

JUDGMENT OF THE COURT (FIRST CHAMBER)

8 JULY 1965<sup>1</sup>

**Emmanuel Stipperger**  
**v High Authority of the ECSC**

**Case 49/64**

**S u m m a r y**

*Costs — Costs unreasonably caused to be incurred*  
*(Rules of Procedure, Article 69 (3))*

If an applicant has been misled and induced to make his application by reason of the ambiguous drafting of a measure by an institution then he has been unreasonably caused to incur his costs which must be borne by the administration.  
Cf. para. 4, summary in Case 14/63, Rec. 1963, p. 723; para. 4, summary in Cases 16/59, 17/59 and 18/50, Rec. 1960, p. 49.

In Case 49/64

**EMMANUEL STIPPERGER**, an official of the High Authority of the European Coal and Steel Community, represented by Ernest Arendt, Avocat-Avoué, with an address for service in Luxembourg at the Chambers of the above, 6 rue Willy-Goergen,

applicant,

v

**HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY**, represented by its Legal Adviser, Pierre Lamoureux, acting as Agent, with an address for service in Luxembourg at its offices, 2 place de Metz,

defendant,

Application for annulment of a decision by the President of the High Authority of 12 October 1964 and, so far as is necessary, of an implied decision of rejection by the President of the High Authority of a request made on 1 July 1964 under Article 90 of the Staff Regulations,

<sup>1</sup> — Language of the Case: French.

## THE COURT (First Chamber)

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

Advocate-General: K. Roemer

Registrar: A. Van Houtte

gives the following

## JUDGMENT

### Issues of fact and of law

#### I — Facts

Mr Emmanuel Stipberger entered the service of the High Authority as a translator and was established as an official in 1958. He was classified first in Grade A7, Step 3, then in career bracket L/A6-L/A5 in Grade L/A6, Step 1. In June 1962 a double promotion in step put him in Step 3 of the same grade.

After various fruitless representations, Mr Stipberger in accordance with Article 90 of the Staff Regulations of the ECSC on 10 July 1964 made a request to the President of the High Authority for classification in the career bracket L/A5-L/A4 which corresponds to the following duties: 'Expert translator, reviser able to translate particularly difficult texts'.

By a note of 12 October (No 17 934), more than two months after the applicant's request, the President of the High Authority informed the applicant as follows:

'I have been informed of your letters of 10 March and 8 and 10 July 1964 in which you complain of your administrative situation within the Language Service; they have had my careful attention. I am astonished at the emotional terms in which you feel you should

express yourself. In fact it appears clearly from the documents in my possession that, contrary to what you believe, your immediate superiors are satisfied with your abilities. They had on their own initiative proposed your promotion to Grade L/A5 long before you made your first request. In my opinion, therefore, your complaint rests, at least in part, upon a misunderstanding.

I would say to you further that on 22 July I gave a favourable reply to the promotion proposal concerning you; within the framework of the execution of recent decisions, your promotion will be effective as from 1 August 1964. A copy of the decision will reach you shortly.'

Mr Stipberger was actually promoted as from 1 August 1964 to Grade L/A5 in the career bracket L/A6-L/A5.

Having in the meanwhile unsuccessfully applied for the vacant post for reviser which had been advertised, Mr Stipberger did not consider himself satisfied by the promotion thus granted. He lodged an appeal, directed primarily against the note of the President, cited above, and secondarily against the implied decision of refusal of his request of 10 July.

This appeal was lodged at the Court

Registry on 10 November 1964, under number 49/64.

## II—Conclusions of the parties

The *applicant* first claims that the Court should:

1. Declare the present appeal admissible;
2. On the substance of the case, hold it to be justified:  
and consequently hold:  
that the applicant has the right to be classified in career bracket L/A5-L/A4 of the table of duties, as an expert translator carrying out particularly difficult translations:  
hold in consequence:  
that the promotion from which the applicant benefited with effect from 1 August 1964 should be in career bracket L/A5-L/A4 and not in career bracket L/A6-L/A5;  
consequently to hold:

### *Principally:*

That as from 1 August 1964 the applicant shall be put into the Grade A4 of career bracket L/A5-L/A4;

### *Alternatively:*

And in any event: in the Grade A5 of career bracket L/A5-L/A4, and not in Grade A5 of career bracket L/A6-L/A5;

3. Order the defendant to pay the costs of the proceedings'.

In his statement in reply he claimed that the Court should:

