OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 2 DECEMBER 1964[1]

Summary

Mr President,
Members of the Court,

This is an application by an official of the High Authority, claiming that his career prospects have been harmed by the new Staff Regulations of the ECSC which came into force on 1 January 1962 and, as a subsidiary point, that he should be classified under the list of posts in the Staff Regulations in accordance with the duties actually exercised by him. As regards the facts of the case I need only make the following remarks: The applicant entered the service of the High Authority on 3 January 1955. He was established as an official under the ECSC Staff Regulations with effect from 1 July 1956 and classified in Grade A 6/1. In October 1958 he was described in the detailed list of posts for the Marketing Division as 'Adminstrator III' in Grade A 6/2. By decision of the High Authority of 27 July 1960 the applicant was promoted to Grade A 5/1 with effect from 1 January 1960. From 1 July 1960 he performed temporarily the duties of a Principal Administrator (post No 18 in the detailed list of posts for the Directorate-General of Work Problems, Rationalization and Reconversion), a decision to that effect having been taken by the

1—Translated from the German.

President of the High Authority on 4 January 1961. In accordance with the Staff Regulations, he drew a supplementary allowance as from 1 September 1960 to make up the difference in salary between his actual grade and Grade A 4/1. When the new ECSC Staff Regulations, which coincided largely with the Staff Regulations of the EEC and Euratom, came into force, the applicant was placed by decision of the President of the High Authority on 5 September 1962 in Grade A 4/1 with effect from 1 January 1962. His position within the administration was described in a note addressed to the applicant by the Director of Personnel on 23 January 1963 as that of Principal Administrator in career bracket A5–A4. The applicant objected to this in a letter to the President of the High Authority on 28 January 1963, expressing his dissatisfaction with this career bracket. After the definition of posts established by the High Authority on 18 December 1962 had been communicated to the staff in a note of 21 May 1963, the applicant decided to lodge a formal complaint under Article 90 of the Staff Regulations by letter dated 29 July 1963 to the President of the High Authority, in which he requested an alteration in his position within the administration, in particular that the career prospects open to Principal Administrators under the earlier Staff Regulations (A4–A3) be preserved. Since the High Authority's reply, by letter of 17 October 1963, was negative, an application was lodged at the Court of Justice on 27 November 1963, seeking the following:

I. 1. annulment of the refusal regarding the applicant's career prospects contained in the decision of the High Authority of 17 October 1963;
2. if necessary: annulment of the ECSC Staff Regulations, in particular Article 5(4) and Annex I;
3. annulment of a decision of the Committee of the four Presidents refusing the request of the High Authority to preserve a career in bracket A4, A3 for the benefit of a number of officials, including the applicant;
4. a declaration that the prospects of a career in Grade A3 must be preserved for the applicant;

II. as a subsidiary point:
5. annulment of the refusal to classify the applicant in Grade A3 contained in a letter from the High Authority of 17 October 1963;
6. annulment of the decision of 5 September 1962 integrating the applicant in so far as it classified him in Grade A4;

II. 7. a declaration that the applicant should be placed in Grade A3 with effect from 1 January 1962;
8. an order for the defendant to pay non-material damages of one Belgian Franc.

The High Authority's view of these claims is essentially that they are inadmissible on several grounds and that in any event they must be dismissed as unfounded.

I shall examine each of the detailed arguments of fact and of law adduced by the parties to support their claims at the appropriate point in the examination which now follows.

Legal Consideration

In considering the questions of law raised here I think it sensible to follow the order in which the conclusions are presented, examining all the problems as to whether the application is admissible and well-founded as they occur in relation to each separate claim. Consequently, I do not intend to deal in advance with questions of admissibility raised in the course of the proceedings as to do so would, I think, obscure the general picture.

1. The first head of the conclusions

The applicant first seeks the annulment of the refusal of the High Authority to adjust his position within the administration in accordance with his complaint of July 1963, that is, to extend his career bracket to include Grade A3.

(a) The High Authority's main objection to this is that the limitation period of three months decreed by Article 91 of the Staff Regulations had expired. In its view the applicant could have pursued the claims set out in the application simply by making an application for annulment of the note of 23 January 1963 determining his position within the administration.

