was to confer on them a favour, not to safeguard a right which must be protected by law.

(b) The *defendant* also maintains that this claim is inadmissible because it is out of time. In fact, the applicant was informed of the provisions which could

have affected any prospects he might have had of a career falling within bracket A 3, namely Article 5 (4) and Annex I to the Regulations regarding the correspondence between basic posts and career brackets and the determination of the position within the administration and personal career bracket of the applicant by note from the President of the High Authority of 16 February 1962 and by a communication of 23 January 1963, respectively. Consequently, the applicant had been out of time since May 1962 for the purpose of contesting Article 5 (4) of the Regulations and since the end of April 1963 for contesting the determination of his position within the administration and his career bracket.

The *applicant* replies that, since the Regulations were drawn up by a body which lacked the necessary powers after expiry of the time-limit provided for by paragraph 7 of the Convention on the Transitional Provisions they should be regarded as not merely open to challenge before the Court, but void *ab initio*. The limitation period fixed by Article 91 of these Regulations is therefore irrelevant, since it is the old Regulations which are applicable, Article 58 of which makes no mention of a limitation period for initiating proceedings. Even if Article 91 of the new Staff Regulations were held to be applicable, the period of time of three months for commencing proceedings can only begin to run from the date of publication of the Regulations, in accordance with Article 81 of the Rules of Procedure of the Court, since they constitute a measure of general application. Such publication in the Official Journal never took place. Even if the Regulations may be regarded as a purely internal circular notified to officials, proof of notification should be provided by the signature of the official on the document the contents of which were communicated to him (Article 26 of the new Regulations and Article 8 of the old Regulations).

In any event, the applicant emphasizes that he responded to the note from the Director of Personnel of 23 January 1963 in a note sent to the President of the High Authority. The reply to this note, made not by the High Authority itself but merely by an official, Mr Jaurant-Singer, cannot be considered to constitute an authoritative reply to a complaint through official channels.

Finally, the applicant claims that only by looking at the definition of duties, of which he was not notified until 21 May 1963, was he able to discover the fact, first, that it was essential for him to submit a fresh request, by means of an appeal through the official channels, for his career prospects to be safeguarded and secondly, that he was entitled to be reclassified in Grade A3.

The *defendant* replies that the only circumstance sufficient to make a measure void is the presence of a grave irregularity, which is certainly not the case here. The new Regulations, set out in the Official Journal of the Communities (Official Journal, 1962, p. 2673), were moreover public knowledge and the applicant was fully aware of them.

Since he admits that on 28 January 1963 he made a complaint to the administration which received no adequate reply, it must be concluded, says the defendant, that by virtue of Article 91 (2) the period of time for commencing an appeal expired at the end of May 1963. The definition of duties and powers is quite without relevance to the change in the applicant's career prospects, which was made as a result of Annex I to the Regulations and the note sent to the applicant on 23 January 1963.

I — 2. Illegality of the Staff Regulations, especially Article 5 (4) and Annex I

See the arguments under I — 1, (b) above.

II — Preservation of the applicant's career prospects up to Grade A3

See arguments under I — 1 above.

III — 1. Annulment of the refusal, contained in the note of 17 October 1963, to reclassify the applicant in Grade A3

As regards the first head of the applicant's subsidiary conclusions the *defendant* remarks that the request contained in this part of the application, to the effect that he should be reclassified in Grade A3, was not set out by the applicant in the note of 29 July 1963. He could not therefore have elicited any decision on the point from the High Authority, and consequently, cannot challenge a refusal which was never made, either expressly or by implication.

The defendant also observes that since this request, submitted in the guise of an application against the note of 17 October 1963, is in reality directed against the decisions of 5 September 1962 and 23 January 1963, it is out of time.

The *applicant* replies that when he suggested in his note of 23 July 1963 the abolition of his post of Principal Administrator and its replacement by that of Adviser, it must have been obvious that he wished to be reclassified in Grade A3. The applicant refers to a note from the Legal Department of 6 December 1963 interpreting his complaint to that effect.

