JUDGMENT OF THE COURT
1 October 1987 *

In Case 84/85

United Kingdom, represented by B. E. McHenry of the Treasury Solicitor's Department, Queen Anne's Chambers, London, acting as Agent, assisted by Francis Jacobs QC, with an address for service in Luxembourg at the British Embassy, 28 boulevard Royal,

applicant,

v

Commission of the European Communities, represented by Julian Currall, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, also a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for a declaration that Decision COM(84) 1941 of the Commission of 19 December 1984 is void in so far as that decision purported to apply reductions of UKL 13 083 004 to grants from the European Social Fund to the United Kingdom in respect of measures for young people under 25,

THE COURT,

composed of: Y. Galmot, President of Chamber, acting as President, T. Koopmans, O. Due, U. Everling, K. Bahlmann, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias, Judges,

Advocate General: J. L. da Cruz Vilaça
Registrar: B. Pastor, Administrator

having regard to the Report for the Hearing as supplemented further to the hearing on 1 April 1987,

* Language of the Case: English.

after hearing the Opinion of the Advocate General delivered at the sitting on 16 June 1987,

gives the following

Judgment

1 By application lodged at the Court Registry on 2 April 1985, the United Kingdom brought an action under the first paragraph of Article 173 of the EEC Treaty for a declaration that Commission Decision COM(84) 1941 of 19 December 1984 was void, in so far as it purported to apply reductions totalling UKL 13 083 004 to grants from the European Social Fund ('the Fund') to the United Kingdom in respect of measures for young people under 25.

2 Pursuant to Decision 83/516/EEC of 17 October 1983 on the tasks of the European Social Fund (Official Journal 1983, L 289, p. 38), the Council adopted Regulation (EEC) No 2950/83 of 17 October 1983 (Official Journal 1983, L 289, p. 1), Article 2 of which provides that the assistance granted in respect of qualifying expenditure is to be equal to 15% of the average gross wage or salary of industrial workers in the Member State concerned. According to Article 2 (2),

'Before 1 August each year the Commission shall determine the amounts of assistance to be granted per person and per unit of time for each Member State in the following financial year and shall publish them in the *Official Journal of the European Communities*'.

By virtue of Article 10 (3) of the regulation, for the financial year 1983 that date was put back to 1 December 1983.

3 On the basis of the abovementioned Council measures the Commission determined, by Decision 83/621/EEC of 30 November 1983 (Official Journal 1983, L 350, p. 25), the amounts of assistance from the Fund towards expenditure on recruitment and employment for the 1984 financial year per person and per week for each Member State. The amount determined for the United Kingdom was UKL 19.50.

4 The United Kingdom submitted its applications regarding expenditure for 1984 on 13 March 1984, pursuant to Articles 4 (1) and 10 (4) of Regulation No 2950/83. The main job creation scheme in the United Kingdom eligible for support from the Fund was the 'Community Programme' administered by the Manpower Services Commission. The United Kingdom applications also related to similar schemes operated by local authorities. After those applications and the applications of other Member States for 1984 had been examined in June 1984 by the Advisory Committee, the Commission adopted a decision on the majority of the applications on 23 July 1984. That Decision, No COM(84) 1076, was not published but was notified to the Member States in August 1984. It consisted of a single operative article followed by extremely voluminous individual decisions. The following note was appended to those decisions:

'In so far as certain of these amounts concern recruitment or employment operations under the terms of Commission Decision 83/621/EEC of 30 November 1983 and the number of hours actually worked per week has not yet been indicated, these amounts are reckoned as being based on full-time working. In the case of part-time work, these amounts will be reduced proportionally to the hours actually worked at the payment stage.'

5 After receiving that decision, the United Kingdom Department of Employment complained to the Commission that some of the United Kingdom's applications had not been included, in particular support for the Community Programme, and challenged the decision in so far as part-time work was concerned. That complaint was followed by an exchange of correspondence between the Department and the Commission.

6 On 19 December 1984, the Commission adopted a further decision, No COM(84) 1941, replacing the decision of 23 July 1984, which contained the following recital in its preamble:

'Whereas it is necessary to recalculate recruitment aids both for half-time operations and for operations relating to the self-employed and . . . such recalculation releases additional appropriations . . . '.