1. order that the documents numbered 110, 115 and 116 should be removed from the applicant's personal file.
2. Reject the conclusions of the defendant and find for the applicant on the basis of the conclusions in the originating application;

### *Alternatively:*

Place it on record that the applicant offers to prove by all legal means, and particularly by witnesses and expert evidence, the following facts:

- (a) that he is an 'expert translator' within the meaning of career bracket L/A5-L/A4;
  - (b) that he is given particularly difficult translations;
  - (c) that in respect of matters concerning which he is expert, the applicant is, in a general way, his own reviser;
- Order the defendant to make available the documents whose numbers are quoted in the body of the present reply, as well as those on lists 1 and 2.'

The *defendant* contends that the Court should:

- dismiss the appeal in its entirety as unfounded;
- order the applicant to pay the costs, the expenditure incurred by the High Authority remaining however its own responsibility in accordance with Article 70 of the Rules of Procedure.'

## III—Summary of the submissions and arguments of the parties

The table of definitions of duties defines career bracket L/A6-L/A5 as follows:

'Experienced translator who is specialized in certain specific fields or who can give evidence of extensive linguistic knowledge;'

The same table defines one of the two alternatives falling within career bracket L/A5-L/A4 as follows:

'Expert translator, reviser able to translate particularly difficult texts.'

The *applicant* considers that the duties which he carries out within the linguistic framework correspond not to career bracket L/A6-L/A5, but to career bracket L/A5-L/A4, in accordance with the definition of duties laid down by the appointing authority in accordance with Article 5 of the Regulations.

The applicant regards himself as an 'expert translator' because of the technicality and the difficulty of the translations that he is called upon to make, because of his previous scientific and technical training, because of his extensive linguistic knowledge (French, English, Dutch, Italian, Spanish and Russian), because of the fact that many of his translations remained unrevised by reason of their technical character, and because of the consultations which he frequently gives to colleagues or to other institutions (Parliament, Council of Ministers, Court of Justice).

For all these reasons, the applicant asks, by virtue of Articles 36 and 62 of the Regulations, for the classification of 'expert translator' in career bracket L/A5-L/A4, the promotion which was granted to him not having had this effect.

He asks for the application of the principles established in the judgment in Case 70/63 (*Collotti v Court of Justice*) to the fixing of his classification.

The *defendant* states that the person concerned has not the qualifications and capacity required for the employment sought and that he was ranked last among candidates who took part in a recent competition.

According to the defendant, an official of career bracket L/A5-L/A4 must fulfil at the same time the two functions of reviser and of expert translator. On this subject the syntax of the phrase which describes this function is significant.

On the one hand, it is incorrect that the applicant ever fulfilled the duties of a reviser. On the other hand the applicant's statement that he revised his own translations contradicts the argument which he puts forward elsewhere and is in itself contradictory. A translator who is both an expert and a

reviser cannot carry out the two tasks he is qualified to perform on the same translation. The fact that certain technical translations are not submitted to revision is intended to accelerate the running of a department which is indifferent to style in working documents. Lastly linguistic and technical knowledge do not necessarily make a translator into an 'expert translator'. The definition of the duties of a 'translator' is proof of this. The defendant states in the second place that in its detailed list of posts there is no post vacant corresponding to the post sought by the applicant.

Since the decision of refusal of the High Authority is legal, it cannot therefore be annulled.

The *applicant* states in his reply that the defendant mentions in its statement in defence assessments—unfavourable to him—of which he had no previous knowledge and that the said assessments appear in his personal file in defiance of the provisions of Article 26 of the Staff Regulations. He therefore asks for the withdrawal from his personal file of the relevant documents.

The *defendant* has replied on this point in its rejoinder:

'In any event, it is clear that the fact that the documents containing these assessments and appearing in the personal file of the applicant will be withdrawn from it cannot have any effect upon the substance of the case . . .'

In the oral proceedings it expressed its intention of removing the disputed documents from the file.

#### IV — Procedure

The procedure followed the normal course and does not call for any comment.

### Grounds of judgment

Mr Emmanuel Stipberger has made an application on the basis of Article 91 of the Staff Regulations against the High Authority of the European Coal

and Steel Community, concerning a decision of 12 October 1964 of the President of that institution classifying him in Grade L/A 5, not of career bracket L/A 5-L/A 4, but of career bracket L/A 6-L/A 5, and an implied decision of refusal arising from a failure to reply to an appeal through official channels made by the said applicant on 10 July 1964 on the basis of Article 90 of the Staff Regulations.