As regards the lateness of the request, the applicant refers to the arguments already submitted on the point, and adds that even if it is conceded that he accepted the grade at which he was established without reservations, or that his reservations must be disregarded because they were not followed by proceedings, the resultant exclusion of his right of appeal applies only to the past, and his complaint must be admissible

from the date on which it was submitted, or at least from the date on which the appeal was lodged at the Court.

In its rejoinder the *defendant* claims that the main object of the administrative complaint made on 29 June 1963 was the preservation of the career prospects to which the applicant claimed he was entitled.

The note from the Legal Department is purely a domestic one and was issued after the initiation of legal proceedings. It was written, moreover, before a detailed examination of the subject-matter of the appeal could be made permitting its true nature to be determined. Since the administrative appeal of 29 June 1963 made no reference whatsoever to the definition of duties sent out on 21 May 1963, and only such a reference could have given the reasons for and constituted a request for reclassification, the request must be out of time.

III — 2. Annulment of the integration of the applicant in so far as it involves his establishment in Grade A4

The *defendant* maintains that this request is inadmissible because it is made out of time, the applicant having been notified of his establishment in Grade A4 by a note dated 21 September 1962.

The *applicant* states that he could not have known that the duties exercised by him were those of an Adviser in Grade A3 until 21 May 1963, the date on which the definition of duties and powers mentioned in Article 5 (4) of the Regulations was communicated to him.

IV — Establishment of the applicant in Grade A3 with effect from 1 January 1962

The *defendant* states that this request is inadmissible on the ground that it relates to the exercise of a power vested in the administration alone.

The *applicant* replies that he is not asking

that the Court itself should establish him in Grade A3, but merely that it give a declaration that he is to be established in Grade A3.

The *defendant* sees in this explanation an amendment of the original request and leaves the matter to the Court's discretion. In addition, it observes that the phrase in Annex X '*may . . . be established*' appears to refer to a power exercisable only by the High Authority.

V — Non-material damage to the applicant

The *defendant* contends that the applicant has submitted no arguments in support of this request, which is accordingly inadmissible.

The *applicant* considers that if judgment is given in his favour as regards the main heads of his conclusions, it will thereby accord him satisfaction as regards the non-material damage.

Substance of the case

A — *The refusal of the High Authority contained in its note of 17 October 1963*

The *application* challenges the decision of refusal which he alleges is contained in the note of 17 October 1963, on the grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaty or of a rule of law relating to its application, and misuse of powers, and argues as follows:

I — The definition of duties and powers attaching to the basic posts listed in Annex I to the Regulations, communicated to the applicant on 21 May 1963, is void because it is based on Regulations drawn up by a body lacking the necessary powers, the period of time prescribed by paragraph 7 of the Convention on the Transitional Provisions having expired when the Regulations were drawn up by the Committee of Presidents. Articles 46 and 62 of the

previous Regulations, drawn up pursuant to paragraph 7 of the Convention, are not applicable outside the transitional period allowed for by this provision.

II — The curtailment of the applicant's career prospects is a violation of the principle whereby vested rights must be observed, a principle which must be safeguarded by the Court according to Article 31 of the ECSC Treaty.

The *defendant* contends, first, that in the absence of any evidence brought by the applicant to support the grounds upon which he relies, in particular those of infringement of an essential procedural requirement and of misuse of powers, contrary to Article 38 (1) of the Rules of Procedure, these submissions must fail from the outset.

The *applicant* replies that it is sufficient for the requirements of Article 38 of the Rules of Procedure that the opposite party is not in doubt as to the grounds invoked, without any necessity for the applicant to state the cause of nullity to which each of his grounds refers. In any case, the statement of grounds can be supplemented by further details in the applicant's reply. As regards in particular the grounds of lack of competence, infringement of an essential procedural requirement and misuse of powers, the applicant refers principally to the arguments submitted by him in support of Head III — 1. of his conclusions.

The *defendant* contends that it is not sufficient to state the facts and plead the grounds of nullity, without establishing the relationship between them.