The decision also contained a revised version of the note concerning reductions for part-time work:

'Where any of these amounts are in respect of recruitment and employment operations and are covered by Decision 83/621/EEC of 30 November 1983, the relevant flat rate applies to a full-time job.

For half-time work the value of the flat rate is halved.'

7 That decision also covered aid for the Community Programme and aid for similar schemes for young people administered by local authorities, but rejected as ineligible certain parts of those programmes, in a total amount of UKL 13 083 004. The reductions resulted from a calculation based on the total number of hours actually worked, as notified by the United Kingdom, converted into working weeks on the basis of a 40-hour week.

8 Reference is made to the Report for the Hearing for a more detailed account of the legal background to the dispute, the facts of the case and the arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

9 In support of its claim that the contested decision should be declared partially void, the United Kingdom relies upon a number of submissions, including breach of the principle of the protection of legitimate expectations.

10 In the first place, it must be emphasized that the Commission stated, in its pleadings, that it was established practice to reduce the amounts of assistance in cases of part-time work. However, at the hearing it conceded that that was not the case and that at least for three national programmes involving part-time work it had granted the full amount of assistance from the Fund. Accordingly, the Commission's defence is limited to the contention that when the United Kingdom submitted its applications to the Fund it already knew or was in a position to know that, for 1984, the number of hours actually worked by the participants in a scheme was important for determination of the amounts repayable.

11 The first limb of the United Kingdom's submission concerning legitimate expectations is based on the argument that when, by Decision 83/621, the Commission,

pursuant to Article 2 (2) of Regulation No 2950/83, determined the amounts of assistance from the Fund for 1984 per person and per week, it was not entitled to define the term 'week' as a full-time working week but was under an obligation to interpret it as a 'calendar week'.

12 It should be noted that the expression 'unit of time' used in Article 2 (2) of Regulation No 2950/83 left a number of possibilities open to the Commission. Thus, it could have taken an hour as the unit of time, the result of which would, incontestably, have been less assistance for a 20-hour working week than for a 40-hour working week. It could also, as it did for the 1985 financial year in its Decision 84/429 of 27 July 1984 (Official Journal 1984, L 241, p. 23), have fixed the unit of time as a week, whilst at the same time stating that 'as regards part-time operations, the amounts shall be calculated in proportion to the number of hours worked'.

13 There is no such express provision in Decision 83/621. Accordingly, it is necessary to consider the second limb of the abovementioned United Kingdom submission to the effect that in that decision the Commission actually used the term 'week' as meaning a 'calendar week'.

14 In that connection, it must be emphasized that, on a purely literal interpretation, the term does not mean a '40-hour working week'. Rather, it must be interpreted as meaning a 'calendar week', as is shown in particular by an historical analysis. By using the words 'per person and per week', the Commission merely repeated those used in Article 1 (2) of Council Regulation No 3039/78 (Official Journal 1978, L 361, p. 1), which applied until 1983. When that provision was in force, the Commission never reduced the amounts of assistance in cases of part-time work but, on the contrary, granted the full amount of assistance from the Fund for at least three national programmes involving part-time work, as has already been stated. Accordingly, it is necessary to start from the premise that the Commission intended, by using the same term, to enact legislation having the same meaning as before. Moreover, that finding is consistent with the explanations given by the Commission at the hearing to the effect that, at the end of 1983, it was aware of the possibility of introducing reductions of the kind at issue, but was hesitant to do so.

15 On the other hand, the Commission asserts that it indicated, in due time for the 1984 financial year, that it had a different intention and that the United Kingdom was aware of this. In that connection, it refers in the first place to the form contained in Annex I to Commission Decision 83/673 (Official Journal 1983, L 377, p. 1), on which it was necessary to 'indicate the average length of participation per person (weeks and hours per week) in the operation' and, in the second place, to a working document forwarded to the Permanent Representatives of the Member States on 26 September 1983, according to which the amount of assistance per person and per week indicated in Decision 83/621 was calculated by multiplying the average gross hourly earnings of workers in national currency by the average length of the working week in the Member State concerned.

16 As regards the abovementioned form, it should be noted that similar information was requested on the forms contained in Annexes 1 to 9 of Commission Decision 78/742 (Official Journal 1978, L 248, p. 1), which applied until 1983; on those forms it was necessary to state whether the methods were full-time or part-time or of the day-release type, and also to indicate the length of the courses (in hours). The change in the wording used on the various forms does not permit the inference that the interpretation to be given to the term 'per week' should be different from the previous interpretation, particularly since the information in question could be of importance in considering the eligibility of the programme concerned.

