

JUDGMENT OF THE COURT

5 October 2000 *

In Joined Cases C-432/98 P and C-433/98 P,

Council of the European Union, represented by J.-P. Jacqué, Director in its Legal Service, and D. Canga Fano and T. Blanchet, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of A. Morbilli, General Counsel, Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

appellant,

supported by

Kingdom of Spain, represented by N. Díaz Abad, Abogado del Estado, acting as Agent, with an address for service in Luxembourg at the Spanish Embassy, 4–6 Boulevard Emmanuel Servais,

intervener on appeal,

APPEALS against the judgments of the Court of First Instance of the European Communities (Fifth Chamber) of 30 September 1998 in Case T-154/96 *Chvatal and Others v Court of Justice* [1998] ECR-SC I-A-527 and II-1579 and Case T-13/97 *Losch v Court of Justice* [1998] ECR-SC I-A-543 and II-1633, seeking to have those judgments set aside,

* Language of the case: French.

the other parties to the proceedings being:

Christiane Chvatal and Others, officials of the Court of Justice of the European Communities, represented by J.-N. Louis and T. Demaseure, of the Brussels Bar, with an address for service in Luxembourg at Société de Gestion Fiduciaire, Boîte Postale 585,

Antoinette Losch, official of the Court of Justice of the European Communities, represented by J.-N. Louis and T. Demaseure, of the Brussels Bar, with an address for service in Luxembourg at Société de Gestion Fiduciaire, Boîte Postale 585,

applicants at first instance,

Court of Justice of the European Communities, L-2925 Luxembourg,

defendant at first instance,

and

Kingdom of the Netherlands, Bezuidenhoutseweg 67, The Hague,

intervener at first instance,

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, J.C. Moitinho de Almeida, D.A.O. Edward, L. Sevón and R. Schintgen (Presidents of Chambers), C. Gulmann, A. La Pergola, J.-P. Puissochet (Rapporteur), H. Ragnemalm, M. Wathelet and V. Skouris, Judges,

Advocate General: S. Alber,
Registrar: D. Louterman-Hubeau, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 11 April 2000,

after hearing the Opinion of the Advocate General at the sitting on 6 June 2000,

gives the following

Judgment

- 1 By two applications lodged at the Registry of the Court of Justice on 1 December 1998, the Council of the European Union brought appeals pursuant to Article 49 of the EC Statute of the Court of Justice and the corresponding provisions of the ECSC and Euratom Statutes against the judgments of the Court of First Instance of the European Communities of 30 September 1998 in Case T-154/96 *Chvatal and Others v Court of Justice* [1998] ECR-SC I-A-527 and II-1579 and Case T-13/97 *Losch v Court of Justice* [1998] ECR-SC I-A-543 and II-1633 ('the contested judgments'), in which the Court of First Instance annulled the decisions of the Court of Justice rejecting the requests of certain members of staff that it enter their names on the list of persons having expressed an interest in being the subject of a measure terminating their service as provided for by Council Regulation (EC, Euratom, ECSC) No 2688/95 of 17 November 1995

introducing special measures to terminate the service of officials of the European Communities as a result of the accession of Austria, Finland and Sweden (OJ 1995 L 280, p. 1).

The facts

- 2 On the occasion of the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, the Commission, having on 21 June 1995 obtained a favourable opinion from the Staff Regulations Committee, presented a proposal on 7 July 1995 for a regulation introducing special measures to terminate the service of officials of the European Communities ('the initial proposal'). That proposal, which fixed the number of officials who could be released by such measures at the Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors and the Economic and Social Committee, was submitted to the institutions concerned for their opinion and met with a favourable opinion from the Parliament, the Court of Justice and the Court of Auditors.
- 3 After the Commission had split the initial proposal, the Council adopted Regulation No 2688/95 on 17 November 1995 authorising the Parliament, until 30 June 2000, to adopt measures terminating the service of officials who had reached the age of 55, with the exception of those in Grades A 1 and A 2.
- 4 By letters sent between 6 February and 16 July 1996 to the Registrar of the Court of Justice in his capacity as appointing authority, Christiane Chvatal and Others and Antoinette Losch, officials of the Court of Justice, separately requested the inclusion of their names on the list of persons having expressed an interest in a measure terminating their service on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