The text of the Staff Regulations and the case-law of the Court appear to justify this objection. Anyone who fails to protect his interests by taking proceedings within the proper time-limit against measures open to challenge cannot be allowed to bring an action for failure to act after expiry of the time-limit, since *interest reipublicae ut sit finis litium*. Admittedly, the Court of Justice (Case 69/93) mitigated the harshness of this principle — and rightly I think — as regards staff cases when it decided that it was desirable, and even necessary in the light of the duty of loyalty by which officials are bound, that administrative decisions adversely affecting officials should not be contested immediately by legal proceedings, but that an attempt must first be made to reach an amicable settlement by means of internal procedure. However, it should at least be insisted that administrative complaints against a measure which may be challenged must be lodged with the authorities within the appropriate time since otherwise the time-limits mentioned by the Staff Regulations would have no meaning.

How is this relevant to the present proceedings? There can be no doubt that the note of 23 January 1963 constitutes clear notice of the effects on his career prospects which the applicant wishes to have removed, that is to say, the restriction of his career to Grades A5 and A4. Nor can there be any doubt that this decision constitutes publication of a measure adopted by the High Authority itself, and is therefore a challengeable administrative decision. The applicant has objected to it, as he is entitled to do, by means of a letter to the President of the High Authority dated 28 January 1963.

If it is considered that this letter amounts to a complaint through the official channels of the administration, as mentioned by the judgment referred to above (Case 69/63), as its wording certainly justifies, then — since the applicant received no reply from the High Authority within the two months' time-limit under Article 91 — an appeal should have been made before the expiry of a further two months, that is, before 28 May 1963. This was not done. If the letter of 28 January 1963 is not regarded as a formal complaint leading to administrative proceedings, it can still be maintained that, no such proceedings having been instituted within the three months' time-limit under Article 91 of the Staff Regulations, a later application to the Court must likewise be inadmissible.

This conclusion is not affected by the fact that the applicant's superior, the Head of the Directorate-General of Work Problems, Rationalization and Reconversion, attempted to have the applicant's position altered by notes to the Administrative Committee of the High Authority of 18 February and 13 June 1963. The representations of this Director-General cannot of themselves have the slightest effect on the proceedings either of the administration or of the Court, and should be seen rather as supplementing the arguments of the applicant in support of his claims. More precisely, they cannot alter to the appli-

cant's advantage the time-limit by which he is bound. To obtain recognition of his rights the applicant should therefore have initiated legal proceedings within the appropriate time regardless of these representations. Nor do I think it relevant that, in reply to a second complaint by the applicant on 29 July 1963, the High Authority took a decision on 17 October 1963 which became the subject of the present application. Viewed correctly, this decision, compared with the note of 23 January 1963, constitutes no more than a confirmatory measure ('acte confirmatif') which cannot revive a right of appeal which has lapsed. It would be otherwise if we could ascertain some alteration in the legal or factual circumstances following communication of the note of 23 January 1963. But we cannot. In fact the notification on 21 May 1963 of the definition of posts by the High Authority is a circumstance of no relevance here, because the definition of the applicant's career bracket depends not on the description of posts but directly on Annex I to the Regulations. This makes the first head of the conclusions inadmissible, unless two other arguments as to the validity of the Staff Regulations and their publication can be upheld.

In the applicant's opinion the time-limits for bringing actions under the Staff Regulations do not apply to him because the Regulations were not issued by the competent body (the Committee of Presidents) and thus are void in their entirety.