17 Finally, contrary to the Commission's contention, the abovementioned working document likewise gave no grounds for concluding that the Commission would depart from its previous practice. Indeed, although it was appropriate, for the purpose of the calculation provided for in that document, to take account of the duration of the working week in so far as the average hourly earnings were multiplied by the number of hours to determine the average weekly earnings, that had nothing to do with the method by which the amount of assistance from the Fund was to be determined in any given case.

18 Accordingly, Decision 83/621 must be interpreted as meaning that no reduction is envisaged therein in respect of part-time work.

19 According to the third limb of the submission, even if the Commission was entitled to decide that the amounts determined were to apply only to a full-time working

week, it could not adopt such a decision retroactively without infringing the principle of the protection of legitimate expectations.

20 In that connection, it must first be emphasized that, contrary to the Commission's contention, the United Kingdom had no way of knowing at the beginning of the 1984 financial year that the reductions at issue would be made in respect of that year, since the only relevant provision at that time had to be interpreted in the opposite sense and the guidelines for the years 1984 to 1986 published pursuant to Article 6 (1) of Decision 83/516 on 10 January 1984 (Official Journal 1984, C 5, p. 2) only provided for reductions on the basis of the available appropriations.

21 In addition, it must be remembered that Articles 2 (2) and 10 (3) of Regulation No 2950/83 provide the Member States with a guarantee that the Commission will adopt a decision as to the amount of assistance concerned before a specified date. Those provisions evince the Council's concern that the Member States should have at their disposal, in due time, all the information that they need to plan their own grant programmes. Moreover, the Commission complied with those time-limits by issuing, for the 1984 financial year, Decision 83/621 determining that amount per person and per week and, for the 1985 financial year, Decision 84/429, which in addition to determining that amount provided for a reduction in the case of part-time operations.

22 Accordingly, it is necessary to consider whether it was permissible to introduce those reductions during the 1984 financial year in respect of that same year, as was done by Decisions COM(84) 1076 and COM(84) 1941, or whether those implementing decisions frustrated such legitimate expectations as the United Kingdom might have entertained by virtue of the basic decision, No 83/621.

23 In that connection, it should be pointed out that the Member States allocate the national grants likely to qualify for assistance from the Fund before that assistance is actually provided towards the end of the financial year. However, the Commission points out that it is only after receiving a detailed report on the relevant operations after they have been carried out that it is possible to calculate the precise amount of eligible expenditure and infers from this that it has a certain discretion regarding the best way of managing the Fund. Although that view

cannot be disputed in principle, it is none the less true that the Commission continues to be bound by the relevant Council regulation and by its own decision, No 83/621, the correct interpretation of which has been given above.

24 The Commission also asserts that the Member States cannot in any event count upon receiving from the Fund fixed sums corresponding to the amounts sought in their applications, since reductions are always possible, indeed probable, depending on the available appropriations.

25 That argument cannot be upheld. A legitimate expectation may arise notwithstanding the circumstances referred to by the Commission; there may be an expectation that the amount applied for will be received, subject only to a reduction based on available appropriations as provided for in the guidelines issued by the Commission at the beginning of the year, whereas, as a result of the practice followed by the Commission in this case, the amount received by the United Kingdom would be reduced in proportion to the number of hours actually worked and might be reduced a second time on the basis of the available appropriations.

26 Accordingly, it must be held that the United Kingdom could legitimately expect that the Commission's practice would not be changed during the course of a financial year so as to take effect in respect of the same year.

27 Since it failed to respect that legitimate expectation, the contested decision must be declared void, and it is therefore unnecessary to consider the United Kingdom's other submissions.

Costs

28 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to pay the costs; since the Commission has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Declares Commission Decision COM(84) 1941 of 19 December 1984 void in so far as it purports to apply reductions of UKL 13 083 004 to grants from the European Social Fund to the United Kingdom in respect of measures for young people under 25;

(2) Orders the Commission to pay the costs.

Galmot Koopmans Due

Everling Bahlmann Moitinho de Almeida Rodríguez Iglesias

Delivered in open court in Luxembourg on 1 October 1987.

P. Heim
Registrar

Y. Galmot
President of Chamber,
acting as President