

JUDGMENT OF THE COURT (FIRST CHAMBER)
OF 8 OCTOBER 1974¹

Union Syndicale — Amalgamated European Public Service Union —
Brussels, Denise Massa and Roswitha Kortner
v Council of the European Communities

Case 175/73

Summary

Officials — Staff associations — Capacity and entitlement to institute proceedings — Limits

(EEC Treaty, Article 173 and 179; Statute of the Court, Article 37; Staff Regulations, Article 24a, 90 and 91)

The freedom of trade union activity recognized under Article 24a of the Staff Regulations means not only that officials and servants have the right without hindrance to form associations of their own choosing, but also that these associations are free to do anything lawful, especially by using the right of action, to protect the interests of their members as employees.

Thus a staff association which fulfils the required conditions is entitled, by virtue

of the second paragraph of Article 173 of the EEC Treaty, to institute proceedings for annulment against a decision addressed to it and, under the conditions set out in Article 37 of the Statute of the Court, to intervene in disputes submitted to the Court.

On the other hand a direct action by a staff association cannot be entertained under the procedure of complaint and appeal established by Articles 90 and 91 of the Staff Regulations.

In Case 175/73

UNION SYNDICALE — AMALGAMATED EUROPEAN PUBLIC SERVICE UNION —

BRUSSELS, MISS DENISE MASSA,

MRS ROSWITHA SCHOTS, NÉE KORTNER,

¹ — Language of the Case: French.

officials of the Council of the European Communities, represented and assisted by M. Grégoire, lawyer at the Brussels Cour d'Appel, rue Camille Lemonnier, 68, 1060 Brussels, with an address for service in Luxembourg at the Chambers of T. Biever, lawyer at the Court, 83, boulevard Grande-Duchesse Charlotte,

applicants,

v

COUNCIL OF THE EUROPEAN COMMUNITIES AT BRUSSELS, represented by G. Lesort, Legal Adviser to the Secretariat-General of the Council at Brussels, assisted by A. Sacchetti, with an address for service in Luxembourg at the office of P. Lamoureux, Legal Adviser to the Commission of the European Communities, 4, boulevard Royal,

defendant,

Application for the annulment of the Decisions of the Council of 22 December 1972, published on 3 January 1973, concerning the appointment of Roger Brisaer and Charles Goetz to administrative posts at Grade A 6 and of all other related decisions and of the implied decision rejecting the applicants' complaints,

THE COURT

composed of: R. Lecourt, President, A. M. Donner and M. Sørensen, Presidents of Chambers, R. Monaco, J. Mertens de Wilmars (Rapporteur), P. Pescatore, H. Kutscher, C. Ó Dálaigh and Lord Mackenzie Stuart, Judges

Advocate-General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The facts and the arguments developed by the parties in the course of the written procedure may be summarized as follows:

I — Facts and procedure

The Union Syndicale is a union of officials and agents of the European institutions and other European organizations located in Brussels, the Rules of which, adopted on 25 January 1973, came into force on that date.

The applicants Massa and Schots are officials of the Secretariat-General of the Council. Miss Massa, who took up employment on 1 May 1971, was appointed to Grade A 7 on 1 January 1972; Mrs Schots, who took up employment on 1 September 1958, was promoted to Grade B 3 on 1 August 1972.

On 8 August 1972, the defendant posted two notifications of vacancies, Nos 84/72 and 86/72, dated 7 August 1972, relating respectively to three and two administrative posts at Grade A 6, in career bracket A 7/A 6.

By Decisions of 22 December 1972, published on 3 January 1973, the defendant appointed to two of those posts, the one mentioned in the notice of vacancy No 86/72, the other in the notice of vacancy No 84/72, respectively Roger Brisaer and Charles Goetz, officials of Grade B 1, who were thereby promoted from Category B to Category A.