The allied problem of which is the body competent to issue the Staff Regulations will be considered fully at a later stage. Suffice it to say, at this point, that the Staff Regulations should be regarded as *void* (the only circumstance which would deprive the time-limit fixed by Article 91 of effect) only — if at all — if they were made by a body *wholly* without the requisite powers. We may say that, as far as it goes, this is a fundamental principle generally recognized for all the systems of administrative law in Member States, as I have already indicated in a different context (Cases 3 to 14/59). Moreover, decisions by the administration, even those of a general nature, remain valid and applicable until they have actually been annulled. The main proof of this is to be found in Article 33 of the ECSC Treaty, where special mention is made of lack of competence as a ground for an application for *annulment*. A number of provisions of the Treaty (Article 78; paragraph 7 of the Convention on the Transitional Provisions) make it clear that, where the scope of the powers of the Committee of Presidents is concerned, there can be no question of a complete absence of powers, in the sense of the applicant's argument, as regards the law governing Community staff. I think this is sufficiently obvious not to require further elaboration. This does not mean, however, that the limitation period under the Regulations can be held inapplicable on the ground of lack of competence to make the provision.

Secondly, the applicant claims that even if the new Staff Regulations are held to be valid, he has not exceeded the limitation period, for it begins to run only after publication of the Regulations in the Official Journal. It is not sufficient to notify staff by means of a circular, particularly where no signature is required to prove that notice was received at a particular time.

My opinion is that at this point, too, it is impossible to follow the applicant. It is true that the Staff Regulations have no binding legal force and their provisions — including those on limitation periods — are not applicable until notice is given of them (that is, by publication). But nowhere is it prescribed that publication can only be made in the Official Journal of the Communities. The applicant is mistaken here in relying on Article 81 of the Rules of Procedure of

the Court of Justice, because this regulates only the commencement of the limitation period for annulment of general provisions, not the problem we have here of an application *based on* general provisions. Publication can, in my opinion, properly be effected by other means, for instance by notifying the Staff Regulations to Community officials and other persons concerned, provided that publicity can be reliably secured in this way. Nor does the judgment in Case 69/63 allow of a different view, since it mentions only publication of the Staff Regulations and does not stipulate that it must be in the Official Journal. Such publication was made by the High Authority by means of the note from its President of 16 February 1962, and it is inconceivable that the applicant, a senior official, is seriously maintaining that he was unaware of a measure so significant for his legal position.

Neither the failure to publish the Regulations in the Official Journal, nor the lack of acknowledgment of notification by the applicant, can have the consequence that the limitation period under Article 91 has not begun to run in relation to legal measures adopted in January 1963.

So it remains the fact that the claim in the first head of the conclusions is inadmissible.

(b) Apart from this it is alleged that this claim is inadmissible on the ground that it is unsubstantiated. In the High Authority's view it is inconceivable that any right to preserve particular career prospects exists, and can therefore be violated. It supports this argument by citing the national laws of Member States governing public servants and considers that the principles embodied in such laws are likewise indicative for the law relating to Community staff.

Indeed, it has demonstrated convincingly in its written pleadings that no right to preserve career prospects is recognized by national laws governing public servants. I refer the Court to the arguments in the statement of defence (pages 12 and 13) with its detailed references to national legal theory and case-law. I also endorse the High Authority's view that these must apply equally in the law governing Community staff.

If, however, the applicant refers us to the fundamental principles which govern certain aspects of international law relating to international public servants, and which indicate a more wide-spread recognition of vested rights, then he must concede the counter-argument that these laws are primarily contractual laws, concerned with contracts of employment which are generally strictly limited in time. But most Community officials are governed by the Staff Regulations. We should bear in mind in this respect the intensive discussions of this point which were held prior to the introduction of the Staff Regulations in the EEC and EAEC. In view of the basic nature of this legal position there can be no question of recognizing vested rights of officials to the same or a similar extent as under international contract law, with the consequent rigid adherence to existing legislation, which might prove a considerable handicap for the Communities' powers of organization. Rather than that, it would seem much more appropriate to be guided by the national law relating to public servants, and the principles from which it is derived, in working out practical legal problems — as the High Authority has done.

Thus a second reason for inadmissibility may be added to the one already found, providing that the considerations set out above do fall within the province of admissibility of the application, for instance on the ground that they concern the interest of the applicant in having a particular measure annulled; this depends on the question whether the alleged infringement of the

law is conceivable 'in abstracto'.
But I leave this question open because it must obviously bring us at least to the borders of the area covered by a consideration of the merits of the case, to which I should like now to turn my attention as far as the first head of the conclusions is concerned, despite my findings as to admissibility.

