JUDGMENT OF THE COURT (Third Chamber)
4 July 1985 *

In Case 233/83

P. Agostini and Others, officials of the Commission of the European Communities, assisted and represented by Jean-Noël Louis, of the Brussels Bar, 51 rue Langeveld, PO Box 16, 1180 Brussels, with an address for service in Luxembourg at the Chambers of Nicolas Decker, advocate at the Cour d'appel, Luxembourg, 16 avenue Marie-Thérèse, PO Box 335,

applicants,

v

Commission of the European Communities, represented by Dimitrios Gouloussis, a member of its Legal Department, acting as Agent, assisted by Claude Verbraeken, of the Brussels Bar, 341 avenue Louise, 1050 Brussels, with an address for service in Luxembourg at the office of M. Beschel, also a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION requesting the Court to

declare illegal and annul:

the salary slips issued by the defendant for December 1982, in so far as they contain statements of salary arrears paid pursuant to Council Regulation No 3139/82 of 22 November 1982 and not increased by interest in order to compensate for the financial loss suffered by the applicants, and,

in so far as is necessary, the express or implied rejection of the complaints lodged by the applicants under Article 90 (2) of the Staff Regulations;

order the defendant to compensate the applicants for the financial loss which they have incurred by the payment of a sum which the Court should fix at an amount equal to the total interest calculated by applying the normal rate to the amount of the arrears payable in respect of each due date until the actual date of payment;

* Language of the Case: French.

order the defendant to pay the whole of the costs pursuant to Article 69 (2) of the Rules of Procedure and also the expenses necessarily incurred by the parties for the purpose of the proceedings, in particular travel and subsistence expenses and lawyer's fees pursuant to Article 73 (b) of those Rules,

THE COURT (Third Chamber)

composed of: C. Kakouris, President of Chamber, U. Everling and Y. Galmot, Judges,

Advocate General: G. F. Mancini
Registrar: H. A. Rühl, Principal Administrator

after hearing the Opinion of the Advocate General delivered at the sitting on 31 January 1985,

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By application lodged at the Court Registry on 13 October 1983, P. Agostini and other officials of the Commission of the European Communities brought an action for the annulment of their salary slips for December 1982 containing statements of salary arrears paid pursuant to Council Regulation (ECSC, EEC, Euratom) No 3139/82 of 22 November 1982 (Official Journal L 331, of 26.11.1982, p. 1) and, in so far as is necessary, for the annulment of the express or implied decisions rejecting the complaints lodged under Article 90 (2) of the Staff Regulations. The applicants seek the annulment of those measures in so far as the salary arrears for the period commencing on 1 July 1980 were not increased, in spite of the loss of purchasing power resulting from the delay in payment, by interest calculated at the normal rate to which they claim to be entitled. The applicants also seek an order requiring the Commission to pay them compensatory interest on account of the loss of purchasing power.

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 thereto (Official Journal L 21, of 24.1.1981, p.18), acting on a proposal to that effect submitted by the Commission on 9 December 1980.

3 In pursuance of that regulation, on 10 February 1981 the Council adopted Regulation (Euratom, ECSC, EEC) No 397/81 fixing the tables of salaries and other components of remuneration (Official Journal L 46, of 19.2.1981, p.1).

4 On 16 March 1981 the Commission brought an action requesting the Court to declare void Regulation No 187/81 and Articles 1 (a), 2 (a), 2 (b) and the first paragraph of Article 11 of Regulation No 397/81.

5 In its judgment of 6 October 1982 in Case 59/81 (*Commission* v *Council* [1982] ECR 3329), the Court declared void Regulation No 187/81 and the aforesaid provisions of Regulation No 397/81.

6 In order to comply with that judgment, the Council adopted Regulation No 3139/82 of 22 November 1982, acting on a proposal from the Commission dated 29 October 1982.

7 The Commission, in its capacity as the appointing authority, proceeded to calculate and pay salary arrears pursuant to the aforesaid regulation.

