JUDGMENT OF THE COURT (Fourth Chamber)
7 March 1990 *

In Case C-320/81

S. Acerbis and Others, officials of the Commission of the European Communities, assisted and represented by Cesare Ribolzi and Giuseppe Marchesini, avvocati with a right of audience before the Corte de Cassazione of the Italian Republic, with an address for service in Luxembourg at the Chambers of Victor Biel, 18 A rue des Glacis,

applicants,

v

Commission of the European Communities, represented by Sergio Fabro, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of its Legal Department, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of the calculation of the arrears of salary due by reason of the adjustment of the weighting with effect from 1 July 1980, on the ground that an inappropriate weighting was applied, and for a declaration that the Community institutions are required to recalculate the arrears in question, applying an appropriate weighting,

THE COURT (Fourth Chamber)

composed of: C. N. Kakouris, President of Chamber, T. Koopmans and M. Díez de Velasco, Judges,

Advocate General: J. Mischo
Registrar: H. A. Rühl, Principal Administrator

* Language of the case: Italian.

having regard to the Report for the Hearing and further to the hearing on 26 September 1989,

after hearing the Opinion of the Advocate General delivered at the sitting on 12 October 1989,

gives the following

Judgment

1 By an application lodged at the Court Registry on 24 December 1981, Mr Silverio Acerbis and 485 other officials of the Commission, all employed at the Joint Research Centre at Ispra (Varese, Italy), brought an action for the annulment of their salary statements for February and March 1981 which contained the calculation by the Commission of arrears of salary with effect from 1 July 1980, pursuant to Council Regulation (Euratom, ECSC, EEC) No 397/81 of 10 February 1981 fixing the tables of salaries and other components of remuneration of officials and other servants of the European Communities (Official Journal 1981, L 46, p. 1). Annulment is sought inasmuch as the amount awarded is insufficient.

2 On 20 January 1981 the Council adopted Regulation (Euratom, ECSC, EEC) No 187/81 adjusting the salaries and pensions of officials and other servants of the European Communities and the weightings applying to them (Official Journal 1981, L 21, p. 18), departing from the proposal put forward by the Commission on 9 December 1980 following investigations carried out by the Statistical Office of the European Communities in the Member States.

3 On the basis of that regulation, which provided for a flat-rate increase in net terms of monthly salaries and pensions of Community officials and other servants, Regulation No 397/81 laid down a single weighting for Italy at the rate of 75.3%, with effect from 1 July 1980.

4 The applicants consider that rate to be unlawful on two counts: firstly, because it was established for the whole of Italy on the sole basis of price trends in the capital, without taking into account the particularly high cost of living in Varese and, secondly, because it is insufficient, even on the basis of the prices prevailing in Rome.

5 The applicants put forward four arguments to support their contention that the fixing of that rate by Regulations Nos 187/81 and 397/81 was unlawful:

(1) infringement of Article 64 of the Staff Regulations of Officials (hereinafter referred to as 'the Staff Regulations'), which lays down that the weighting must be calculated in relation to the living conditions in the various places of employment;

(2) infringement of Article 65(2) of the Staff Regulations: reassessment of the weighting for Italy was made too late and was insufficient;

(3) infringement of the principle of non-discrimination: the applicants were discriminated against in relation to other officials employed at other places;

(4) breach of the principle of the 'protection of legitimate expectations' on the ground that no account was taken of the investigation carried out by the Statistical Office in October 1980.

6 The applicants claim that the Court should:

(i) annul the calculation of the arrears of salary, with effect from 1 July 1980;

(ii) declare that the institutions are obliged to adopt the measures consequent upon the requested annulment; in particular, as well as recalculating the arrears, they should apply, with effect from 1 July 1980, an adequate weighting;

(iii) in the alternative, direct that the proceedings in the present case be stayed until a decision is given in Case 158/79 *Roumengous Carpentier* v *Commission.*

7 In their reply, the applicants ask in addition for compensatory interest.

8 Since all the parties concurred on the point, the Court (Third Chamber) decided on 20 January 1982 to suspend proceedings until judgment had been delivered in a series of cases in which the issues were similar to those of the present case.

9 By a judgment of 6 October 1982 in Case 59/81 *Commission* v *Council* [1982] ECR 3329, the Court annulled Regulation No 187/81 together with certain provisions of Regulation No 397/81 inasmuch as they were contrary to Article 65(1) and (2) of the Staff Regulations. Following that judgment, the Council, acting on a proposal by the Commission of 29 October 1982, adopted Regulation (ECSC, EEC, Euratom) No 3139/82 of 22 November 1982 amending the tables of basic salaries and adjusting, with effect from 1 April 1980, the weightings applicable to remuneration and pensions (Official Journal 1982, L 331, p. 1).