(c) The first fact to emerge here is that the applicant's legal position when subject to the old Staff Regulations was that of an Administrator as from 1 January 1960, and thus fell within a career bracket restricted to Grades A6 to A4. He carried out the duties of a Principal Administrator (career bracket A4 and A3) with effect from 1 July 1960 purely in the capacity of a temporary replacement. Bearing in mind his legal position under the old Regulations, there can be no question of his legal interests having been prejudiced, even if his claim to retain his particular career prospects is recognized, unless in his capacity as a temporary official or by reason of some other capacity he was entitled to be placed in career bracket A4 to A3. That does not appear to be the case.
As the High Authority correctly points out, temporary occupation of a post, even for a period exceeding that prescribed by the Regulations, confers no right to permanent appointment to the post so occupied, since, according to the general view, it entails no right to promotion, and even less to a new higher classification, so long as an open competition is prescribed for this. Nor can it be conceded that the applicant had been promoted to Principal Administrator with retroactive effect from 1 July 1960 by the decision of the High Authority of 5 September 1962 integrating him under the new Staff Regulations. This is wrongly deduced by the applicant from the calculation of seniority in the service contained in the above-mentioned decision. He overlooks the fact that the decision expressly provides that it comes into force with effect only from 1 January 1962. Finally, it is not possible to acknowledge any contingent right to the career of a Principal Administrator under the former Regulations even on other grounds, for instance, that establishment in this career bracket was possible under the old Regulations even after 31 December 1961 (at that time the applicant met the requirements for promotion to the next highest grade) or in view of the assurances given by junior officials in the Personal Administration that this promotion to Principal Administrator under the old Staff Regulations was a foregone conclusion.
It must therefore be concluded that no injury was done to the applicant's legal interests by the reorganization of the career bracket of Principal Administrator, because he has no legal claim to this career under the old Regulations. The results so far make a second consideration relating to the merits of the application practically unnecessary. It concerns the complaint that the curtailment of the applicant's career prospects is illegal because it was carried out by a body which lacked the necessary powers, the Committee of Presidents, under Annex I to the Staff Regulations.
This complaint, too, proves to be without foundation. Evidently, the applicant has a mistaken impression of the powers relating to the adoption of the Staff Regulations in the ECSC. In my view there can be no doubt that in reality the Committee of Presidents — and this is all that concerns us here — was at least competent to undertake the definition of officials' careers, and that directly by virtue of Article 78 of the Treaty. I refer the Court in this connexion to the statements of my former colleague Advocate-General Lagrange in the *Algera* case. It is therefore not at all necessary for our argument to have recourse to paragraph 7 of the Convention on the Transitional Provisions and to enquire as to the position after this ceased to have effect,

for there the powers of the Committee of Presidents mentioned are not *created* but *assumed*. Moreover, the powers of the Committee of Presidents cannot be challenged even when it is sought to maintain the view that it is chiefly the individual institutions of the Community which have the authority to issue the Staff Regulations. When it adopted the first Staff Regulations in 1956 the High Authority in fact expressly conferred upon the Committee of Presidents the power to alter those Regulations (Article 62 of the Staff Regulations).

That this view alone leads to a sensible result is in itself enlightening. Were it otherwise, one would be left with either the distribution of individual powers in such a way that every institution in the Community would be competent to alter the Staff Regulations, which is hardly desirable in the light of the general endeavours being made to harmonize the Staff Regulations; or with conclusion that the Staff Regulations, once adopted, must remain in force without alteration, equally unthinkable for a piece of legislation in the context of a Community created to last fifty years; or finally with the argument that the power to make subsequent alterations to the Staff Regulations must be determined by way of 'gap-filling' under Articles 95 and 96 of the Treaty, which seems totally inappropriate in view of the true purpose which these provisions are designed to fulfil and the unwieldiness of the procedure which they describe.

Thus, the first head of the conclusions cannot succeed even with the aid of arguments based on the power to alter the Staff Regulations.

