

JUDGMENT OF THE COURT (FIRST CHAMBER)

16 JUNE 1971<sup>1</sup>

**Maurice Prelle**  
**v Commission of the European Communities**

**Case 77/70**

**S u m m a r y**

1. *Procedure — Closure of the oral procedure — Request to the Court by one party for a measure of inquiry — Conditions for admissibility*  
*(Rules of Procedure, Article 59 (2))*

2. *Officials — Upgrading of post — Carrying out the duties of a superior career bracket — No grounds for reclassification*

1. The application for a measure of enquiry made by one party after the closure of the oral procedure may only be granted if it relates to facts which are capable of having a decisive influence and which the party concerned was not able to put forward before the closure of the oral procedure.

2. The carrying out by an official of tasks which also belong to a post in

a career bracket higher than his own may be one factor to be taken into account for the purposes of his promotion but is not in itself enough to justify the reclassification of his post.

This is particularly so in departments where the duties assigned to servants in different grades are of a comparable nature and are for this reason interchangeable.

**In Case 77/70**

**MAURICE PRELLE**, an official of the Commission of the European Communities, residing at 18, Square Ambiorix, Brussels, assisted by Ernest Arendt, Advocate of the Cour supérieure de Justice of the Grand Duchy of Luxembourg at the Chambers of the said Ernest Arendt, 34/B rue Phillippe-II,

applicant,

v

**COMMISSION OF THE EUROPEAN COMMUNITIES**, represented by its Legal Adviser, Peter Gilsdorf, acting as Agent, with an address for service in Luxembourg at the offices of Émile Reuter, Legal Adviser to the Commission, 4 boulevard Royal,

defendant,

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

Application for the annulment of the decision of the Commission rejecting the application made by the applicant on 16 July 1970, and of a request for either the classification of the applicant in Grade A 3, as from 25 April 1970, or monetary compensation,

## THE COURT (First Chamber)

composed of: A. M. Donner, President of Chamber, R. Monaco (Rapporteur) and J. Mertens de Wilmars, Judges,

Advocate-General: K. Roemer

Registrar: A. Van Houtte

gives the following

## JUDGMENT

### Issues of fact and of law

#### I — Facts and procedure

The facts and procedure may be summarized as follows:

On 26 January 1970, Maurice Prelle brought an action for the annulment of a decision of the Commission refusing to grant him, as from 24 July 1969, the differential allowance provided for by Article 7 (2) of the Staff Regulations. He believed that as from 24 April 1969, in addition to his own duties, he had undertaken those of a colleague in Grade A 3, who had obtained leave on personal grounds.

The action was dismissed by the judgment of the Court in Case 5/70 of 16 December 1970.

In the meantime, on 16 July 1970 the applicant lodged a complaint whereby, after stating that the factual situation giving rise to the action had carried on beyond the period of one year set out in Article 7 (2) of the Staff Regulations,

he requested the Commission to draw the consequences in accordance with the Staff Regulations and, more particularly, to classify him in Grade A 3 with effect from 24 April 1970.

The Commission replied by a letter of 29 September 1970 rejecting his request.

On 19 November Mr Prelle lodged the application which is the subject of the present case. After hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court (First Chamber) decided to open the oral procedure without any preparatory inquiry.

The parties presented oral argument at the hearing on 28 April 1971.

The Advocate-General delivered his opinion at the hearing on 12 May 1971. By a document dated 28 May 1971, the applicant made a request for the hearing of witnesses in accordance with Article 60 of the Rules of Procedure.

## II—Conclusions of the parties

The *applicant* claims that the Court should:

'Annul the decision of the Commission rejecting the abovementioned application made by the applicant on 16 July 1970;

Rule that there are grounds for compensation for the damage, both non-material and material, suffered by the applicant because of the existence and continuance of an administrative situation which does not comply with the Staff Regulations. In compensation for this damage, declare and adjudge:

— either the applicant shall be classified in Grade A 3 as from 25 April 1970;

— or that the applicant shall be granted such monetary compensation as the Court shall deem appropriate; order the Commission, should this be necessary, to pay the said compensation; and

Order the Commission to pay the entire costs.'

