ORDER OF THE COURT OF FIRST INSTANCE (Third Chamber)
28 June 2000 *

In Case T-338/99,

Lily Karoline Schuerer, a former official of the Commission of the European Communities, residing in Munich (Germany), represented by H.J. Winzen and M. Angermaier, Rechtsanwälte, Munich, with an address for service in Luxembourg at the Chambers of M. Steil, 12 Rue d'Anvers,

applicant,

v

Council of the European Union, represented by M. Bauer and P.M. Cossu, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of A. Morbilli, General Counsel of the Legal Service of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

* Language of the case: German.

APPLICATION for a declaration that, by applying to the calculation of the applicant's pension a weighting for Germany which was not fixed on the basis of the cost of living in Berlin, the Council has infringed the EC Treaty,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Third Chamber),

composed of: K. Lenaerts, President, J. Azizi and M. Jaeger, Judges,

Registrar: H. Jung,

makes the following

Order

Facts giving rise to the dispute

1 Under the second subparagraph of Article 82(1) of the Staff Regulations of officials of the European Communities ('the Staff Regulations'), retirement pensions are weighted at the rate fixed for the country where the recipient proves he has his residence. Under Annex XI to the Staff Regulations, the national weightings are calculated on the basis of the cost of living in the capital of each Member State.

2 Until October 1990 Bonn was the capital of the Federal Republic of Germany and, accordingly, the weighting for that State was fixed on the basis of the cost of living in that city.

3 Following the reunification of Germany, Berlin became the capital of that Member State on 3 October 1990.

4 The Commission introduced before the Council various proposals for a regulation with a view to fixing the weighting for Germany on the basis of the cost of living in Berlin.

5 On 19 December 1994 the Council adopted Regulation (ECSC, EC, Euratom) No 3161/94 adjusting, with effect from 1 July 1994, the remuneration and pensions of officials and other servants of the European Communities and the weighting applied thereto (OJ 1994 L 335, p. 1). Article 6(1) of that Regulation lays down, with effect from 1 July 1994, a weighting for Germany based on the cost of living in Berlin, as well as specific weightings for Bonn, Karlsruhe and Munich.

6 The applicant, a retired former official of the Commission residing in Germany, claims to be prejudiced by the fact that the weighting for Germany was, after reunification of that country, calculated on the basis of the cost of living in Bonn until 30 June 1994.

Procedure and forms of order sought

7 It was in these circumstances that, by application lodged with the Registry of the Court of First Instance on 1 December 1999, the applicant commenced the present proceedings.

8 The applicant claims that the Court should:

— declare that, in applying to her pension with effect from 3 October 1990, the date on which Berlin became the capital of Germany, instead of the weighting for that city, the weighting for Bonn, the Council has infringed the EC Treaty;

— order the Council to pay the costs.

9 By separate document, filed at the Registry of the Court of First Instance on 20 January 2000 the Council raised a plea of inadmissibility under Article 114(1) of the Rules of Procedure of the Court of First Instance.

10 In its plea, the Council claims that the Court should:

— dismiss the action as manifestly inadmissible;

— order the applicant to pay the costs.

11 By letter dated 3 March 2000, the applicant waived the right to file observations on the plea of inadmissibility.

Admissibility

12 Pursuant to Article 114(3) of the Rules of Procedure the remainder of the proceedings on the plea of inadmissibility are to be oral, unless the Court of First Instance decides otherwise. In this case the Court considers that it has sufficient information from the documents in the case, and there is no need to open the oral procedure.

Arguments of the parties

13 In its plea of inadmissibility the Council submits, first, that, to the extent that the applicant may be considered to be seeking the annulment of acts of the Council, her claim is inadmissible since the acts being challenged, namely the regulations fixing the weightings for all officials, former officials and other agents of the European Communities are in the form of regulations, and are not of direct and individual concern to the applicant. The Council adds that the regulations in question all date from before 1994, so that the time allowed for instituting proceedings under the fifth paragraph of Article 230 EC has, in any event, expired.

14 Next, the Council argues that, to the extent that the applicant's pleadings are to be interpreted as seeking a declaration that the Council has failed to act, the

action is also inadmissible since it refers to the adoption of a regulation and, what is more, the applicant failed to call upon it to act, contrary to what is required under the second paragraph of Article 232 EC.

15 The applicant submits in her application that the Council's decision to intervene in support of the Commission in the case giving rise to the order of the Court of First Instance of 1 December 1999 in Case T-81/99 *Schuerer* v *Commission* [1999] ECR-SC II-1193, and the refusal of the Council, expressed in its application to intervene in that case, to put right the incorrect regulation gives rise to the possibility of an appeal.

Findings of the Court

16 It should be pointed out that the forms of order sought in the application include a claim for a declaration 'that, in applying to [the applicant's] pension with effect from 3 October 1990, the date on which Berlin became the capital of Germany, instead of the weighting for that city, the weighting for Bonn, the Council has infringed the EC Treaty'. In light of the fact that it is not for the Community courts to make declarations of principle (see order of the Court of First Instance of 10 February 1994, Case T-468/93 *Frinil* v *Commission* [1994] ECR II-33, paragraphs 36 and 37, and Joined Cases T-171/95 and T-191/95 *Becker and Others* v *Commission* [1998] ECR-SC I-A-257 and II-803, paragraph 37), that claim is inadmissible.

