JUDGMENT OF THE COURT (SECOND CHAMBER)
17 FEBRUARY 1977 [1]

# Andreas H. Reinarz
# v Commission and Council of the European Communities

**Case 48/76**

1. *Officials — Regulation — Relationship involved under the Staff Regulations — Dispute — Means of redress under the Staff Regulations — Application — Official complaint condition precedent to any application to the Court*

2. *Officials — Application for compensation — Origin — Place of employment — Legal basis*
*(Staff Regulations, Articles 90 and 91)*

1. In the event of a dispute concerning the application of a regulation which, although not officially forming part of the Staff Regulations of Officials, is nevertheless concerned with regulating a specific aspect of the relationship, under Staff Regulations, between the Community institutions and certain of their officials, the means of redress available to those concerned are those provided for by the Staff Regulations, which include the lodging of an official complaint as a condition precedent to any application to the Court.
2. A dispute between an official and the institution to which he is or was answerable concerning compensation for damage is pursued, where it originates in the relationship of employment between the person concerned and the institution, under Article 179 of the Treaty and Articles 90 and 91 of the Staff Regulations and lies outside the sphere of application of Articles 178 and 215 of the Treaty.

In Case 48/76

ANDREAS H. REINARZ, a former official of the Commission of the European Communities, residing in Wasa, (Canada), represented by A. J. Hammerstein, Advocate at the Arrondissementsrechtbank, Maastricht, with an address for service in Luxembourg at the Chambers of Félicien Jansen, 21 rue Aldringer,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Raymond Baeyens, acting as Agent, with an address for service in

1 — Language of the Case: Dutch.

Luxembourg at the office of Mario Cervino, Legal Adviser to the Commission, Bâtiment CFL, place de la Gare,

and

COUNCIL OF THE EUROPEAN COMMUNITIES, represented by its Legal Advisers, Antonio Sacchettini, acting as Agent, and Gijsbertus Peeters, acting as co-agent, with an address for service in Luxembourg at the office of Mr Van den Houten, Director of the Legal Service of the European Investment Bank, 2 place de Metz,

defendants,

Application, at the present stage of the proceedings, for a finding of admissibility of the application for the annulment of the third subparagraph of Article 3 (3) of Regulation (EEC) No 2530/72 of the Council of 4 December 1972 introducing special and temporary measures applicable to the recruitment of officials of the European Communities in consequence of the accession of new Member States, and for the termination of service of officials of those Communities (OJ, English Special Edition 1972 (1-8 December), p. 11); and damages,

THE COURT (Second Chamber)

composed of: P. Pescatore, President of Chamber, M. Sørensen and Lord Mackenzie Stuart, Judges,

Advocate-General: F. Capotorti
Registrar: A. Van Houtte

gives the following

## JUDGMENT

## Facts

The facts of the case, the procedure, the conclusions and the submissions and arguments of the parties may be summarized as follows:

I — Facts

1. In the interests of the service and in order to meet requirements resulting

from the accession of new Member States, Regulation (Euratom, ECSC, EEC) No 2530/72 of the Council authorized the institutions of the Communities, until 30 June 1973, to adopt for their officials in Grades A 1 to A 5 inclusive measures terminating their service (Article 2 (1)).

An official affected by such a measure is entitled: for a period of a year, to a monthly allowance equal to his last remuneration; during the following 30 months, to a monthly allowance equal to 80 % of his basic salary; and thereafter, for a period the length of which is determined by the official's age, to 70 % of his basic salary (Article 3 (1)).

Article 3 (3) of the regulation reads as follows:

'The allowance provided for in paragraph 1 shall be weighted in accordance with the second subparagraph of Article 82 (1) of the Staff Regulations, for the Community country where the recipient provides proof of residence.

If the recipient of that allowance resides outside the Community countries the weighting to be applied to the allowance shall be that valid for Belgium.

The allowance shall be expressed in Belgian francs. It shall be paid on the basis of the values referred to in [the third paragraph of] Article 63 of the Staff Regulations.'

The third paragraph of Article 63 of the Staff Regulations of Officials (hereinafter referred to as 'the Staff Regulations') reads as follows:

'Remuneration paid in a currency other than that of the country where the Community which he serves has its provisional seat shall be calculated on the basis of the par values accepted by the International Monetary Fund, which were in force on 1 January 1965.'

2. The applicant entered the service of the ECSC in 1952. In 1959, he transferred to the service of the Commission of the EEC, where he was classified in Grade A 2.

On 1 May 1973, the applicant's service with the EEC ceased pursuant to Regulation No 2530/72.

