JUDGMENT OF THE COURT (Second Chamber)

20 October 1994 *

In Case C-76/93 P,

Piera Scaramuzza, an official of the Commission of the European Communities, residing in New York, represented by J. N. Louis, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of A. Schmitt, 62 Avenue Guillaume,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Fifth Chamber) in Case T-75/91 between Mrs Scaramuzza and the Commission of the European Communities, seeking to have that judgment set aside,

the other party to the proceedings being:

Commission of the European Communities, represented by J. Griesmar, Legal Adviser, acting as Agent, assisted by D. Waelbroeck, of the Brussels Bar, with an

* Language of the case: French.

address for service in Luxembourg at the office of G. Kremlis, of its Legal Service, Wagner Centre, Kirchberg,

THE COURT (Second Chamber),

composed of: F. A. Schockweiler, President of the Chamber, G. F. Mancini (Rapporteur) and J. L. Murray, Judges,

Advocate General: F. G. Jacobs,
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 21 April 1994,

after hearing the Opinion of the Advocate General at the sitting on 9 June 1994,

gives the following

Judgment

1 By application lodged at the Registry of the Court of Justice on 17 March 1993, Mrs Piera Scaramuzza brought an appeal pursuant to Article 49 of the EEC Statute and the corresponding provisions of the ECSC and EAEC Statutes of the Court of Justice against the judgment of 15 December 1992 in Case T-75/91 *Scaramuzza* v *Commission* [1992] ECR II-2557, in which the Court of First Instance dismissed

her application for annulment of the Commission's decision rejecting her request for the whole of her salary to be paid in the currency of the country of employment with application of the corresponding weighting.

The judgment of the Court of First Instance

2 It appears from the judgment of the Court of First Instance that Mrs Scaramuzza is an official in Grade B 3. She was posted to the Commission's Permanent Delegation in Oslo on 4 January 1988 and was transferred to the Commission's office in New York on 17 June 1991. In accordance with the special salary regime applicable to officials serving in non-member countries, the Commission paid Mrs Scaramuzza only 80% of her remuneration in the currency of the place of employment with application of the corresponding weighting. Mrs Scaramuzza asked for the whole of her salary to be paid in the currency of and with the weighting for her place of employment, with effect from the date when she took up her duties. The Commission rejected that request. Her complaint brought on 23 April 1991 was also rejected. Mrs Scaramuzza brought proceedings in the Court of First Instance for annulment of those two rejections.

3 The salary regime applicable to officials serving in non-member countries is contained in Annex X to the Staff Regulations of Officials of the European Communities (hereinafter 'the Staff Regulations'). That annex, which was added to the Staff Regulations by Council Regulation (Euratom, ECSC, EEC) No 3019/87 of 5 October 1987 laying down special and exceptional provisions applicable to officials of the European Communities serving in a third country (OJ 1987 L 286, p. 3), provides in Article 11:

'Remuneration, as also the allowances referred to in Article 10, shall be paid in Belgian francs in Belgium. They shall be subject to the weighting applicable to the remuneration of officials employed in Belgium.'

4 Article 12 of Annex X provides:

'At the request of the official, the appointing authority may decide to pay all or part of his remuneration in the currency of the country of employment. In that event, it shall be subject to the weighting for the place of employment and shall be converted on the basis of the corresponding exchange rate.

In duly substantiated exceptional cases, the appointing authority may make all or part of this payment in a currency other than that of the country of employment in such as way as to maintain purchasing power.'

5 On the basis of the third paragraph of Article 1 of Annex X to the Staff Regulations, the Commission adopted 'internal directives determining the arrangements for payment referred to in Article 12 of Annex X to the Staff Regulations' (hereinafter 'the internal directives'), Article 1 of which reads as follows:

'In pursuance of Article 12 of Annex X to the Staff Regulations and at the request of the official, the appointing authority shall pay in the currency of the place of employment a part of his remuneration up to 80% of his net remuneration.

