ORDER OF THE FIRST CHAMBER OF THE COURT
14 OCTOBER 1981 [1]

Jakob Flamm
v Commission and Council of the European Communities

Case 567/79 A

In Case 567/79 A

JAKOB FLAMM, residing in the Via Grazia Delledda, Ranco (Varese), Italy, represented by B. Potthast and H.-J. Rüber, of the Cologne Bar, with an address for service in Luxembourg at the Chambers of V. Biel, 18a, Rue des Glacis,

applicant,

v

1. COMMISSION OF THE EUROPEAN COMMUNITIES, represented by J. Pipkorn, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of O. Montalto, Jean Monnet Building, Kirchberg,

2. COUNCIL OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, J. Carbery, acting as Agent, assisted by Tito Gallas, with an address for service in Luxembourg at the office of D. Fontein, Director of the Legal Department of the European Investment Bank, Kirchberg,

defendants,

APPLICATION challenging the terms for repayment of building loans granted by the Commission, as amended by the latter as from April 1979 on the basis of Council Regulation No 3085/78 and No 3086/78 of 21 December 1978 (Official Journal L 369, pp. 6 and 8),

1 — Language of the Case: German.

THE COURT (First Chamber)

composed of: G. Bosco, President of Chamber, A. O'Keeffe and T. Koopmans, Judges,

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

having heard the views of the Advocate General,

makes the following

ORDER

Facts and Issues

On 24 December 1979 the applicant lodged an application supplementing his main application directed against the Council and the Commission (cf. Cases 530 to 729/79 and 781/79), in which he asks that the Court:

I. (a) Declare null and void the salary statement issued by the first-named defendant for April 1979 and its decisions of 28 September 1979 on the complaints submitted to it also in so far as those decisions concern deductions for repayment of a building loan granted by the first-named defendant, such deductions being in excess of the amount given in lire for that item if the instalments are converted at the rate which was applied on payment of the loan;

(b) Alternatively, in the case of those applicants whose contracts for building loans from the first-named defendant were "updated" in 1975, declare null and void the salary statement issued by the first-named defendant for April 1979 and its decisions of 28 September 1979 on the complaints submitted to it also in so far as those decisions concern deductions for repayment of a building loan granted by the first-named defendant, the deductions exceeding the amounts in lire paid out for that purpose up to and including March 1979 on the basis of the higher rate of exchange which was applied to the payment of the loans at the time when the contratct was modified ("updated");

(c) Rule that, in lire, the monthly repayments of the building loan should continue to correspond to the amount as stated on 1 April 1979;

(d) Alternatively, in the case those applicants whose contracts were "updated" in 1975, rule that, in lire, the monthly repayments of

the building loan are to be calculated on the basis of the exchange rate which was applied to the payment of the loans at the time when the contracts were updated;

(e) In the further alternative, declare that the applicant shall be permitted, for a period of two years after the Court's decision has become binding, to make advance repayment of his building loan on the basis of the rate of exchange applied to the payment of the loan;

(f) Order the first-named defendant to adjust the balance of the applicant's building loan to take account of the heads of claim set out at I (a) to (d) above;

(g) Order the first-named defendant to pay the applicant in Italian lire the sum outstanding after the accounts have been adjusted in accordance with head of claim I (f);

II. (a) Order the defendants to compensate the applicant for the financial damage caused to him, such compensation to be fixed at the total of the interest, calculated at the rate of 6 %, accumulated on the amount of arrears due on each instalment until such time as it is paid;

(b) Order the defendants to pay the costs of the action.

As the supplementary application falls outside the scope of the main action it has been decided, at the suggestion of the applicant and with the agreement of the Commission, to treat it as a separate action.

By a document dated 5 March 1981 the Council raised an objection of inadmissibility against the application pursuant to Article 91 (1) of the Rules of Procedure of the Court, in which it requested the Court to declare the application inadmissible in so far as it was directed against the Council and to order the applicant to pay the costs. The case was of no concern to persons other than the parties to the loan contract. As the Council was not such a party it could not be a party to the action.

The applicant's reply to the objection, contained in a document dated 23 April 1981, is that the Council was cited in the present action because the action is a supplementary one and the Council was one of the defendants in the original action. As the Council is not a defendant in the present action it is not necessary to submit argument on its objection. Should the Court take a different view the applicant states that he would discontinue his action against the Council.

Decision

The Council is neither the applicant's appointing authority nor a party to the loan contract, which refers solely to the Commission and the applicant. The Council cannot therefore be party to this action, a view which is shared by the applicant himself. The applicant has not asked to discontinue the action.

In these circumstances the Court (First Chamber) holds that it is not necessary to open the oral procedure.

The application is inadmissible in so far as it is directed against the Council and must therefore be dismissed.

Costs

According to Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs.

However, Article 70 of the Rules of Procedure states that in actions brought by servants of the Communities the institutions shall bear their own costs.

On those grounds,

THE COURT (First Chamber)

hereby orders as follows:

1. **The application is dismissed as inadmissible in so far as it is directed against the Council.**

2. **The applicant and the Council shall bear their own costs.**

Luxembourg, 14 October 1981.

J. A. Pompe
Deputy Registrar

G. Bosco
President of the First Chamber