The argument based on lack of competence *ratione temporis*

(a) *Admissibility*

The *defendant* maintains that the submission based on the alleged nullity of the Regulations is inadmissible because it fails to establish its object and because the applicant has no legal interest in

maintaining it. In fact if the Regulations were defective the decision establishing the applicant in his post of Principal Administrator, and consequently his promotion to Grade A/4, would be void and the applicant would find himself back in Grade A/5. French administrative case law is quite clear that in such a case the appeal must fail for lack of legal interest.

The *applicant* replies that annulment of the Regulations need not entail as a matter of course the cancellation of his appointment, especially since he had already been appointed to Grade A4 under the old Regulations. Moreover, he could have an interest, even if he were to be put back in Grade A5 for a time, in being subsequently appointed to Grade A4 with the same career prospects as he enjoyed under the old Regulations.

The *defendant* observes, on the contrary, that the applicant's interest in obtaining a declaration to the effect that the Regulations are void must be evaluated solely in relation to the object of the appeal, which is the preservation of the career prospects to which he claims he is entitled. The nullity of the Regulations must inevitably entail the applicant's removal from Grade A4, and his chances of reattaining this grade are too uncertain to constitute an interest sufficient to enable him to plead that nullity.

(b) *Substance*

According to the *defendant* the grounds invoked by the applicant are not well-founded in law since Articles 62 and 46 of the former Regulations on which the power of the Committee of Presidents to amend the Regulations is based, did not cease to be applicable on expiry of the transitional period. The transitional provisions which, according to paragraph 7 of the Convention, were to cease to have effect on the expiry of the transitional period at the latest, con-

cerned the engagement of the servants under contract and not the Regulations to be adopted by the Committee of Presidents. On the other hand, the effects of the Regulations adopted on 21 December 1955 by the High Authority exercising its powers of internal organization, and terminating the temporary contractual scheme, were not confined to the duration of the transitional period.

Moreover, the questions on which the Committee of Presidents is competent to rule under Article 78 (3) of the Treaty are governed by Article 5 (4) and Annex I to the Regulations, the establishing of a table of correspondence between basic posts and career brackets coming within the context of determination of salary scales. But even if the Committee of Presidents had not the necessary powers, the High Authority itself did because it has power to regulate relationships between itself and its servants.

The *applicant* relies on the opinion of Advocate-General Lagrange in the *Algera* case, where it is stated that this power depends not on Article 78 of the ECSC Treaty but on paragraph 7 of the Convention on the Transitional Provisions. The Committee of Presidents was given powers by the Treaty signatories for a limited period and cannot take to itself, by means of Articles 62 and 46 of the old Regulations, additional powers for a longer period, contrary to paragraph 7 of the Convention on the Transitional Provisions.

In accordance with the principles laid down by the Court in Cases 24/58 and 34/58, the applicant readily concedes that the former Regulations could have continued to be applicable even after expiry of the transitional period. If the High Authority wished to draw up new Regulations it should have followed the procedure for amendment laid down by Article 95 of the Treaty, or allowed the individual institutions to make the necessary amendments themselves.

Rejecting the defendant's arguments to

the effect that by raising the objection of illegality the applicant can challenge only those provisions of regulations which have adversely affected him, the applicant claims that, even as regards Article 5 (4) and Annex I to the Regulations, it is very doubtful whether the establishment of a table of correspondence between basic posts and career brackets can constitute a measure relating to the determination of salary scales. In any event, the power of the Committee of Presidents in this respect is not a power to make decisions, but merely to co-ordinate the measures to be taken in this field by the competent body which has yet to be determined.

As regards the power of the High Authority itself to adopt the new text of the Regulations, the applicant considers it highly probable that in this instance the new text was adopted by the High Authority purely by means of a decision to the effect that the text was to be applicable to its staff. Moreover, it is not certain whether after the transitional period had expired, and the power of the Committee of Presidents had lapsed, the competent body would be the institution itself. Lastly, if the High Authority did have the power alleged by the defendant, the complaint that this official's career prospects had not been preserved would be justifiable, since the High Authority would no longer be able to take refuge in the argument that the measure was binding on it.