The *defendant* submits that the Court should: ●

'1. Dismiss the application both as to the principal and secondary claims as unfounded;

2. Order the applicant to pay the costs.'

## III—Submissions and arguments of the parties

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

The *applicant* states that the main object of the application is essentially to obtain compensation for the non-material and material damage suffered by him in his career by having to carry out, while in Grade A 4, the duties of a post in career bracket A 3 for longer than the period of one year set out in Article 7 (2) of the Staff Regulations. The irregularity of his position was the easily foreseeable con-

sequence of two decisions of the Commission: the decision promoting Mr Marchini-Camia to Grade A 3 in July 1968 and the decision to grant to this official at his request leave on personal grounds (as from 25 April 1969) which implied in the short term the applicant's deputizing for him in the long term a temporary posting or a decision to fill the post.

The applicant observes, with regard to the nature of the duties in question, that whereas in its letter of 29 September 1970 the Commission stated that 'the duties carried out are not linked to a post in a higher career bracket', nevertheless in its statement of defence in Case 5/70 it had recognized that 'in practice the applicant had to take over the duties' of his colleague in Grade A3.

The *defendant* sees no contradiction between these two statements. The fact that in practice the applicant undertakes the tasks which were previously carried out by a colleague classed in Grade A 3 does not allow of any conclusion as to the level of these duties. In view of the structure of the legal department, it is not in fact impossible that duties of the same level may be carried out by officials of different career brackets. Certainly the correspondence between the level of duties and the post—to which the grade should correspond—is a basic rule, but there are natural limits to the application of this rule where a certain type of work corresponds to the description of duties belonging to posts of different levels. This is precisely the case in the legal department, whose structure cannot be adapted to the principle of a complete and absolutely rigid hierarchy. Such a structure very often results in the superimposing of career brackets, but it was chosen to achieve proper objects (the functioning of a department with very divergent duties, the need to have lawyers of general experience). In addition it does not prejudice the rights accruing to officials under the Staff Regulations, either in making provision

for vacant posts or with regard to promotion or careers. Rather it encourages the harmonious continuation of a career since officials may, without a change of post, which is always complicated, work in different areas of the law and thus better prepare themselves to assume increased responsibilities.

The defendant further observes, in the alternative, that even if the applicant did, as from 24 April 1970, undertake duties undeniably belonging to the level of Grade A 3, it does not automatically follow that he has a right to be classified in this grade. Since the granting of an allowance for a temporary posting is subject to an express decision of the appointing authority, the final grading should *a fortiori* be a matter for this authority.

The defendant contends that since the applicant was not given duties which were above his grade and his post, the Commission has committed no wrongful act and therefore cannot be ordered to pay him monetary compensation. The applicant has no right to such compensation, even if the contrary were true, because it is impossible to see what real damage he suffers merely because he is carrying out duties belonging to a higher level than that of his grade.

After giving details of certain facts concerning in particular the organization (after the merger of the executives) of the department to which he belonged, the applicant mainly criticizes the defendant's conception of grades, career brackets and posts within this department.

First, the applicant states that he does not contest the principle of the force of *res judicata* attaching to the judgment of the Court in Case 5/70 since this judgment was delivered with regard to *temporary* measures whereas the present application relates to a problem of *final* grading.

Citing in particular Articles 7 (1) and 5 (1) of the Staff Regulations, the applicant observes that the system established by these provisions rests in the main

on a principle whereby each post, an individual concept relating to each official, is, for the purposes of its definition, characterized by the nature of the duties attaching to it and, with regard to its place in the scale of posts, by the level of these duties. It follows that two posts of the same level cannot be graded in different career brackets, one in A 3 and the other in A 5/A 4. It is precisely with this principle, which forms the legal framework within which the institutions are free to organise their departments, that the system advocated by the Commission conflicts; according to that system two posts, recognised to be of the same level, are graded in two different career brackets. In addition this system has the result of dividing officials into two groups, those who benefit from the guarantees of the Staff Regulations linked to the scale of posts and to the definition of posts and those who are excluded therefrom because of the organization of the department to which they belong. For this reason it is contrary not only to Articles 5 (1), 7 (1), 4 and 29 of the Staff Regulations but also to the principle which is set out in Article 5 (3) of the equality of career conditions.