He asks the Court to recognize, with all necessary consequences, his right to be classified in career bracket L/A 5-L/A 4 of the table of definitions of duties, as an expert translator given particularly difficult translations. In his reply he has furthermore requested an order for the removal of three documents from his personal file.

The request concerning the classification of the applicant

The admissibility of the appeal is not the subject of any dispute.

The applicant claims the right to be classified in career bracket L/A 5- L/A 4 of the table of definitions of duties in the Language Service and asserts that the work given to him comes within the duties corresponding to that career bracket.

The High Authority is opposed to this classification because career bracket L/A 5-L/A 4 is that of reviser, a duty which is not carried out by the Applicant.

It follows from the 'definition of duties and powers attaching to the basic posts provided for in Annex I of the Staff Regulations' that, under the heading 'Posts in the Language Service', career bracket L/A 5-L/A 4 covers the basic post described as that of 'Reviser' corresponding to the duties described as: 'Expert translator, reviser able to translate particularly difficult texts'.

The wording in question does not alone make it possible to determine whether career bracket L/A 5-L/A 4 is open only to those who have the qualities both of an expert translator and of a reviser or is meant to devote the simple alternative between the two duties of expert translator or reviser. In laying down the necessity for the person concerned to possess capabilities sufficient for him to be given particularly difficult translations, the provision in question appears to have made this a pre-requisite for both expert translators and revisers in the disputed career bracket. However the ambiguity of

the comma separating the two names and the significant absence of the word 'and' which the author of the Annex could have inserted between them, constitute no reason for failing to recognize the general sense of the whole of the table, which distinguishes the basic post of reviser (L/A 5-L/A 4) from that of translator and interpreter (L/A 6-L/A 5). The basic post of reviser itself corresponds to three categories of duties to which the concept of 'reviser' is central, one concerning the 'Reviser of translations' (called 'Reviser') the next the disputed duty called 'Reviser-Translator', and the last finally concerning the principal interpreter with qualifications and responsibility 'similar to those of a reviser-translator'.

Thus in spite of the equivocal nature of the disputed definition there appears to follow from the table as a whole a plan for reserving career bracket L/A 5-L/A 4 to officials or servants carrying out the duties of reviser, that is to say, whose activity is at least in part concerned with translations already carried out.

It has not been seriously claimed by the applicant that he carried out such duties. His statement that he revised his own translations is not sufficient, by reason of the mere fact that these were sometimes not revised by anybody, to cause him to be regarded as a reviser.

No matter how specialized the applicant's abilities may be, and his value and abilities are in no way disputed, it is of no interest in the present case to inquire whether he can be given particularly difficult translations and thus be regarded as an 'expert translator' since he cannot claim to have the duties of a reviser.

The application is thus unfounded.

The request concerning the disputed documents appearing in the applicant's personal file

The applicant has asked the Court to order that the documents numbered 110, 115 and 116 should be removed from his personal file. The conclusions on this point were included only in the reply because of the new fact, which appeared during the course of proceedings and consists of the discovery of the said documents. The defendant has expressed in the course of the proceedings its intention to remove these documents. A formal note will be made of this.

**C o s t s**

Under Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs. However under Article 70 of the Rules of Procedure, the administration shall bear its own costs. It is proper to take into account the fact that the applicant was misled and was induced to make his application by reason of the ambiguous drafting of the definition of duties which he believed to be applicable to his case. It appears equitable to apply to him the second subparagraph of Article 69 (3) of the Rules of Procedure and to make the High Authority pay the applicant's costs.

On those grounds,

Upon reading the pleadings;  
Upon hearing the report of the Judge-Rapporteur;  
Upon hearing the parties;  
Upon hearing the opinion of the Advocate-General;  
Having regard to the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community;  
Having regard to the Staff Regulations of the European Coal and Steel Community and its implementing provisions;  
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Article 69;

**THE COURT (First Chamber)**

hereby:

1. **Dismisses Application No 49/64 as unfounded;**
2. **Takes note that the defendant is to remove from the applicant's personal file documents numbered 110, 115 and 116 which have appeared therein;**
3. **Orders the defendant to pay the costs of the proceedings.**

Lecourt

Delvaux

Trabucchi

Delivered in open court in Luxembourg on 8 July 1965.

A. Van Houtte

Registrar

R. Lecourt

President of the First Chamber