10 By Regulation (EEC, Euratom, ECSC) No 3681/83 of 19 December 1983 adjusting the weightings applied in Italy (Official Journal 1983, L 368, p. 1), the Council provided for the reassessment of the Italian weighting and for a higher weighting for Varese compared with Rome. On the basis of that regulation, the Commission paid arrears of salary to all officials.

11 By judgments of 15 January 1985 in Case 158/79 *Roumengous Carpentier* v *Commission* [1985] ECR 39, Case 737/79 *Battaglia* v *Commission* [1985] ECR 71 and Joined Cases 532/79, 534/79, 567/79, 600/79, 618/79, 660/79 and 543/79 *Amesz and Others* v *Commission* [1985] ECR 55, the Court awarded default interest at the rate of 6% per annum on the arrears of remuneration, with effect from the date of the applicants' complaint in those cases, but rejected the claim for the payment of compensatory interest.

12 Following those judgments, by a decision of 31 July 1985 the Commission paid all officials employed at Ispra default interest on the sums due pursuant to the reassessment of the weighting applicable in Italy introduced by Regulation No 3681/83, cited above.

13 Subsequently, on 26 November 1986, the Council adopted Regulation (EEC, Euratom, ECSC) No 3619/86 correcting the weightings applicable *inter alia* in Italy of the remuneration and pensions of officials and other servants of the European Communities (Official Journal 1986, L 336, p. 1), departing once more from the Commission's proposal. Following the action brought by the Commission, the Court annulled that regulation, which it held to be contrary to Article 64 of the Staff Regulations (judgment of 28 June 1988 in Case 7/87 *Commission* v *Council* [1988] ECR 3401).

14 The Council acted on that judgment in its Regulation (ECSC, EEC, Euratom) No 3294/88 of 24 October 1988 correcting the weightings applicable *inter alia* in Italy of the remuneration and pensions of officials and other servants of the European Communities (Official Journal 1988, L 293, p. 1), which introduced a special weighting applicable to Varese, with effect from 1 January 1981.

15 None of the measures listed above, which were adopted after the annulment of Regulations Nos 187/81 and 397/81 cited above, was contested by the applicants in the present proceedings.

16 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the submissions and arguments of the parties, which are mentioned hereinafter only in so far as is necessary for the reasoning of the Court.

17 The facts recounted above raise the question whether the subject-matter of this case is still in existence.

18 It should be noted in that connection that the applicants are seeking the annulment of their salary statements for February and March 1981. Those salary statements constitute individual measures taken to implement the abovementioned Regulations Nos 187/81 and 397/81 which, according to the applicants, were unlawful inasmuch as they did not take into account the cost of living in Varese and fixed a weighting for the whole of Italy at an inadequate level.

19 It is clear, however, from the foregoing that in the meantime the regulations in question, which were annulled by judgment of the Court, have been replaced by other regulations. Those measures, subsequently replaced by others, introduced with retroactive effect different rules concerning both the level of salaries and pensions of officials and other servants of the European Communities and the weightings applicable to those salaries and pensions, and involved replacing the salary statements relating thereto.

20 Consequently, the salary statements that are challenged in the present proceedings ceased to exist from the point when they were replaced by fresh salary statements. Since the purpose of the present proceedings, that of having those statements nullified, has been attained, it must be held that the proceedings have become devoid of purpose.

21 The applicants acknowledged at the hearing before the Court that their principal claim had been satisfied. They consider, however, that the claim for compensatory interest put forward in their reply, seeking full compensation for the harm suffered by them because of the delay in adopting the measures and redress in respect of the consequences of monetary devaluation, has not been satisfied.

22 The Commission disputes not only the basis of that claim but also its admissibility, pointing out that it was submitted out of time.

23 The submission that the claim is inadmissible must be upheld. The claim was put forward for the first time in the reply. It must therefore be held inadmissible pursuant to Article 19 of the Statute of the Court of Justice of the European Communities and Article 38 of the Rules of Procedure.

Costs

24 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. However, under Article 70 of the Rules of Procedure, in proceedings brought by servants of the Communities, institutions are to bear their own costs.

On those grounds,

THE COURT (Fourth Chamber)

hereby:

(1) Dismisses the application;

(2) Orders the parties to bear their own costs.

Kakouris Koopmans Díez de Velasco

Delivered in open court in Luxembourg on 7 March 1990.

J.-G. Giraud
Registrar

C. N. Kakouris
President of the Fourth Chamber