In duly reasoned cases the appointing authority may agree to pay in the currency of the country of employment a part of the remuneration exceeding 80%.'

6 Mrs Scaramuzza put forward two pleas in law in support of her application to the Court of First Instance.

7 The first plea alleged that the Commission had infringed the first paragraph of Article 12 of Annex X to the Staff Regulations when adopting Article 1 of its internal directives. The applicant argued that Article 12 makes no provision for any restriction with respect to the payment of remuneration in the currency of and subject to the weighting for the place of employment and does not give the appointing authority any discretion in this respect.

8 The Court of First Instance rejected the first plea, holding (paragraph 18 of its judgment) that the first paragraph of Article 12 of Annex X confers a discretion on the Commission to determine the extent to which it must grant the requests brought by officials on the basis of that provision and (paragraph 20) that there is nothing in principle to prevent the appointing authority from establishing, by means an internal decision of a general nature, rules for the exercise of the discretion conferred on it by the Staff Regulations. Moreover, the Commission did not abuse its discretion, as Mrs Scaramuzza claimed, since (paragraph 23) Article 1 of the internal directives does not prevent 'all' the remuneration from being paid in the currency of and with the weighting for the country of employment, but requires the official to give proper reasons for his request where it concerns more than 80% of his remuneration.

9 The Court likewise rejected the applicant's second plea alleging a breach of the principle of equal treatment for all officials, in the form of equality of purchasing power in the various places of employment, in particular between officials serving within the Community and officials serving in non-member countries. Contrary to Mrs Scaramuzza's argument that the only method of ensuring such equality of treatment is that laid down in Articles 64 and 65 of the Staff Regulations under which the entire remuneration is automatically paid in the currency of and subject

to the weighting for the place of employment, as in the case of officials serving within the Community, the Court of First Instance held that the position of those officials was different from that of officials serving in a non-member country, with respect in particular to the expenditure likely to be incurred in the country of employment.

10 The Court held that in order to ensure that equivalent purchasing power is maintained for all officials irrespective of their place of employment, the way in which the remuneration is paid must take those different situations into account. It is common ground that, unlike officials serving within the Community, officials serving in non-member countries, under Annex X of the Staff Regulations, do not have to bear accommodation costs or health expenditure at the place of employment. Consequently, the presumption that officials serving in non-member countries are likely to spend only 80% of their remuneration in their country of employment, whereas officials serving within the Community are presumed to spend their entire remuneration in the country where they carry out their duties, constitutes a difference in treatment which is commensurate with the difference between the situations of the two categories of officials.

11 With respect to Mrs Scaramuzza's final argument that she was deprived, in breach of Articles 62 to 65 of the Staff Regulations establishing the right of officials to their remuneration, of part of her remuneration because of the refusal to pay it in full in the currency of and subject to the weighting for her place of employment, the Court considered that since the Commission had not infringed any provision or principle, she had not been wrongfully deprived of part of her remuneration.

12 The Court of First Instance thus dismissed the application.

The appeal

13 In her appeal Mrs Scaramuzza asks the Court of Justice to set aside the judgment of the Court of First Instance and the decisions rejecting her complaint and her request, and to order the Commission to pay, with retroactive effect, the balance of her remuneration in the currency of and subject to the weighting for the country of employment, together with interest for late payment.

14 She puts forward a single plea in law based on breach of the general principle of law that a worker is free to dispose of his remuneration as he wishes, a freedom which is enshrined for European officials in Article 62 of the Staff Regulations, and breach of the general principle of law of respect for private life, laid down in Article 8 of the European Convention on Human Rights and Article 12 of the Universal Declaration of Human Rights. She contends that the judgment under appeal accepted that the Commission had a discretion, without dealing with her argument that such a discretion interfered with her private life, although when first submitting her request on 1 October 1990 she had complained of 'interference with officials' personal choices and rights in the use of what is due to them under the Staff Regulations', an argument maintained in her reply submitted to the Court of First Instance.