From 1 May 1973 to 1 May 1974, the applicant received a monthly allowance equal to his last remuneration. This allowance was paid to him in Belgian francs by remittance to his bank account in Belgium.

Since 1 May 1974 the applicant has been receiving a monthly allowance equal to 80 % of his basic salary. As he has meanwhile settled in Canada, the allowance is paid to him not in Belgian francs but in Canadian dollars by remittance to his bank account in Canada. The allowance is paid on the basis of a par value of FB 46·25 to the Canadian dollar in accordance with the third subparagraph of Article 3 (3) of Regulation No 2530/72. The weighting valid for Belgium is applied to these amounts in accordance with the second subparagraph of Article 3 (3) of the regulation.

## II — Procedure

1. On 8 June 1976 the applicant submitted the present application in which he claims that the Court should:

'1. Rule that with regard to the monthly allowance due to the applicant, the provisions of the final subparagraph of Article 3 (3) of Regulation No 2530/72 of the Council in conjunction with the third paragraph of Article 63 of the Staff Regulations, are void or at least should not be applied in respect of the applicant;

2. Order the Council and the Commission of the EEC to compensate the applicant for the past and future damage suffered or to be

suffered since 1 May 1974 as a result of the application of the rules referred to in the first paragraph above including any damage arising out of resettlement in a country of the Community;

3. Order the Council and the Commission of the EEC to pay the applicant's costs.'

2. In his application, the applicant claims, *inter alia,* on the substance, that he is entitled to a monthly allowance paid to him either after conversion into Canadian dollars of the amount which he receives in Belgian francs on the basis of the par value of the Belgian franc against the Canadian dollar at the time of payment or by payment in Belgian francs in accordance with the regulations applicable to officials of the EEC.

The rules contested by the applicant involve, *inter alia,* a breach of the principle of equality of treatment as between officials of the Community.

In this connexion the applicant states that the weighting which is applied to his allowance, together with the system of payment which he is contesting, take no account of living conditions in Canada or of the purchasing power of the Canadian dollar, which, since 1 January 1965, has depreciated in relation to that of the Belgian franc.

The Council must take measures to adjust the weighting in accordance with Article 65 of the Staff Regulations because, since 1 January 1965, the cost of living in Canada has changed considerably compared to the cost of living in Belgium.

As the result of the contested system of conversion, the applicant has, during the period from 1 May 1974 to date, suffered a loss of income of approximately 15 to 35 % as a result of the par value operative between the franc and the Canadian dollar. He considers that, under the second paragraph of Article 215 of the Treaty establishing the Community, he is entitled to claim compensation for the damage which he has suffered and which he has still to suffer in the future as the result of legislative acts or failure to adopt legislative acts breaching the principle of non-discrimination and for which an institution of the Communities is responsible.

The applicant further objects to the fact that the social security benefits to which, over and above his monthly allowance, he is entitled under Article 3 (1) of Regulation No 2530/72 are also paid to him in converted Canadian dollars in pursuance of the rule which he contests.

In the alternative, the applicant relies on the general principles relating to the protection of human rights, contending that the contested rules impede emigration from the Community to a third country.

3. By defences lodged respectively on 17 August and 12 July 1976, the Commission and the Council requested the Court to rule pursuant to Article 91 of the Rules of Procedure on the admissibility of the application without going into the substance, to declare the application to be inadmissible, and to order the applicant to pay the costs.

4. In a statement lodged on 15 September 1976, the applicant requested the Court to dismiss the objection raised by the Council, costs being awarded accordingly. In a statement lodged on 15 October 1976, the applicant leaves the objection of inadmissibility raised by the Commission to the discretion of the Court.

5. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court (Second Chamber) decided to open the oral procedure on the objection without making any preparatory inquiry.

III — Submissions and arguments of the parties on the admissibility of the application

1. The *Commission* states that in so far as the application is directed against it, it can be interpreted as, in essence, seeking annulment of the application which it made of the provisions of the last subparagraph of Article 3 (3) of Regulation No 2530/72. In addition the application refers to an action for damages on the ground of non-contractual liability.

Since this is a dispute between a former official and the institution in which he was employed, the rules of procedure laid down in Articles 90 and 91 of the Staff Regulations are applicable in this case.

The applicant did not lodge a complaint within the meaning of Article 90 (2) of the Staff Regulations and, by virtue of Article 91 (2) his application is not, in consequence, admissible.