2. The second head of the conclusions

The second head of the conclusions seeks the annulment so far as is necessary of Article 5(4) and Annex I to the Staff Regulations. This will not detain us long. It is certainly inadmissible for being out of time, as I have shown in the relevant argument on the first head. It is possible to demonstrate its inadmissibility by means of the ingenious objection advanced by the High Authority, namely that the grounds adduced in its support fail to achieve their purpose, as the applicant has in reality no interest in having the Staff Regulations annulled, since not only would he thereby jeopardize his present legal position, which depends on the Regulations which he criticized, but also he would have no guarantee that his career prospects would be improved were the Staff Regulations to be re-issued by a competent authority. Finally, all the arguments thus far presented make it clear that it is also unfounded.

3. The third head of the conclusions

The third head of the conclusions asks for the annulment of the refusal of the Committee of Presidents to maintain the career prospects of the applicant — and of other officials — under the old Staff Regulations, in accordance with the requests made by the High Authority.

First, it leads us to a few observations about the question of the identity of the defendant in the proceedings. This does not depend on the theory, repeatedly maintained by the applicant's representative, that an application directed against the Community as such makes any institutions involved parties to the proceedings, for to that extent the well-established rule of procedure applicable in the law relating to the Coal and Steel Community as well as in EEC law, must must be observed, namely that only those Community institutions whose acts are contested or — in applications for damages — which have been expressly named as parties, are defendants. The special feature of the present case

is different: the application was brought, as far as necessary, expressly against the Committee of Presidents, which raises the question whether in fact the Committee of Presidents can at all be a defendant in legal proceedings.

I would concur with its Chairman and say that it cannot, on the ground that the Coal and Steel Community can only be represented by its institutions, whereas the Committee of Presidents is not one of those institutions within the meaning of Articles 5 and 6 of the Treaty.

In this respect, too, I may refer to the the statements of my colleague Mr Advocate-General Lagrange in the *Algera* case. There he maintains that 'The decisions which it (the Committee of Presidents) has to take, must be incorporated into the decisions — whether in the form of regulations or of individual decisions — of the various institutions on which they are binding, and only through the latter can the legality of the decisions of the Committee of Presidents be contested'.

Accordingly, the third head of the conclusions can only be regarded as admissible if it is considered as an objection of illegality aimed at procuring the incidental examination of the decisions of the Committee of Presidents which formed the basis of the measures directly challenged.

Within the general picture of the proceedings and the outline of their purpose this is quite possible, and all the more so when — as we have heard in the proceedings — the negotiations between the High Authority and the Committee of Presidents as to settlement of the disputed questions took place *before* the Staff Regulations were established. The decisions of the Committee of Presidents referred to in this head of the conclusions are thus nothing other than the rules of law of the revised Staff Regulations themselves. Individual decisions concerning the situation of the applicant and of others similarly placed have not been made by the Committee of Presidents.

This shows that the third head of the conclusions must share the fate of the second, so that, as regards the question of the legality of the provisions in the Staff Regulations concerning the definition of the various career brackets, we may simply refer to what has already been said.

4. The request for a declaration in the fourth head of the conclusions, as to the admissibility of which I refer to what was said in the judgment in the Case of *Wollast, née Schmitz*, (Case 18/63), requires no particular remarks: If the applicant is not entitled as of right to retain the career prospects of a Principal Administrator under the former Regulations, then the Court cannot give a ruling to the effect that he is.

5. Alternatively, that is to say, in the event of those of his claims so far dealt with not being successful, the applicant seeks the annulment of the refusal allegedly contained in the note from the High Authority of 17 October 1963, to classify him in Grade A 3, on the ground that this was the grade accorded him by implication prior to his integration under the new Regulations by virtue of his having been entrusted with certain duties. This raises the same problems as in the case of *Muller* v *Commission of the European Economic Community*: we must see whether the applicant has a claim to be established in the list of grades in accordance with the duties he actually performed.

(a) First, two objections as to admissibility raised by the High Authority must be examined. It claims that there can be no question of a refusal in the letter of 17 October 1963 such as that alleged by the applicant because the applicant submitted no claim to that effect in his complaint to the High Authority of 29 July 1963. Secondly,

even if such is the purpose of the application, it must be considered out of time since it relies principally on the definition of posts communicated to the applicant on 28 May 1963.