The *defendant* contends that Article 95 of the Treaty applies only to amendments of provisions of the actual Treaty and not to the Staff Regulations. There is no reason for the High Authority to consider itself bound to preserve the career prospects available to a particular official under the old Regulations.

As regards the powers of the Committee of Presidents, the defendant cannot see how 'a prior declaration within the meaning of Article 78 (3), of the Treaty implies a power to give

opinions and not to make decisions'.

The complaint of a violation of the principle of vested rights

The *applicant* claims that the curtailment of his career prospects violates the principle whereby vested rights must be observed, a principle of law which must be upheld by the Court in accordance with Article 31 of the ECSC Treaty.

Besides the arguments relating to admissibility adduced by it in this respect to show that no such right could have vested in the applicant, the *defendant* claims that as a general rule public servants governed by means of a set of staff regulations have no vested rights in the continued existence of the text governing their position, other than that expressly accorded them. It refers on this point in particular to Belgian, French and Italian law.

The *applicant*, while acknowledging that under national law officials governed by staff regulations do not in general have the advantage of vested rights, states that the case-law of international administrative courts and tribunals shows that an endeavour has been made to define the area of application of vested rights. In general, these courts consider that the international public servant has a vested right to his salary and to his grade. According to the applicant, it would not go beyond the limits of a sensible application of the concept of vested rights to hold that the right to a grade implies equally the right to retain the benefits attaching to that grade, in particular career prospects.

Furthermore, the mere reference to national law does not necessarily mean that it must prevail over the generally acknowledged principle that vested rights must be respected, especially in view of the fact that this principle should be interpreted particularly generously with regard to international public servants. This is because these, unlike national public servants, have little

opportunity to protect themselves, by collective action at political or trade union level, against attempts to infringe their rights by means of laws and regulations.

The *defendant* replies that the applicant's arguments based on the distinction between servants subject to contract and those subject to regulations is irrelevant in this case, since it has been provided from the outset that ECSC officials must be governed by a set of Staff Regulations, apart from a brief initial transitional period. Consequently the provisions of national law do apply in this case.

The defendant refers to the general principle of non-retroactivity which must be respected by administrative bodies. The right to a particular grade arises only after promotion or appointment to that grade. There is no right to promotion. Consequently, the creation of new, immediately applicable conditions which must be satisfied in order to give rise to a right to Grade A3, by means of amending the career brackets, does not infringe the principle of non-retroactivity. The second paragraph of Article 94 confirms that an endeavour has been made to respect this principle.

B—The decision of the Committee of Presidents mentioned in head I—3 of the conclusions

The *applicant* maintains that the decision of the Committee of Presidents refusing the request made by the High Authority to preserve the career prospects of certain individual officials is illegal because:

- (a) The Committee of Presidents has no power, under Article 78 of the ECSC Treaty, to oppose such a measure on which the High Authority alone is competent to decide;
- (b) The refusal violates the principle that vested rights must be respected.

The *defendant* contends that this argument is *inadmissible* because, first, the

applicant is not entitled to invoke such an argument when his career prospects never embraced Grade A3 and, secondly, the failure on the part of the Committee of Presidents to make transitional provisions preserving the said career prospects cannot be called a decision.

The *applicant* argues that he ought not to suffer as a result of the opposite party's delay in regularizing his position. Moreover, the refusal by the Committee of Presidents does constitute a decision.

The *defendant* claims that this argument by the applicant amounts to saying that wherever there is a positive decision it imports likewise a refusal as regards all the other positive decisions which could have been taken but were not.

The defendant also maintains that the argument is false and *not well-founded* in law, since the alterations in officials' career brackets challenged by it result from the wording of the new Regulations, which contain no transitional provisions for preserving the abovementioned career prospects. Besides, in the absence of any vested rights in that regard the Committee of Presidents was under no obligation to preserve individuals' personal career prospects.