2. (a) The *Council* states that, even though the conclusions of the applicant are not a comprehensive statement of the purpose of the applications addressed to the Court, it is possible to distinguish the three following actions on the basis of the application taken as a whole:

— an application for annulment of the provision contained in the last subparagraph of Article 3 (3) of Regulation No 2530/72;
— an action based on non-contractual liability under the second paragraph of Article 215 of the Treaty;
— an application, in the alternative, based on the inapplicability, within the meaning of Article 184 of the Treaty, of the provision which it is sought, alternatively, to annul.

(b) With regard to the action for annulment, the Council points out that there are only two possible alternatives: an appeal pursuant to Article 91 of the Staff Regulations or proceedings under Article 173 of the Treaty. The application is inadmissible in both cases.

The applicant is subject to the provisions of the Staff Regulations in the matter of appeals even though he is not, strictly speaking a 'person to whom these Staff Regulations apply' because the conditions applicable to him are determined by Regulation No 2530/72. One of the recitals to the regulation expressly mentions the need to adopt on a temporary basis special measures concerning the Staff Regulations of Officials of the European Communities.

In consequence, the rules contained in Articles 90 and 91 of the Staff Regulations must be observed if the application is to be admissible. Article 90 (2) clarifies the concept of 'act adversely affecting' by indicating that it arises when the appointing authority ought to have taken a decision or has failed to adopt a measure prescribed by the Staff Regulations. The only decision which the conclusions in the application seek to have annulled is an act of the Council. Since the Council is not the appointing authority in the case of the applicant, the contested act cannot therefore constitute an individual act which adversely affects him within the meaning of Article 90 (2) of the Staff Regulations.

Nor does the applicant fulfil the conditions laid down in the second paragraph of Article 173 of the EEC Treaty under which an individual can institute proceedings for annulment before the Court. There is no act in the form of a regulation or a decision addressed to another person which is 'of direct and individual' concern to him. In the first place, it is clear that the contested act was an act of general application within the meaning of the judgment of the Court of 14 December 1962 in Joined Cases 16 and 17/62, *Confédération Nationale des Producteurs de Fruits et Légumes and Others* v *Council* [1962] ECR 471. Secondly, the contested act cannot be held to be of

'individual' concern to the applicant within the meaning of the judgment of the Court of 15 July 1963 in Case 25/62, *Plaumann & Co.* v *Commission* [1963] ECR 95.

(c) As regards an action based on non-contractual liability, the Council contends that this application is concerned with one of the conclusions which the Council would have to draw from a judgment of annulment and is, therefore, indistinguishable from an application for annulment within the meaning of the judgment of the Court of 18 March 1975 in Case 72/74, *Union Syndicale-Service Public Européen and Others* v *Council* [1975] ECR 401.

Finally, the Council refers to the judgment of the Court of 22 October 1975 in Case 9/75, *Meyer-Burckhardt* v *Commission* [1975] ECR 1171. It follows from that judgment that, since the present dispute originates in a relationship of employment between the person concerned and the institution, it must be pursued under Article 179 of the Treaty and Articles 90 and 91 of the Staff Regulations and, as regards in particular the question of its admissibility, lies outside the sphere of application of Articles 178 and 215 of the Treaty.

In the light of the principles so clearly laid down by the Court, the Council concludes that proceedings instituted by the applicant on the ground of non-contractual liability are inadmissible for the same reasons as those which apply in the case of an application for annulment based on Article 91 of the Staff Regulations of Officials.

(d) As regards the applicant's claim concerning inapplicability, the Council considers that no such claim can be made since the present case involves a dispute in which the Court would not pronounce on the substance.

3. The *applicant, defendant in the preliminary proceedings,* states in reply to the objection of inadmissibility raised by the Council that he accepts that there are two channels of appeal open to him: that under the Staff Regulations provided for in Article 179, and that under Article 178 of the Treaty. The applicant contends that the latter was the only means of redress open to him; his action is directed in the first place against the Council and refers to a loss which occurred only some considerable time after the entry into force of Regulation No 2530/72, which is the cause of that loss.

The judgment of the Court of 22 October 1975 in Case 9/75 has no relevance in the present case since the situation of the applicant is entirely different.

### IV — Oral procedure

The applicant announced that he would not appear at the hearing on 13 January 1977.

During the hearing the Commission, represented by its Legal Adviser, R. Baeyens, acting as Agent, and the Council, represented by its Legal Advisers, A. Sacchettini, acting as Agent, and G. Peeters, acting as co-agent, continued the arguments developed in the written procedure.

The Advocate-General delivered his opinion at the hearing on 3 February 1977.