- 5 By letters sent between 28 February and 22 July 1996 ('the contested letters'), the Registrar of the Court of Justice replied that he was unable to react favourably to their requests since, as the rules stood, institutions other than the Parliament were not permitted to adopt termination-of-service measures, but that the interest expressed by them would certainly be taken into consideration should the Council come to accept the Commission's initial proposal in so far as it also covered officials of the other institutions.
- 6 Between 21 May and 24 September 1996 Christiane Chvatal and Others and Antoinette Losch separately lodged complaints against the decisions contained, according to them, in the contested letters. Those complaints were rejected by the Complaints Committee of the Court of Justice on the ground that they sought solely to call into question the validity of Regulation No 2688/95, in particular on the basis that it did not apply to officials of the Court of Justice, when it was not for the appointing authority of that institution to decide whether a Council regulation was valid.
- 7 Following those rejections, which were notified between 11 July and 23 October 1996, Christiane Chvatal and Others and Antoinette Losch, by two applications lodged at the Registry of the Court of First Instance on 8 October 1996 and 20 January 1997 respectively, brought actions for a declaration that Regulation No 2688/95 was unlawful and for the consequent annulment of the decisions of the appointing authority, contained in the contested letters, rejecting their requests.

The contested judgments

- 8 First, the Court of First Instance rejected the pleas that the applications were inadmissible, put forward by the Court of Justice, which was the defendant at first instance, and by the Council and the Kingdom of the Netherlands, which intervened at first instance in support of the order sought by the Court of Justice.

- 9 It held that the exercise by an official of the right to request the appointing authority to take a decision relating to him, pursuant to Article 90(1) of the Staff Regulations of Officials of the European Communities ('the Staff Regulations'), was unconditional and that the decisions adopted by the appointing authority, by definitively refusing to take the requests submitted into consideration, directly and immediately affected the legal situation of Christiane Chvatal and Others and Antoinette Losch and therefore prejudiced them.
- 10 The Court of First Instance then held that the objection contesting the legality of Regulation No 2688/95 was also admissible.
- 11 After finding that Regulation No 2688/95 constituted the direct legal basis for the decisions of the appointing authority inasmuch as officials of institutions other than the Parliament were, by necessary implication, not covered by it, the Court of First Instance held that the objection of illegality raised against that regulation was not premature — since no measure concerning 'release' had been adopted, following Regulation No 2688/95, for the other institutions and the Commission's initial proposal had partly lapsed — and did not constitute an abuse, notwithstanding that the appointing authority had no choice but to reject the requests submitted to it.
- 12 Finally, as to the substance, the Court of First Instance considered the objection raised before it contesting the legality of Regulation No 2688/95 and held the regulation unlawful for two reasons.
- 13 First, carrying out a review limited to manifest error and misuse of powers, it found that, in so far as Regulation No 2688/95 restricted the right to have recourse to measures for the release of staff to the Parliament alone, it imposed a distinction between entirely similar situations which was arbitrary, or manifestly inappropriate in relation to the objective pursued, and was as such contrary to the

principle of equal treatment, a fundamental principle of Community law. The situation of the Court of Justice was no different from that of the Parliament as regards the need to adjust the composition of the officials in their service on the accession of new Member States.

14 Second, the Court of First Instance held that Regulation No 2688/95 was vitiated by an infringement of an essential procedural requirement because the Parliament and the Staff Regulations Committee were not reconsulted when the Commission amended its initial proposal.

15 The amendment made went to the essence of the initial proposal since it reduced its scope considerably, and should therefore have been submitted to the Parliament, under Article 24 of the Treaty establishing a Single Council and a Single Commission of the European Communities, and to the Staff Regulations Committee, under the second sentence of the second paragraph of Article 10 of the Staff Regulations. However, that was not done.

16 On those grounds, the Court of First Instance annulled the decisions of the Court of Justice addressed to Christiane Chvatal and Others and Antoinette Losch refusing to enter their names on the list of persons having expressed an interest in a measure terminating their service as provided for by Regulation No 2688/95.

The appeals

17 The Council claims that the Court should set aside the contested judgments. In support of its appeals, it puts forward six pleas in law, of which three relate to the admissibility of either the actions brought before the Court of First Instance or the objection of illegality raised by them and three concern the legality of Regulation No 2688/95.