The complaints lodged by the applicants pursuant to Article 90 (2) of the Staff Regulations received no reply and the present application was made on

22 October 1973 and registered at the Court on 24 October 1973. The application is essentially based upon the infringement, by the acts in issue, of Articles 29 (1), 29 (2) and 45 (2) of the Staff Regulations of officials of the European Communities, in that the relevant appointments were made without any prior competition, although such a competition is alleged to be obligatory (infringement of Article 29 (1)) and although this rule may be waived only in exceptional cases and under conditions which did not obtain in this case, in particular because the recruitment was internal to the institution and concerned posts which do not require special qualifications (infringement of Article 29 (2)), and more especially because it involved the promotion of an official from Category B to Category A (infringement of Article 45 (2)). Further, there was an alleged infringement of Article 29 (2) in that provision could be invoked, if indeed it was admissible in the present case, only if the notification of vacancy or a subsequent act had given notice of that possibility and if the reasons for the adoption of a recruitment procedure without competition had been given.

By a statement of 27 November 1973, the Council raised a plea of inadmissibility and requested that, pursuant to Article 91 (4) of the Rules of Procedure, the Court of Justice should give a ruling to that effect without considering the merits of the application. The applicants claimed that the Court should reject the said plea.

By Order of 13 February 1974, the Court, First Chamber, decided to refer the case to a plenary session of the Court pursuant to Article 95 (2) of the Rules of Procedure.

The Court, in plenary session, decided to give a ruling on the plea of inadmissibility without considering the merits of the case.

After hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General the Court further decided not to order any preparatory inquiry.

II — Submissions of the parties with regard to the plea of inadmissibility

The Council submits that the Court should:

- declare the application inadmissible insofar as it has been brought by the Union Syndicale — Amalgamated European Public Service Union, and by the other applicants, to the extent that the latter intend to take part in the application in this case in their capacities as officers or members of the said Union Syndicale.

In reply to the preliminary objection of the Council the following claims are made to the Court:

1. *By the applicants Massa and Schots*
 - (a) that notice be taken by the Court that they have brought and are pursuing their applications on a personal basis and for the defence of their own interests,
 - (b) that the Court should find, as a consequence, that **no** plea of inadmissibility has been or can be raised against their applications.
2. *By the applicant Union Syndicale*
 - that the Court should reject the plea of inadmissibility.
3. *By all the applicants*
 - that the applications should be declared admissible,
 - that the Court should order the continuation of the procedure with regard to the merits.

III — Submissions and arguments of the parties in relation to the plea of inadmissibility

1. The Council notes, firstly, that Article 179 of the EEC Treaty gives the Court jurisdiction 'in any dispute between the Community and its servants' whereas Article 91 of the Staff Regulations lays down that it shall have jurisdiction in any dispute 'between the Communities and any person to whom these Staff Regulations apply regarding the legality of an act adversely affecting such person within the meaning of Article 90 (2)'. The Union Syndicale is neither a servant within the meaning of Article 179 nor a 'person to whom these Staff Regulations apply', since this last expression is merely a slightly wider interpretation of the concept of a servant, which is intended to cover persons who, although not yet servants, take part in the procedures laid down by the Staff Regulations to obtain that status.

2. Although Article 24 a of the Staff Regulations entitles officials to exercise the right of association, it does not permit unions to be considered as persons to whom the Staff Regulations apply. It affirms the right of officials to form unions, but not that of the unions to intervene on behalf of officials.

The unequivocal desire on the part of the Council, in its role as a legislative body, to refuse union organizations the right to appear before the Court in matters relating to the Staff Regulations is demonstrated by its refusal to adopt an amendment, proposed by the Assembly, to Article 24 a of the Staff Regulations, to the following effect: 'in disputes before the Court of Justice between the Community and any person to whom these Staff Regulations apply, the union or professional organization of which that person is a member may intervene in the dispute if such intervention is justified by the general interest of the staff'.

The Council further states that, according to Article 91 of the Staff Regulations, the act in issue must adversely affect the applicant, but that this is not the case here. The act must be one which directly affects the legal situation of the person concerned. An act which affects the interest, shared by all officials, in a general adherence to the rules contained in the Staff Regulations, cannot be regarded as an act having an adverse effect.

3. Although it is indeed true that, in certain Member States, professional organizations may be recognized as being qualified to represent the general interests of their members, such recognition is subject to conditions of a restrictive nature and is only conferred in a limited degree. Furthermore, the disparities between the legislations and case laws of the Member States preclude any finding as to a general legal principle, recognized in all the Member States, and which would thereby acquire the status of a Community rule which it would be incumbent upon the institutions, and in particular upon the Court, in its role as judicial body, to implement.