Admissibility of the appeal

15 The Commission contests the admissibility of the appeal, arguing that the single plea put forward by the appellant comprises two distinct pleas which are raised as such for the first time in the appeal. Under Articles 113(2) and 116(1) of the Rules of Procedure of the Court of Justice, new pleas which were not part of the original application cannot be raised for the first time in the appeal.

16 As regards the first plea alleging a breach of the general principle, enshrined in Article 62 of the Staff Regulations, of the freedom of workers to dispose of their remuneration as they please, it must be held, in agreement with the Advocate General (paragraph 11 of his Opinion), that it amounts in substance to a complaint that the Commission deprived the appellant of part of her remuneration.

17 Since the judgment of the Court of First Instance (paragraphs 22 and 57) shows that the appellant did indeed raise such a plea, the objection of inadmissibility must be rejected in this respect.

18 As regards the second plea, alleging a breach of the general principle of respect for private life set out in Article 8 of the European Convention on Human Rights and in Article 12 of the Universal Declaration of Human Rights, it is admittedly true that the appellant did not expressly rely on the former provision before the Court of First Instance. However, paragraph 27 of the judgment under appeal shows that she argued that the requirement to provide proof of the nature or structure of her outgoings would constitute 'unacceptable interference with the official's private life, an interference which would be contrary to Article 12 of the Universal Declaration of Human Rights'. Since Mrs Scaramuzza again relies before the Court on the protection of her private life and on Article 12 of the Universal Declaration, and also on Article 8 of the European Convention on Human Rights, which likewise concerns the right to respect for private life, it must be held that the specific reference to Article 8 is merely the development of an argument already raised at first instance.

19 It follows that the objection of inadmissibility must be rejected in this respect as well.

Alleged infringement of Article 62 of the Staff Regulations

20 The appellant submits that Article 62 of the Staff Regulations ('... an official who is duly appointed shall be entitled to the remuneration carried by his grade and step. An official may not waive his entitlement to remuneration ...') expresses the general principle of law that workers are free to dispose of their remuneration as they please. The Court of First Instance fell into an error of law by finding that the restriction of that freedom, as a consequence of the presumption that only 80% of the remuneration of officials serving in non-member countries was likely to be spent in the country of employment, was justified by the fact that those officials receive a special payment intended to cover all their accommodation and health costs. The Court was thus mistaken in considering that the appellant had not been wrongfully deprived of part of her remuneration.

21 On this point, the Court considers that the reasoning by which the Court of First Instance concluded that the payment method at issue was lawful is not open to criticism.

22 It suffices to observe that the Court of First Instance showed that there was a real difference in the situations of officials serving within the Community and those serving in non-member countries, one that justified different treatment. While the former have to bear all their accommodation costs and, as a general rule, 20% of their medical expenses, the latter do not have to bear either of these, since in accordance with the provisions of Annex X their health expenses are covered in full and the institution either provides them with appropriate accommodation or reimburses their hotel expenses.

23 As the Court of First Instance rightly held (paragraph 47 of its judgment), since the underlying rationale of the system is the need to apply the weighting only to amounts which are likely to be spent in the place of employment, it is reasonable that that weighting should not automatically apply to the part of the remuneration of an official serving in a non-member country corresponding to the part of the

remuneration of an official serving within the Community which is spent on accommodation and health, since, unlike the latter, an official serving in a non-member country will be unable to incur such expenditure at the place of employment.

24 It is important to note that the application of the weighting system is intended to ensure that purchasing power is maintained for officials who perform their duties in countries other than Belgium and Luxembourg. In the case of countries, in this case a non-member country, where the cost of living is higher than in Belgium or Luxembourg, the application of the weighting effectively amounts to revaluing the nominal salary in Belgian francs before converting it into the currency of the non-member country in question.