The *applicant* replies that the illegality consists precisely in the failure by the Committee of Presidents to make provision in the Regulations for preserving the above-mentioned career prospects.

C—*The correspondence between duties and grade*

In his originating application the *applicant*, arguing in support of his subsidiary claims against the High Authority's refusal in the letter of 17 October 1960 of his request to be classified in Grade A3, puts forward the grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaty or of a rule of law relating to its application, and misuse of powers, without however bringing any specific

arguments to support those grounds.

The *defendant* contends that these grounds of nullity cannot be taken into consideration in the circumstances. In any case it could not classify the applicant in Grade A3 because post No 18 in the detailed list of posts for the Directorate where the applicant was employed, next but one after post No 7 (both posts of Administrator) corresponds to post No 123 in the new detailed list of posts, next after post No 112 (ex-post No 7), the post of Head of Division. Consequently, the most the applicant could obtain is Grade A4. In the circumstances, the applicant cannot maintain that he exercised duties other than those corresponding to the post to which he had been assigned. The defendant notes here that the request made in 1960 by Mr Vinck, the applicant's Director-General, that the applicant be directly attached to him, was rejected by the Administrative Committee of the High Authority at its meeting on 10 March 1960.

The '*exceptio obscuri libelli*' is rejected by the *applicant*, who maintains that it is sufficient for the purposes of Article 38 of the Rules of Procedure that the opposite party and the Court should be able to understand precisely the content of the application without its being necessary to make express reference to any particular Article of the Treaty or to any other provisions. Moreover, Article 42 of the Rules of Procedure permits grounds which are outlined in the application to be developed in greater detail, and applies particularly in a case such as this, where the Court has unlimited jurisdiction.

As to the substance of this head, the applicant says that the real problem here is to discover what precisely were the duties in fact exercised by him. The defendant's argument based on the principle of the grade attained rather than the duties actually carried out is not in accordance with the principle

stated in the Maudet judgment. The applicant claims that, bearing in mind the fact that he was directly attached to Mr Vinck, the duties carried out by him both before and after his integration correspond to those of an Adviser in Grade A3, according to the definition of duties and powers drawn up by the High Authority. He submits that Mr Vinck be heard as a witness on this point.

He also disputes the distinction drawn by the defendant between duties exercised *de jure* and those exercised *de facto*. In performing his duties the applicant was merely carrying out the instructions of his Director-General and it was natural for him to consider that he was authorized so to do.

The defendant replies that the principles referred to by the applicant, as stated in Joined Cases 20 and 21/63, do not apply in this instance, since it was fully established in those cases that the applicant was in charge of a department which was termed a 'division' by the institution itself, and it was therefore indisputable that the applicant was exercising the duties of a head of division both *de jure* and *de facto*. In this case, however, it is *de jure* incontestable, having regard to the detailed list of posts both before and after 1962, that the applicant did not exercise the duties of a head of a division, or duties such as would have shown that he had the task of advising one body of the institution, or that he was engaged in studies or supervisory work under the authority of a Director-General or a Director, because his rank was subordin-

ate to that of someone who was himself responsible to a Director.

The various reports on the position drawn up by the Director-General of Administration and Finance on behalf of the High Authority, the refusal given on 5 March 1963 by the Administrative Committee to create a post of Adviser to the applicant's Director-General are evidence that the High Authority never had the intention of assigning to the applicant, either *de jure* or *de facto*, any duties other than those attaching to his position in the detailed list of posts. Therefore, the applicant's request amounts to a refusal to acknowledge the High Authority's capacity and power to organize its own staff, rendering impossible the establishment of a detailed list of posts and the making of budgetary provisions therefor, and denies the Committee of Presidents, contrary to the third paragraph of Article 78 of the Treaty, the power of prior decision which is provided for therein.

IV—Procedure

The written procedure followed the normal course. After hearing the Advocate-General, the First Chamber of the Court decided at its sitting on 21 October 1964 to open the oral procedure without any preparatory inquiry.

The oral submissions of the parties were heard in open court on 11 November 1964. The Advocate-General delivered his opinion at the hearing on 2 December 1964.