Moreover, even if the right of professional organizations to intervene before the courts to contest the legality of an administrative act was recognized uniformly in all the Member States, its applicability within the legal order of the Community would depend upon its being demonstrated that the Community legislature had not — as here — decided the question in the negative.

4. Finally, the Council claims that the representation of the interests of the staff is the exclusive responsibility, under Article 9 (3) of the Staff Regulations, of the Staff Committee, or, in certain cases, of representatives of the latter on the Joint Committee. The Order of the Court of 14 November 1963 (Case 15/63, *Lassalle v European Parliament*, Rec. 1964, p. 97) did not recognize the Staff Committee's right of intervention; the position must be the same, *a fortiori*,

with regard to unions. In that they represent only a section of the staff, unions cannot appear before the Court to contest an individual act, which cannot as such affect them adversely, and which they cannot raise in issue if it is such as to affect all the staff of the Communities.

5. The applicants, defendants in the matter of the plea of inadmissibility, reply to the above as follows.

6. They state, firstly, that the plea can apply only to the application made by the Union Syndicale, since Miss Massa and Mrs Schöts made their applications under their own names, on their own names, on their own behalf and in their own personal interest.

7. Considering next the right of action before the Court of Justice enjoyed by union organizations, and the interest in such action which they must display, the applicants remark, as to the first point, that this right derives from general legal principles, and thus can be restricted only by legislation which is unambiguous on this issue.

Legal personality necessarily involves the right to be a party to legal proceedings, and the Council does not contest the fact that the Union Syndicale has legal personality. Furthermore, union organizations possess the attributes of legal personality, as distinguished in the case law of the Court of Justice, namely: independence and responsibility for their own actions (Order of 14 November 1963, Case 15/63, *Lassalle v European Parliament*, Rec. 1964, p. 100). It is precisely these qualities which distinguish unions from committees, and the argument *a fortiori* drawn by the Council from the Order of 14 November 1963 cited above is therefore groundless.

8. The recognition of the ability of unions to be parties to legal proceedings, taken in conjunction with the facts that the Court of Justice is alone competent to hear cases between the staff and the institutions, and that the specific task of

the unions is to undertake the defence of the professional interests of the staff, lead to the conclusion that, in principle, union organizations have and indeed must have a right of action before the Court of Justice. This right of action, particularly in matters relating to the Staff Regulations, also derives from the laws of the Member States and therefore constitutes a general legal principle applicable within the legal order of the Community.

9. It is the combined effect of the foregoing considerations that, in the absence of legislation to the contrary, the right of action of union organizations before the Court must be admitted. Such legislation does not in fact exist.

Neither Article 179 of the Treaty nor Article 91 of the Staff Regulations could be interpreted as embodying such a prohibition. The expression 'servants' in Article 179 should not be understood as having a restrictive meaning, as appears from Article 91 of the Staff Regulations, where it is replaced by the expression 'any person to whom these Staff Regulations apply', for the precise purpose of including in the concept of 'servants' persons who are not servants in the strict sense of the word (Judgment of 31 March 1965, Case 23/64, *Vandevyvere v Parliament*, Rec. 1965, p. 206). It is therefore equally admissible to consider as 'any person to whom these Staff Regulations apply' unions recognized by the institutions, whose task is to defend, within the framework of the Staff Regulations, the professional interests of the staff. Moreover, when the unions act they do so in exercise of the right of action enjoyed by servants of the Community themselves.

10. The mention made at Article 24 a of the Staff Regulations of 'trade unions or staff associations' cannot, as the Council maintains, be devoid of all legal effect. It necessarily implies that the unions exist, that they are permissible under the Staff Regulations and that they can undertake their own specific

task. The Council's Decision of 21 March 1972, on the system of adjustments to remunerations, adopted pursuant to Article 65 of the Staff Regulations, gave unions *the right* to receive certain information, which also refutes the Council's statement 'that mention is made of the unions in the Staff Regulations not so that they may acquire rights or be made subject to obligations'.