25 If, notwithstanding the fact that a substantial part of the living expenses of officials serving in non-member countries is defrayed, the weighting were applied to the whole of their salary in Belgian francs, that would constitute a breach of the principle of equality of remuneration as between officials, since officials serving in non-member countries would in fact receive a higher remuneration than their colleagues serving within the Community.

26 As to the evaluation at 20% of the part of his salary which an official serving within the Community is likely to spend at the place of employment on accommodation and health, the Court of First Instance has shown convincingly (paragraph 48 of its judgment) that such an evaluation is reasonable. First, that figure relates to the 15 to 20% of the remuneration of officials serving in non-member countries which, before Annex X came into force, corresponded to the accommodation contribution which officials had to pay to their institution in order for it to provide them with accommodation. Second, the figure of 20% corresponds to the size of the 'accommodation' item in the weighting structure of officials' consumption and hence to the weight accorded to the accommodation item in the calculation of the weightings for given places of employment.

27 It follows from the foregoing that the Court of First Instance did not commit any error of law in holding that the Commission's practice with respect to remunera-

tion of officials serving in non-member countries, objectively justified, did not infringe the provisions of Article 62 of the Staff Regulations and thus did not deprive the appellant of part of her remuneration.

28 Consequently, the first part of the single plea put forward by the appellant must be rejected.

The alleged failure to respect private life

29 The appellant, relying on Article 8 of the European Convention on Human Rights and Article 12 of the Universal Declaration of Human Rights, submits that as an official she has the right to respect for her private life. The fact of being obliged under Article 1 of the internal directives to submit a reasoned request in order to obtain over 80% of the remuneration in the currency of the country of employment constitutes, in her opinion, an interference with an official's private life and does not correspond to any pressing social need for the purposes of Article 8 of the European Convention on Human Rights. By dismissing Mrs Scaramuzza's application, the Court of First Instance is said to have endorsed a Commission procedure which infringes the right of officials to respect for their private life.

30 It must be held that although the Court of First Instance did not expressly state its reasons for rejecting this plea, it follows from the judgment that the plea was not put forward separately but was incorporated in the plea alleging a breach of the principle of equivalence of purchasing power (paragraph 27 of the judgment) and was rejected with that plea.

31 The Court of First Instance could indeed have set out its reasoning more fully on this point, especially as it is settled case-law that fundamental rights, such as the right to respect for private life under Article 8 of the European Convention on Human Rights, are an integral part of the general principles of law, the observance

of which the Court ensures (see, in particular, the judgment in Case C-260/89 *ERT* [1991] ECR I-2925, paragraph 41).

32 However, the appellant has merely challenged Article 1 of the internal directives in so far as it requires a properly reasoned request for the payment of over 80% of remuneration in the currency of the country of employment. She has not shown that she would have been obliged to give reasons which were so detailed that they would have constituted a breach of her fundamental right to respect for private life.

33 In those circumstances, the Court of First Instance cannot be criticized, nor indeed does the appellant criticize it, for rejecting a specific plea without expressly stating its reasons.

34 Since the plea alleging failure to respect private life must also be rejected, therefore, the appeal must be dismissed in its entirety.

Costs

35 Under Article 70 of the Rules of Procedure, in proceedings between the Communities and their servants the institutions are to bear their own costs. However, the second paragraph of Article 122 of those Rules provides that that rule shall not apply to an appeal brought by an official or other servant of an institution. In such proceedings Article 69(2) of the Rules of Procedure must therefore be applied, under which the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. In the present case, since the appellant has been unsuccessful, she must be ordered to pay the costs of the present proceedings.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. Dismisses the appeal;

2. Orders the appellant to pay the costs of these proceedings.

Schockweiler Mancini Murray

Delivered in open court in Luxembourg on 20 October 1994.

R. Grass F. A. Schockweiler

Registrar President of the Second Chamber