Grounds of judgment

A — The naming of the ECSC and the Committee of Presidents as defendants

The applicant named as defendant in his application not only the High Authority of the ECSC but also the ECSC itself and, as far as necessary, the Committee of the four Presidents referred to in Article 78 of the ECSC Treaty.

As far as the naming of the European Coal and Steel Community as a party is concerned, Article 90 of the Staff Regulations, which governs the procedure for the submission of complaints to the appointing authority prior to the initiation of legal proceedings, provides that any official may submit his complaint to the appointing authority of his institution. In the absence of provisions to the contrary an appeal to the Court under Article 91 of the Regulations must be governed by similar rules and be directed against that same institution.

In view of the nature of the duties assigned to the Committee of the four Presidents by Article 78 of the Treaty, measures adopted by it are only capable of producing legal effects as regards servants of the Community by means of decisions of the institutions on which such measures are binding. The legality of measures adopted by the Committee of Presidents may only be questioned through such institutions.

Consequently, it is necessary to exclude, before proceeding to any further examination, the possibility of admitting actions brought by servants of the Community against that Committee, and it is not necessary to decide the question whether the latter has the capacity under Community law to be a party to legal proceedings.

In the circumstances the application must be considered only as directed against the High Authority of the ECSC.

B — Preservation of the applicant's career prospects

Admissibility

The applicant requests the annulment of the decision of refusal contained, he alleges, in the note of 17 October 1963 signed by the Vice-President of the High Authority. The defendant objects that this request is inadmissible, since the measure challenged does not in its opinion constitute a decision.

The arguments put forward by the defendant in support of this objection, however, are based on the denial of any right vested in the applicant to a career in bracket A3, principally on the ground that neither under the old Regulations nor under the new are Community servants entitled as of right to be established in a post which they occupy temporarily. These arguments touch on the substance of the case and therefore this objection cannot be upheld until some examination has been made of the substance.

The defendant further objects that the request is inadmissible because it is

out of time. The applicant was notified of the determination of his position within the administration and his career bracket under the new Regulations by a note sent to him on 23 January 1963. It appears from this note that the applicant's career bracket was restricted to Grades A4 and A5. Therefore, even though the letter sent on 28 January 1963 by the applicant to the President of the High Authority is capable of constituting a complaint within the meaning of Article 90 of the Regulations, and though the note of 7 February 1963 signed by the Director of Personnel cannot amount to an adequate reply to this complaint, the time-limit for initiating proceedings before the Court against the implied decision of refusal under Article 91 of the Staff Regulations had already expired when the present application was lodged.

The applicant further claims that, since the Regulations were drawn up by a body which, after the expiry of the time-limit provided for by paragraph 7 of the Convention, lacked the necessary powers, they were therefore void in law, so that the time-limit fixed by Article 91 of the Regulations does not apply.

This objection cannot be upheld. Paragraph 7 of the Convention on the Transitional Provisions, far from itself conferring powers relating to the Regulations on the Committee of Presidents, presupposed the existence of such powers.

It is usual and in accordance with the proper functioning of any administration that a body which has power to adopt regulations in a particular field should likewise have the power to amend them. Therefore, Article 62 of the Regulations drawn up in 1956 by the Committee of Presidents and applied by the High Authority, providing that the Committee shall have the power to make amendments, subject to certain conditions, to the Regulations, must be considered lawful.

In those circumstances Article 91 of the new Regulations applies to the applicant, and the said request must be held inadmissible because it is out of time.

C — Admissibility of the second head of the principal conclusions and the second head of the subsidiary conclusions

It is clear from the above that quite apart from any other consideration the applicant's requests for the annulment, as far as necessary, on the one hand, of Article 5 (4) and of Annex I to the Staff Regulations and, on the other hand

of the decision of 5 September 1962, by which he was integrated, in so far as it classifies the applicant in Grade A4, are inadmissible because they are out of time.