In other words, the Commission's conception of the posts in the legal department is merely of a system where the appointing authority distributes grades without needing to take into account the duties or their level. If this were accepted by the case-law, this conception would open the way to arbitrariness without there being any judicial interpretation available to remedy the absence of counterbalances which the legislature would necessarily have provided, had it been led to choose such a system.

The attempt by the defendant to show that the 'particular' system applicable to lawyers nevertheless did have counterbalances, is far from being convincing and merely underlines the futility of such advantages.

The applicant asserts that the failure up to now to apply the second subparagraph

of Article 5 (4) of the Staff Regulations, providing for the definition of the duties, is a failure to act of which the administration cannot take advantage in this case. He goes on to reply to a number of arguments of fact and of law put forward by the defendant. With particular regard to his request for reclassification he replies that in any case it cannot be denied that if a situation contrary to the Staff Regulations is created adequate compensation in one form or another must be made for this. The fact that a subjective right to be reclassified cannot be invoked by the applicant in the absence of a decision by the appointing authority appointing him to the higher post or giving him, on a permanent basis, the duties which he claims, is not an argument but merely begs the question. In fact it was the Commission which automatically set off the situation at issue by the effect of the rules for deputizing which it set up itself, and which determined the classification of the post in question in Grade A 3. The principles of good faith provide that it should not try to escape from the consequence of its own decisions. The *defendant* replies by stating its position on a number of particular remarks relating to points of

fact and law. In particular it denies that the promotion of the colleague of the applicant to Grade A 3 was linked to an upgrading of his (former) post and thus of the duties attaching to it. In fact the official concerned had been promoted in another post and after his promotion had continued to exercise at least on a provisional basis the same duties as before. His former post (A 5/ A 4) had thereafter been declared vacant and had been occupied by another official. Moreover the Commission states that it never maintained that the post of the applicant and that of his colleague were of the same nature. On the contrary it had emphasized that the A 3 and A 4 posts of the legal department were distinguished by the degree of responsibility which the officials had to assume, but that this did not exclude that for a certain time they might exercise identical duties. Neither did it state that posts in the legal department which were graded differently did not show marked differences with regard to the level of the duties. In spite of the overlapping of career brackets, there was a continuous grading of the level of functions according to the step in the hierarchy of posts within this department.

### Grounds of judgment

- <sup>1</sup> This application is directed against a decision of the Commission rejecting the complaint made by the applicant on 16 July 1970.
- <sup>2</sup> In his application, the applicant has maintained that as he occupied a post in a higher career bracket of his category after the expiry of the period set out in Article 7 (2) of the Staff Regulations, he has a right to compensation for the non-material and material damage caused to him by the continuance of such an administrative situation, which fails to comply with the regulations.
- <sup>3</sup> In its judgment of 16 December 1970, given in respect of the same parties, the Court ruled that the applicant had no right to the differential allowance set out in Article 7 (2) of the Staff Regulations since the duties undertaken by the applicant did not necessarily imply greater responsibility than was normally his.

- 4 In his reply, the applicant gave details of his position stating that since it appeared from the abovementioned judgment that his duties were similar to those carried out by an official of Grade A 3, it followed that his post should be reclassified in the same grade and in the same career bracket.
- 5 Therefore he argues that he should be classified in Grade A 3 with effect from 25 April 1970 or in the alternative that the Commission should be ordered to pay him appropriate monetary compensation.

#### Admissibility of the request of 28 May 1971

- 6 By a document dated 28 May 1971, the applicant asked the Court to order, in accordance with Article 60 of the Rules of Procedure, the hearing of witnesses in order to determine the level of the duties which he had undertaken in the post in question.
- 7 Since this request was presented at a time when, in accordance with Article 59 (2) of the Rules of Procedure, the oral procedure had been closed, it may only be admitted if it relates to facts which are capable of having a decisive influence and which the party concerned was not able to put forward before the closure of the oral procedure.
- 8 Since this was not so in this case, the request is inadmissible.