As for the second objection, it has no justification. I believe that the applicant adopted the proper course when (like the applicants in the *Muller* case) he pursued his remedy in law after the definition of posts came into force and was communicated to him, not by means of an application to the Court against an administrative decision which had been addressed to him earlier, but by making an administrative complaint with a subsequent and related application to the Court. But since the request for reclassification, allegedly contained in the letter of 29 July 1963, counting from the date of communication of the definition of posts which is the sole determining factor to be considered in judging the applicant's application, was submitted to the High Authority within the limitation period under Article 91, there is no question of the applicant's having asserted his claims out of time. Admittedly, the applicant's position appears less secure when viewed in the light of the other objection as to admissibility. Even if Article 35 of the Coal and Steel Treaty does not apply directly to staff disputes, the legal principle which it expresses must be observed. I have explained this view on a previous occasion, when it was endorsed by the Court (Case 69/63). It is, that to pursue legal rights derived from the Staff Regulations by means of Court proceedings presupposes in any case that the administrative authorities have been previously notified in a clear manner so that if possible the matter may be settled without recourse to the Courts. The matter brought before the Court must be limited to what was unmistakeably the subject-matter of the administrative proceedings. In this respect the letter of complaint of 29 July is open to grave doubts. Its main claim is obviously that the applicant's career bracket should be extended, at least for him personally, to include Grade A3, that is to say, an appeal against the curtailment of his career prospects. On the other hand, the letter merely speaks in general terms of regularizing the applicant's position within the administration, including the suggestion that the post of Principal Administrator occupied by him should be abolished, substituting for it a post of Adviser in the detailed list of posts. How, with this argument as its content, the later claim can justify establishing the applicant in Grade A3 on account of his exercising *de facto* the duties of Adviser, I do not see. Without becoming excessively formalistic, we must therefore conclude that the refusal of the High Authority contained in the letter of 17 October 1963 is not concerned with the applicant's claim to be classified. Consequently, the corresponding head of the conclusions which, if compared with the letter of complaint, appears as an extension of the request, is inadmissible.

(b) I shall nevertheless examine too the question whether it is well-founded, that is to say, whether the applicant is legally entitled to be classified according to the duties actually performed by him. For this I can refer to a large extent, as far as the legal aspects of the problem are concerned, to the argument in the case *Muller* v *Commission of the European Economic Community*.

This applies in the first place to the argument that the claim asserted is justified by the provisions in the Staff Regulations concerning integration. But that this is not so as regards Article 102 of the Staff Regulations, was decided by the Court of Justice in the *Maudet* case. Annex X to the ECSC Staff Regulations, corresponding word for word with Article 102 of the EEC Staff Regulations, yields a similar result. The essential point of reference as regards grading under the new Staff Regulations is,

however, the grade accorded expressly or by implication under the old Staff Regulations, while the duties exercised *de facto* are not to be taken into account. So far the applicant's legal position is clear. Nor does his temporary placement in Grade A4 justify a different conclusion. According to Article 93 of the Staff Regulations it meant simply that he could be integrated under the new Regulations in the grade corresponding to his temporary post.

As for the point of law, whether the duties exercised *de facto*, or those assigned to an official by the appropriate appointing authority, are decisive in the case of a claim to be classified in a particular grade, I am decidedly in favour of the latter reply. The same view is held by the High Authority. It is the only one, in my opinion, which can be reconciled with the requirements of legal certainty, the only one which affords a guarantee that the administrative authority's organizational power will not be undermined by acts, whether authorized or not, of officials who assign to themselves or other servants the duties attached to a more senior post, contrary to the provisions in the detailed list of posts.