- 18 Christiane Chvatal and Others and Antoinette Losch request the Court to declare the appeals inadmissible, in the alternative to declare them unfounded, and to order the Council to pay the costs.
- 19 By orders of the President of the Court of 19 April 1999, the Kingdom of Spain was granted leave to intervene in Cases C-432/98 P and C-433/98 P in support of the form of order sought by the Council. It requests the Court to set aside the contested judgments.
- 20 By order of the President of the Court of 17 March 2000, Cases C-432/98 P and C-433/98 P were joined for the purposes of the oral procedure and judgment.

Admissibility of the appeals

- 21 Christiane Chvatal and Others and Antoinette Losch request the Court to declare the appeals inadmissible. They argue that the contested judgments are analogous in their grounds and operative parts to the judgment of the Court of First Instance in Case T-164/97 *Busacca and Others v Court of Auditors* [1998] ECR-SC I-A-565 and II-1699. Since the Council did not intervene in Case T-164/97, the appeal which it has brought against that judgment is manifestly inadmissible. As none of the parties in Case T-164/97 has brought an appeal, the judgment of the Court of First Instance in *Busacca* has become definitive. To declare the Council entitled to appeal against the contested judgments would therefore be tantamount to allowing it to call into question the binding authority of the judgment in *Busacca*, when it deliberately did not intervene in that case and now has the task of taking the necessary measures to comply with the judgment.
- 22 It need only be observed that the conditions governing the admissibility of appeals laid down by Article 49 of the EC Statute of the Court of Justice and the

corresponding provisions of the ECSC and Euratom Statutes are assessed in relation to the case at issue and that alone. The fact that the grounds of a decision of the Court of First Instance which is stated to have become definitive uphold an objection of illegality raised against a legislative measure does not prevent an appellant who has entered an admissible appeal from contesting the illegality of the same regulation in other proceedings.

23 It is also clear from the second paragraph of Article 49 of the EC Statute of the Court of Justice and the corresponding provisions of the ECSC and Euratom Statutes that, if an institution which intervened at first instance was unsuccessful, in whole or in part, in its submissions, that is sufficient for it to be entitled to bring an appeal before the Court of Justice.

24 Since that was true of the Council in the cases which gave rise to the contested judgments, that institution is entitled to appeal against those judgments, an entitlement which cannot be affected by the state of the proceedings in other cases, even if those cases raise similar questions of law.

Merits of the appeals

The objection that Regulation No 2688/95 is unlawful

25 The Council argues that the Court of First Instance misapplied Article 184 of the EC Treaty (now Article 241 EC) in declaring that the objection of illegality directed against Regulation No 2688/95 was admissible.

- 26 It is not in dispute that the only ground upon which the Court of First Instance annulled the decisions at issue is the illegality of the legislative measure which forms the legal basis for those decisions. It follows that if the Court of First Instance was wrong in holding that the indirect challenge to the legality of Regulation No 2688/95 made before it was admissible, such an error of law must necessarily result in the setting aside of the contested judgments.
- 27 According to the contested judgments, Christiane Chvatal and Others and Antoinette Losch requested the appointing authority to include their names on the list of persons having expressed an interest in a measure terminating their service. By the contested letters, which were referred to the Court of First Instance, the appointing authority replied to those officials that, as matters then stood, it was unable to react favourably to their requests, since Regulation No 2688/95 was applicable solely to officials of the Parliament and the rules therefore did not permit the other institutions to adopt measures for the termination of service of their staff.
- 28 It is to be noted first of all that termination-of-service measures, such as those which were permitted by Regulation No 2688/95, do not have their legal origin in the Staff Regulations and therefore do not constitute a standard event in the careers of the persons concerned. Such measures to release staff must, on the contrary, be regarded as a practice to which the Community has resorted in specific cases in the interest of the proper functioning of its institutions.
- 29 It follows, first, that a request to be entered on a list of persons having expressed their interest in such a measure presupposes the existence of a specific and lawful legislative provision which supplies a legal basis for it and, second, that even if there is such a provision, the institution concerned is not obliged either to grant the requests submitted to it or to make even partial use of the power conferred on it to decide to terminate the service of some of its officials.

30 In the present case, the sole legal basis that could be put forward by officials when seeking measures terminating their service was Regulation No 2688/95, which authorised only the Parliament to adopt such measures.