Finally, it is to no avail that the Council pleads its refusal to consider the amendment to Article 24 a of the Staff Regulations, as proposed by the European Parliament, relating to the right of trade unions to intervene before the Court of Justice. The reason for this silence, as appears from an introductory note by the Council working party on Staff Regulations (Annex II to the applicants' Observations), was the wish not to adopt 'by means of an amendment to the Staff Regulations, provisions which belong within the Rules of Procedure before the Court of Justice'.

11. Regarding the interest which a trade union must justify, the applicants claim that, once the right to be a party to legal proceedings and the right of action of trade unions in matters relating to the Staff Regulations are admitted, a collective interest must be sufficient to qualify a trade union to bring an application for annulment of an administrative act. The question here is that of knowing whether and to what extent an organization can take action, on the ground of a collective interest, in respect of a detriment suffered by some of its members as individuals.

12. The collective interest could be threatened by individual acts if they threaten the objective pursued by the union in a way which the latter feels to be detrimental to the value which it is its objective to defend or promote. In this case the objective is to ensure that the exceptional nature of the procedure laid down at Article 29 (2) of the Staff Regulations is respected. The exceptional

nature of that provision is a fundamental principle, the disregard of which would have effects of a general nature, not merely individual repercussions. The union cannot remain inactive while a situation is created which, if approved by the Court, would throw into question, by its effect as a precedent, all the normal rules governing recruitment and promotion.

13. The collective interest could also be threatened by an individual act which is certain to have repercussions with regard to several non-identifiable persons forming part of the organization which is bringing the application for annulment, even where such repercussions will only be felt at some time in the future. With regard to this point the applicants refer to the case law of the Belgian Conseil d'État (Judgment of 12 July 1967, No 12521/67, *Verbond van het Vlaams Overheidspersoneel*, RACE 1967, p. 752), which corresponds moreover to the view taken by a substantial body of academic lawyers, especially in France. The promotions at issue in this case are likely to damage the material and moral interests of an indeterminate number of members of the Union Syndicale, as well as those of other officials who, at some future time, will be faced with the way in which, in the acts in issue here, Article 29 (2) of the Staff Regulations has been employed.

14. As a subsidiary point, the applicants observe that, even if the union were not permitted to bring the application itself, it would nevertheless be able to undertake a joint application with those of its members who had been adversely affected by the acts in issue.

Finally, the applicants do not believe that, in order to decide the admissibility of the application, it is necessary to examine the degree of representation displayed by the Union Syndicale. The latter could not be required to establish, *in concreto*, that certain of its members were in fact adversely affected by the individual acts. At all events, the applicants, Miss Massa and Mrs Schots, are members of the Union Syndicale and were in fact adversely affected.

Furthermore, the right of action of the first applicant could not be made dependent upon the condition that the act caused detriment only to members of the Union Syndicale nor, clearly, upon the condition that all officials of the European institutions should belong to that organization.

During the course of the oral procedure, on 21 March 1974, the parties expanded the arguments put forward during the written procedure.

The Advocate-General presented his opinion at the hearing on 8 May 1974.

Law

- 1 The application submitted on 22 October 1973, on the basis of Articles 90 and 91 of the Staff Regulations of Officials of the European Communities, jointly by the 'Union Syndicale — Amalgamated European Public Service Union — Brussels', Miss Denise Massa, and Mrs Roswitha Schots, officials of the Council of the European Communities, seeks to annul both the appointments of Roger Brisaer and Charles Goetz to administrative posts at Grade A 6 which had been the subject of the Notices of Vacancies Nos 84/72

and 86/72, and the earlier decisions, taken prior to the said appointments, as well as the implied rejection of the complaints made by the said applicants on 26 and 27 March 1973, seeking the reversal of the decisions in issue.

- 2 By written submission of 27 November 1973 the Council raised a plea of inadmissibility and asked the Court to rule thereon without entering into the merits.
- 3 The First Chamber of the Court, before which the case was brought pursuant to Article 95 (1) of the Rules of Procedure, referred the case to the Court sitting in plenary session, by Order of 13 February 1974.
- 4 The Court decided, pursuant to Article 91 of the Rules of Procedure, to rule on the plea without entering into the merits.
- 5 As regards the admissibility of the application, the request submitted by the Union Syndicale should be distinguished from that of the other applicants.
- 6 In effect, the latter assert that they are acting in their own names and in defence of their own interests, not as members or officers of the first applicant.