Now let us see how this is relevant in the present case. The applicant maintains that even before the entry into force of the new Regulations he acted as the immediate adviser of the Director-General of the Work Problems, Rationalization and Reconversion Division. This may be true as a *fact*. Against his conclusion from this that he was employed as an Adviser in the strictly legal sense it can, however, be objected on the one hand that, on his own admission, he occupied that position from as far back as 1955, though at first only in Grade A6, which certainly does not constitute proof that his duties were on the level of those of an Adviser, and on the other hand that, and this is even more important, we have been given no proof that the competent appointing authority had assigned to the applicant the duties of an Adviser, or at the very least had tacitly countenanced his exercising them in such a matter as to bind it. In particular, we find in the documents which have been produced the following information: In March 1960 the Director-General of the Work Problems, Rationalization and Reconversion Division had already sought to have the applicant attached directly to him. However, this request was refused by the Administrative Committee of the High Authority on 10 March 1960. In addition we know that the applicant was accorded the post of Principal Administrator in the Directorate-General of Work Problems, Rationalization and Reconversion by a decision of the President of the High Authority on 4 January 1961, but purely on a temporary basis. This post (No 18 in the detailed list of posts) comes next after another post of Principal Administrator. But he was not assigned in that capacity directly to the Directorate-General, but to the Directorate-General of Planning. The applicant continued to occupy this post even after the new Staff Regulations came into force. This we know from the definitive decision of 23 January 1963 concerning the applicant's position in the administration, describing him as a Principal Administrator in post 123 (formally post No 18). This is confirmed by the note from Mr Vinck, Director-General, of 18 February 1963 (also the reminder of 13 June 1963) which requested — apparently for the benefit of the applicant — that a post of Principal Administrator be converted into one of Adviser, but received a negative answer from the Directorate-General of Administration of the High Authority in a letter of 28 June 1963, on the ground that the Administrative Committee of the High Authority had not created any posts for Advisers in that Directorate-General.

None of the arguments adduced by the applicant can prevail against this clear-

cut situation. When he claims that the High Authority made attempts to include Grade A3, the High Authority contests this. Moreover, such a claim would not prove that the applicant was at that time legally entitled to be classified in Grade A3 on the basis of the duties actually performed by him, since even in the negotiations which took place between the High Authority and the Committee of Presidents all that was mentioned was the *extension* of the career bracket. Nor is his reference to the fact that the integration report was personally signed by the Director-General of the Work Problems, Rationalization and Reconversion Division of any importance, in particular because at the instance of the administration of the High Authority this measure was later supplemented by the signature of the Head of the Planning Division, to whom the applicant was, according to the detailed list of posts, immediately subordinate. Lastly, it seems obvious that circumstances such as the position of the applicant's office next to that of the Director-General, the mission orders made out and the permissions for leave granted by the Director General, or certain statements contained in the report of a private firm on the reorganization of the administration of the High Authority, have no relevance here.
But the result is that the applicant's claim to be classified as an Adviser in Grade A3 fails, and head no 5 of his conclusions, pleaded as an alternative, is — if it cannot be dismissed as inadmissible — at least unfounded.

6. The second alternative head of the conclusions, seeking the annulment of the decision of 5 September 1962 to integrate the applicant in so far as it classifies him in Grade A4 is inadmissible because it is out of time. It would also be unfounded, since no infringement of the relevant provisions (Article 94; Annex I to the Staff Regulations) has been established.
On this point I may refer in detail to the *Maudet* judgment as well as to my opinion in the *Muller* case, which deal with the same problem in relation to Article 102 of the EEC Staff Regulations.

7. I have also said all that is necessary concerning the request for a declaration that the applicant should be classified in Grade A3, a claim which is in substance a corollary to head no 5 of the conclusions.

8. Finally, as regards the claim for damages the same applies as in the *Muller* case: It is inadmissible, because the application does not comply with the requirements of the Statute of the Court of Justice and its Rules of Procedure since it fails to set out the alleged wrongful act or omission. It would also be unfounded, since after all that has been said concerning the claims for annulment and for declarations, it has not been proved that the High Authority acted illegally.

9. To summarize, we are left with the following conclusions:

The application must be dismissed as inadmissible in its entirety, or at least as unfounded.

The costs of the proceedings, except those of the High Authority (Article 70 of the Rules of Procedure), must be borne by the applicant.