## Law

1 The applicant, a former official of the European Communities and at present in receipt of an allowance pursuant to Regulation (Euratom, ECSC, EEC) No

2530/72 of the Council of 4 December 1972 introducing special and temporary measures applicable to the recruitment of officials of the European Communities in consequence of the accession of new Member States and for the termination of service of officials of those Communities (OJ, English Special Edition 1972 (1-8 December), p. 11) seeks the annulment of the final subparagraph of Article 3 (3) of that regulation, in conjunction with the third paragraph of Article 63 of the Staff Regulations or, at least, a declaration that they do not apply to him and compensation for the loss which he claims to have suffered as a result of the application of those provisions.

2 After the applicant's service with the Communities came to an end in 1973, he settled in Canada and, in consequence, his allowance, expressed in Belgian francs, has been paid in the currency of Canada calculated on the basis of the official par values in force on 1 January 1965, pursuant to Article 3 (3) of Regulation No 2530/72, in conjunction with the third paragraph of Article 63 of the Staff Regulations.

3 The applicant contests the correctness of this system of payment claiming, *inter alia,* that the rules in question and the way in which they have been applied to him infringe the principle of equality of treatment of officials, since the weighting applied to his allowance is that based on living conditions in Belgium regardless of depreciation in the purchasing power of the Canadian dollar.

4 The Council and the Commission, defendants, raised objections of inadmissibility contending, first, that the applicant did not, prior to the lodging of his application, submit a complaint under Article 90 (2) of the Staff Regulations to the competent authority and, secondly, that, in so far as the application is to be regarded as being brought under Article 178 and the second paragraph of Article 215 of the EEC Treaty, the application based on liability under those articles cannot arise in respect of matters concerning the rights of officials under the Staff Regulations.

5 Although Regulation No 2530/72 does not officially form part of the Staff Regulations of Officials, it is nevertheless concerned with regulating a specific aspect of the relationship, under Staff Regulations, between the Community institutions and certain of their officials.

6 Consequently, the means of redress available to those concerned in the event of a dispute concerning the application of the regulation are those provided

for by the Staff Regulations, which include the lodging of an official complaint as a condition precedent to any application to the Court.

7 It is a fact that the applicant did not submit any complaint under Article 90 (2) of the Staff Regulations concerning the complaints which are the subject of this application.

8 In so far as it is brought under Article 179 of the Treaty and the first paragraph of Article 91 of the Staff Regulations, the application is, therefore, inadmissible.

9 In so far as the applicant relies for the basis of his application on Article 178 and the second paragraph of Article 215 of the Treaty relating to applications based on non-contractual liability, the application in this case would be admissible only if the articles mentioned were interpreted as making available to an official or to a former official a means of redress which is independent of the proceedings under Staff Regulations pursuant to Article 179 of the Treaty.

10 In this connexion it must be pointed out that, as the Court held in its judgment of 22 October 1975 in Case 9/75, *Meyer-Burckhardt* [1975] ECR 1171, a dispute between an official and the institution to which he is or was answerable concerning compensation for damage is pursued, where it originates in the relationship of employment between the person concerned and the institution, under Article 179 of the Treaty and Articles 90 and 91 of the Staff Regulations and lies outside the sphere of application of Articles 178 and 215 of the Treaty.

11 Furthermore, the unlimited jurisdiction conferred on the Court in the disputes referred to in Article 179 enables it, within the context of such disputes, to give judgment not only on the validity of the contested act but also on compensation for any damage suffered by the person concerned as a result of an act contrary to his rights under the Staff Regulations.

12 In consequence the application is inadmissible also in that it is based on Article 178 and the second paragraph of Article 215 of the Treaty.

## Costs

13 Under Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs.

14 The applicant has failed in his submissions.

15 However, under Article 70 of the Rules of Procedure, in proceedings commenced by an official of the Communities, institutions shall bear their own costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

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

Pescatore Sørensen Mackenzie Stuart

Delivered in open court in Luxembourg on 17 February 1977.

A. Van Houtte
Registrar

P. Pescatore
President of the Second Chamber

## OPINION OF MR ADVOCATE-GENERAL CAPOTORTI DELIVERED ON 3 FEBRUARY 1977 [1]

*Mr President,*
*Members of the Court,*

1. The subject-matter of my opinion is limited: it consists exclusively in the question of the admissibility of the application submitted on 8 June 1976 by Mr Andreas Reinarz against the Council and the Commission. As you will recall, the Second Chamber decided to consider

1 — Translated from the Italian.