As regards the Union Syndicale

- 7 The Council claims, firstly, that the applicant union is neither an 'agent' within the meaning of Article 179 of the Treaty nor a 'person to whom these Staff Regulations apply' within the meaning of Article 91 of the Staff Regulations and that its application must accordingly be held inadmissible.
- 8 It claims, secondly, that the right of union organizations to institute proceedings for the purpose of representing the collective interests of the staff and to contest, on that authority, the legality of an administrative act cannot be held to be a general principle of law recognized in the Member States and which must be incorporated into the Community legal order.

- 9 Under Article 24 a of the Staff Regulations, officials enjoy the right of association and, in particular, may be members of trade unions or staff associations of European officials.
- 10 The applicant union is an association organizing a substantial number of officials and servants of the Community institutions and component bodies established in Brussels and there is no reason to doubt its representative character.
- 11 Under its rules, its constitutional structure is such as to endow it with the necessary independence to act as a responsible body in legal matters.
- 12 The Community institutions officially recognize it as a negotiating body on questions involving the collective interests of the staff.
- 13 It is therefore impossible to deny the applicant union's capacity to institute proceedings.
- 14 Under the general principles of labour law, the freedom of trade union activity recognized under Article 24 a of the Staff Regulations means not only that officials and servants have the right without hindrance to form associations of their own choosing, but also that these associations are free to do anything lawful to protect the interests of their members as employees.
- 15 The right of action is one of the means available for use by these associations.
- 16 Under the Community legal system, however, the exercise of this right is subject to the conditions determined by the system of forms of action provided for under the Treaties establishing the Communities.
- 17 Thus a staff association which fulfils these conditions is entitled, by virtue of the second paragraph of Article 173 of the EEC Treaty, to institute proceedings for annulment against a decision addressed to it within the meaning of that provision.

- 18 On the other hand, the bringing of a direct action is inadmissible under the arrangements provided under Articles 90 and 91 of the Staff Regulations for proceedings to be brought before the Court, insofar as these provisions give effect to Article 179 of the EEC Treaty and the corresponding Articles of the ECSC and EAEC Treaties.
- 19 Though Article 179 is available as a basis on which arrangements may be made for settlement by the Court of collective as well as individual disputes between the Community and its servants, this does not alter the fact that the procedure for complaint and appeal established by Articles 90 and 91 of the Staff Regulations is designed to deal exclusively with individual disputes.
- 20 This means that the channel of appeal provided for under Article 91 is available only to officials or servants.
- 21 Under the second paragraph of Article 37 of the Statute of the Court the right to intervene is, on the other hand, open to any person establishing a legitimate interest in the result of any case submitted to the Court, including those coming under Article 91 of the Staff Regulations.
- 22 In the circumstances of this case, therefore, as to the facts and to the law, the Court has no jurisdiction to entertain a direct action brought by a staff association under Article 91 of the Staff Regulations.
- 23 The application must therefore be held inadmissible insofar as it has been made by the first applicant.

As regards the applicants Massa and Schots

- 24 The action must be referred to the First Chamber of the Court insofar as it has been instituted by the second and third applicants.

Costs

- 25 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs.
- 26 In view, however, of the general interest of the issue which has been raised the first applicant should be ordered to bear its own costs and the remaining costs should be reserved.

On those grounds,

THE COURT

hereby:

1. Dismisses the application as inadmissible insofar as it has been brought by the first applicant;
2. Orders the first applicant to bear its own costs;
3. Orders the case to be transferred before the First Chamber of the Court insofar as regards the other applicants.

Lecourt	Donner	Sørensen	Monaco	Mertens de Wilmars
Pescatore	Kutscher	Ó Dálaigh	Mackenzie Stuart	

Delivered in open court in Luxembourg on 8 October 1974.

A. Van Houtte
Registrar

R. Lecourt
President