17 However, the applicant explains in her application (paragraph 6) that the action is founded on Article 173 of the EC Treaty (now, after amendment, Article 230 EC).

18 Under the first paragraph of Article 19 of the EC Statute of the Court of Justice, applicable to proceedings before the Court of First Instance by virtue of the first paragraph of Article 46 of the same statute, and under Article 44(1)(c) and (d) of the Rules of Procedure of the Court of First Instance, the application must state, amongst other things, the subject-matter of the dispute, the forms of order sought and a brief statement of the pleas in law.

19 Irrespective of any question of terminology, the particulars must be sufficiently clear and precise to enable the defendant to prepare the defence, and the Court of First Instance to rule on the application without having to request further information, as the case may be. In order to guarantee legal certainty and sound administration of justice it is necessary, for an action to be admissible, that the basic matters of law and fact relied on be indicated, at least in summary form, coherently and intelligibly in the application itself (order of the Court of First Instance of 21 May 1999, Case T-154/98 *Asia Motor France and Others* v *Commission* [1999] ECR II-1703, paragraph 49, and Case T-145/98 *ADT Projekt* v *Commission* [2000] II-387, paragraph 66).

20 If, in a spirit of openness, the forms of order sought in the application were to be interpreted as seeking annulment, the fact remains that the applicant has nowhere specified the act, or acts, that she claims should be annulled.

21 In her application, the applicant confines herself to references, without any further clarification, to the 'measure in question' (paragraph 2), 'the unlawful Council Regulation' (paragraph 3), 'the present Council decision' (paragraph 5), 'the refusal of the Council [...] to put right the incorrect Regulation' (paragraph 5), 'the unlawful Regulations' (paragraph 8), the refusal of the Council to 'correct its erroneous Regulations' (paragraph 8) and the 'decision [of the Council] to maintain its incorrect Regulations' (paragraph 9).

22 In those circumstances it must be found that the application does not satisfy the formal requirements of Article 19(1) of the Statute of the Court of Justice and Article 44(1)(c) and (d) of the Rules of Procedure.

23 For the sake of completeness, it should also be stated that, even if, as the Council took it to mean, the application sought the annulment of Council Regulation (Euratom, ECSC, EEC) No 3736/90 of 19 December 1990 correcting, with effect from 1 July 1989, and adjusting, with effect from 1 July 1990, the remuneration and pensions of officials and other servants of the European Communities and the weightings applied thereto (OJ 1990 L 360, p. 1), Council Regulation (ECSC, EEC, Euratom) No 3834/91 of 19 December 1991 adjusting, with effect from 1 July 1991, the remuneration and pensions of officials and other servants of the European Communities and the weightings applied thereto (OJ 1991 L 361, p. 13), and of Council Regulation (EEC, Euratom, ECSC) No 3761/92 of 21 December 1992 adjusting, with effect from 1 July 1992 the remuneration and pensions of officials and other servants of the European Communities and the weightings applied thereto (OJ 1992 L 383, p. 1), and Council Regulation (Euratom, ECSC, EC) No 3608/93 of 20 December 1993 adjusting, with effect from 1 July 1993, the remuneration and pensions of officials and other servants of the European Communities and the weightings applied thereto (OJ 1993 L 328, p. 1), the proceedings would have to be declared inadmissible since they were not instituted within the time limit of two months provided for by the fifth paragraph of Article 230 EC. Contrary to the applicant's claim, the decision of the Council to intervene in the case giving rise to the order in *Schuerer* v *Commission*, cited above, does not in the least reopen the time-limits for the commencement of proceedings for the annulment of acts that have become definitive.

24 Assuming that the action should be interpreted as seeking the annulment of an alleged refusal of the Council to fix, with retroactive effect to 3 October 1990, a

weighting for Germany based on the cost of living in Berlin, it would also be considered inadmissible. This is because where a decision of the Council amounts to a rejection, it must be appraised in the light of the nature of the request to which it constituted a reply (Joined Cases C-15/91 and C-108/91 *Buckl and Others* v *Commission* [1992] ECR I-6061, paragraph 22). The measure sought by the applicant is one of general application which, if it were to be adopted, would affect her in the same way as every other former official of the Community residing in Germany, and would not be of individual concern to her, within the meaning of the fourth paragraph of Article 230 EC.

25 Lastly, the wording of the application does not allow the present action to be regarded as founded on Article 232 EC, which is indeed confirmed by the fact that the applicant did not formally call upon the Council to act before bringing the present proceeedings.

26 It follows from all of the above considerations that this action must be dismissed as inadmissible.

Costs

27 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, she must be ordered to pay the Council's costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby orders:

1. **The application is dismissed as inadmissible.**

2. **The applicant shall pay the costs.**

Luxembourg, 28 June 2000.

H. Jung
Registrar

K. Lenaerts
President