D — Correspondence between duties and grade

1. *Admissibility*

In support of the first head of his subsidiary conclusions, the applicant claims that the duties exercised by him in accordance with the instructions given by his Director-General, both before and after his integration under the new Staff Regulations, correspond to those of an Adviser in Grade A3, according to the definition of duties and powers drawn up by the High Authority. Consequently, he claims that he is entitled to be reclassified in that grade.

The defendant contends that this request is inadmissible because it is out of time, on the ground that while made in the form of an application against the note of 17 October 1963, it is in reality aimed at the decision integrating the applicant notified to him on 21 September 1962 and the decision fixing his position within the administration notified to him on 23 January 1963.

This objection cannot be upheld. Only by referring to the definition of duties and powers drawn up by his institution was the applicant able to become fully aware of the correspondence between the functions exercised by him and a given basic post.

The defendant further contends that in the note of 29 July 1963 the applicant made no request to be reclassified in Grade A3. He could not therefore have elicited from the High Authority in this matter any decision capable of forming the subject-matter of an appeal under Article 91 of the Staff Regulations.

It is true that in his above-mentioned note the applicant only requested as a subsidiary point, and in very vague terms that his post of Administrator be converted into a post of Adviser. However, the defendant well understood the true import of this proposal, as is evident from the reply given by the High Authority in the note of 17 October 1963 and from the reasons given in it for the impossibility of converting the applicant's post as he had requested.

This objection of the defendant must therefore likewise be rejected.

2. *The substance*

The aim of the principle of the correspondence between duties performed and the grade which forms the basis of Annex I to the Regulations as also of Article 5 referring to the definition of duties and powers drawn up by each institution, is on the one hand to avoid inequality of treatment between officials to whom duties of a comparable nature have been validly assigned, and on the other hand to ensure that no official is required to give services which do not fall within the definition of the duties attaching to his post.

That is why, in the case referred to by the applicant the Court annulled the refusal by the appointing authority to classify an official in a grade which corresponded to the duties for the performance of which he had been expressly engaged and which had been exercised by him without interruption in accordance with the provisions of the above-mentioned authority, both before and after his integration under the Staff Regulations.

On the other hand, this principle cannot be applied in such a manner as to oblige the appointing authority to accord its officials a grade other than that which, according to Annex I and the definition referred to in Article 5, corresponds to the basic post to which it has not only formally appointed them, but also in fact intended them to fill. Any other conclusions would mean that every time a head of department took it upon himself without authority to give his subordinates duties to perform which, according to the scale of posts, related to a post higher than that to which the employee had been appointed, a factual situation might arise which would be binding on the appointing authority while not intended by it.

In the present case, whatever the nature of the duties the applicant might have been asked to perform by his Director-General, it is clear that the defendant never authorized the applicant to be directly attached to the latter. On the contrary, it showed evidence of the opposite intention on several occasions.

Consequently, the applicant can have no legitimate claim to be reclassified in Grade A3.

E — The claim for damages

The applicant asks that whatever the outcome of the case the defendant be ordered to pay non-material damages of, provisionally, one franc. However, the applicant has in no way explained in what respect he has suffered non-material damage. Moreover, it has been established that he had no right to be reclassified in Grade A3.

Therefore this claim must be dismissed.

Costs

Under Article 70 of the Rules of Procedure of the Court of Justice of the European Communities institutions shall bear their own costs in actions by servants of the Communities.

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

Since the applicant has failed in all his submissions, he must pay his 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 Article 78 of the Treaty establishing the ECSC and paragraph 7 of the Convention on the Transitional Provisions annexed to that Treaty;
Having regard to the Staff Regulations of officials of the ECSC;
Having regard to the Rules of Procedure of the Court;
Having regard to the Protocol on the Statute of the Court of Justice of the ECSC;

THE COURT (First Chamber).

hereby:

- 1. dismisses application No 102/63;**
- 2. orders each party to bear its own costs.**

Lecourt

Delvaux

Trabucchi

Delivered in open court in Luxembourg on 17 December 1964.

A. Van Houtte
Registrar

R. Lecourt
President of the First Chamber