#### The substance of the case

- 9 The applicant, who is classified in Grade A 4 of the legal department of the Commission, undertook at least a substantial part of the duties of a colleague in Grade A 3 who was on leave on personal grounds from 25 April 1969 and who was re-integrated into the legal department on 1 January 1971.
- 10 The abovementioned judgment declared with the force of *res judicata* that, regard being had to the organization of the legal department of the Commission, there was no marked difference between the duties attaching to the post occupied by the applicant and those attaching to the post which he occupied temporarily.
- 11 Nevertheless, the fact that an official carries out tasks which also belong to a post in a higher career bracket, although it may be a factor to be taken into account in respect of his possible promotion, cannot of itself suffice to justify a reclassification of his post.

- <sup>12</sup> This is particularly so in departments such as the one to which the applicant belongs, where the duties assigned to servants in different grades are of a comparable nature and are for this reason interchangeable.
- <sup>13</sup> Therefore the assignment of the duties in question to the post occupied by the applicant cannot have the effect of upgrading the post and making it necessary to classify it in a higher grade.
- <sup>14</sup> For these reasons the principal conclusions in the application must be rejected.
- <sup>15</sup> With regard to the secondary conclusions, for the payment of damages, it follows from the foregoing considerations that the fact that the applicant had to assume the duties referred to cannot have caused him material or non-material damage for which compensation would be due to him.
- <sup>16</sup> Therefore the secondary conclusions must also be rejected.

### Costs

- <sup>17</sup> The applicant has failed in his submissions.
- <sup>18</sup> Article 69 (2) of the Rules of Procedure provides that the unsuccessful party shall be ordered to pay the costs.
- <sup>19</sup> Nevertheless Article 70 of those rules provides that the costs incurred by institutions in actions by servants of the Communities shall be borne by the institutions themselves.

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 treaties establishing the European Communities;  
Having regard to the Protocol on the Statute of the Court of Justice;  
Having regard to the Staff Regulations of Officials of the European Communities, especially Article 5;  
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT (First Chamber)

hereby :

1. Dismisses the application;
2. Orders the parties to bear their own costs.

Donner

Monaco

Mertens de Wilmars

Delivered in open court in Luxembourg on 16 June 1971.

A. Van Houtte

Registrar

A. M. Donner

President of the First Chamber

OPINION OF MR ADVOCATE-GENERAL ROEMER  
DELIVERED ON 12 MAY 1971<sup>1</sup>

*Mr President,  
Members of the Court,*

As you know, the applicant in the action on which I am today giving my opinion originally worked for the Euratom Commission. From 1 February 1964 he was posted to the joint Legal Department of the executives of the Communities in the 'Euratom' section in Grade A 5. With effect from 1 January 1965 he was promoted to Principle Administrator in Grade A 4. After the formation of a single Commission in 1967 the Legal Department was restructured. However the applicant remained in the 'Euratom and Research' Group which, at that time consisted of one A 2 official (the head of the group) one A 3 official and two A 4 officials and which was responsible for questions of the application of the Euratom Treaty, of technological development and of research in the sphere of the European Coal and Steel Treaty. Together with another colleague in Grade A 4 the applicant was particularly concerned

with the question of nuclear research, with the circulation of the knowledge acquired and with matters concerning patents and research agreements within the scope of the European Coal and Steel Treaty. In addition he had responsibility for problems of civil liability in the sphere of nuclear matters. By a decision of 24 July 1968 the colleague of the applicant was promoted to Grade A 3 with effect from 1 July 1968 without there being any immediate alteration in the matters for which he was responsible. In the course of 1969, to be exact from 25 April 1969, this official received leave on personal grounds by a decision of the appointing authority which was originally meant to finish on 24 May 1970 but which however later was regularly extended and, in all, lasted until December 1970. During this time the composition of the 'Euratom and Research' group in the Legal Department of the Commission did not alter (only with effect from 15 January 1971 was another A 6 official posted to it). This meant that during the absence

<sup>1</sup> — Translated from the German.