31 Therefore, even if that regulation were unlawful for whatever reason and thus inapplicable, that circumstance could not have had the effect of providing a legal basis for the requests of officials attached to institutions which were excluded from its field of application.

32 The legality of the appointing authority's replies to Christiane Chvatal and Others and Antoinette Losch thus cannot be affected by any defects in a regulation not applying to the Court of Justice.

33 It follows that the officials in question were not entitled to mount an indirect challenge to the legality of a regulation in respect of which the contested decisions do not constitute implementing measures. The Court of First Instance therefore wrongly agreed, in the contested judgments, to rule on the objection of illegality raised by the applicants against Regulation No 2688/95.

34 Accordingly, the plea alleging that Article 184 of the Treaty was misapplied is well founded and the contested judgments must be set aside on that basis without its being necessary to consider the other pleas raised by the Council.

The plea concerning the failure to reconsult the Staff Regulations Committee

- 35 The Council nevertheless requests the Court, should it not rule on the legality of Regulation No 2688/95, to consider the plea, which was one of the pleas as to the substance upheld by the Court of First Instance, relating to the infringement of an essential procedural requirement through failure to reconsult the Staff Regulations Committee after the Commission's initial proposal had been split.
- 36 However, since the request of Christiane Chvatal and Others and Antoinette Losch that the Court of First Instance rule on an objection as to the legality of Regulation No 2688/95 was not admissible, there is no need for the Court of Justice, having found it inadmissible, to rule on the validity of the reasoning of the Court of First Instance as to the substance.

The actions brought before the Court of First Instance

- 37 Under Article 54 of the EC Statute of the Court of Justice and the corresponding provisions of the ECSC and Euratom Statutes, where the appeal is well founded the Court of Justice is to set aside the decision of the Court of First Instance. It may then itself give final judgment in the matter, where the state of the proceedings so permits. That is the case here.
- 38 It follows from paragraphs 26 to 34 of this judgment that the actions brought before the Court of First Instance by Christiane Chvatal and Others and by Antoinette Losch respectively must be dismissed.

Costs

39 Under the first paragraph of Article 122 of the Rules of Procedure of the Court of Justice, where the appeal is well founded and the Court of Justice itself gives final judgment in the case, it is to make a decision as to costs.

Costs incurred at first instance

40 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Under Article 87(4), Member States and institutions which have intervened in the proceedings are to bear their own costs. Article 88 provides that in proceedings between the Communities and their servants the institutions are in principle to bear their own costs.

41 Since Christiane Chvatal and Others and Antoinette Losch have been unsuccessful, each party, including each intervener, is to bear its own costs.

Costs incurred on appeal

42 Under Article 69(2) of the Rules of Procedure of the Court of Justice, which applies to the appeal procedure by virtue of Article 118, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Under Article 69(4), which also applies to the appeal

procedure, Member States and institutions which intervene in the proceedings are to bear their own costs. Article 70, which applies to appeals brought by the institutions by virtue of Articles 118 and 122, provides that, without prejudice to other provisions, in proceedings between the Communities and their servants the institutions are to bear their own costs.

- 43 Since *Christiane Chvatal and Others* and *Antoinette Losch* have been unsuccessful, each party, including the Kingdom of Spain which intervened in the appeal, is to bear its own costs.

On those grounds,

THE COURT

hereby:

1. Sets aside the judgments of the Court of First Instance of the European Communities of 30 September 1998 in Case T-154/96 *Chvatal and Others v Court of Justice* and Case T-13/97 *Losch v Court of Justice*;
2. Dismisses the actions brought before the Court of First Instance in Cases T-154/96 and T-13/97;

3. Orders Christiane Chvatal and Others and Antoinette Losch, the Court of Justice of the European Communities, the Council of the European Union, the Kingdom of Spain and the Kingdom of the Netherlands to bear their own costs, incurred both at first instance and on appeal.

Rodríguez Iglesias	Moitinho de Almeida	Edward
Sevón	Schintgen	Gulmann
La Pergola	Puissochet	Ragnemalm
Wathelet		Skouris

Delivered in open court in Luxembourg on 5 October 2000.

R. Grass

G.C. Rodríguez Iglesias

Registrar

President