8 Each of the applicants lodged a standard-form complaint under Article 90 (2) of the Staff Regulations contending that account had to be taken of the loss of purchasing power during the period in respect of which the arrears were paid pursuant to Council Regulation No 3139/82 and claiming default interest which, in their view, should have been paid together with those arrears.

9 Those complaints were rejected by express or implied decisions whereupon the applicants commenced these proceedings.

Admissibility

10 The Commission raises certain objections concerning the admissibility of the application which are considered below.

Nature of the salary slips

11 The Commission raises an objection of inadmissibility inasmuch as the application challenges the validity of salary slips which do not represent decisions but are simply measures implementing Council Regulation No 3139/82.

12 The applicants maintain in the first place that the salary slips did not have the effect of placing them in the situation in which they would have been if the remuneration to which they were entitled had been paid to them when it was legally due. Hence, in their view, those salary slips constitute decisions adversely affecting them and may therefore be challenged by an appeal under Article 91 of the Staff Regulations of Officials. The applicants refer to a judgment of 21 February 1974 in which the Court recognized the admissibility of actions challenging the validity of salary slips (Joined Cases 15 to 33, 52, 53, 57 to 109, 116, 117, 123, 132 and 135 to 137/73, *Schots-Kortner and Others* v *Council, Commission and Parliament* [1974] ECR 177).

13 It must be borne in mind, as the Court has stated on several occasions, most recently in its judgment of 19 January 1984 in Case 262/80 (*Andersen and Others* v *Parliament* [1984] ECR 195), that a salary statement may constitute a measure adversely affecting an official and may therefore be the subject of an action; the fact that the institution concerned is only applying the regulations in force is irrelevant in that respect. The objection raised by the Commission must therefore be rejected.

Admissibility of the action to establish liability

14 The Commission maintains that the second limb of the application, namely the action to establish the defendant's liability on the ground that Council Regulation No 3139/82 is unlawful, is in reality an action for the annulment of that regulation and, since the applicants have not challenged that regulation directly, they cannot, by bringing an action for damages, circumvent the inadmissibility of an application for annulment and achieve the same result as they would have obtained if they had brought an action for annulment.

15 In reply the applicants state that any action they might have brought for the annulment of Regulation No 3139/82 would have been inadmissible in view of the legislative nature of that measure. They emphasize that the Commission itself raised an objection of inadmissibility with regard to actions for the annulment of a Council regulation and that the objection was upheld by the Court in its judgments of 4 October 1979 in Case 48/79 (*Ooms* v *Commission* [1979] ECR 3121) and of 10 November 1981 in Case 532/79 (*Amesz and Others* v *Commission and Council* [1981] ECR 2569).

16 The applicants refer to the case-law of the Court according to which, in proceedings involving officials and relating to the legality of an act adversely affecting the applicant, the Court has jurisdiction whatever the nature of the action, and they infer that they have *locus standi* to claim both annulment and damages provided that the conditions for bringing actions under the Staff Regulations have been satisfied.

17 It must be borne in mind in that regard that, under Article 184 of the EEC Treaty, any party may, in proceedings in which a regulation is in issue, challenge its legality. The objection of inadmissibility raised by the Commission must therefore be rejected.

18 However, as the Court held in its judgment of 22 October 1975 in Case 9/75 (*Meyer-Burckhardt* v *Commission* [1975] ECR 1171), a dispute between an official and the institution by which he is employed, even if it involves an action for damages, is pursued, where it originates in the relationship of employment between the person concerned and the institution, under Article 179 of the EEC Treaty and Articles 90 and 91 of the Staff Regulations. Accordingly, the applicants have *locus standi* to submit both a claim for annulment and a claim for damages provided that they satisfy the conditions laid down by the Staff Regulations, which are the same for both means of redress.

19 It must be noted that, in this case, as is clear from the documents before the Court, the applicants claimed only default interest in their complaints and not compensatory interest which they claimed for the first time in their application to the Court. Consequently, their application is inadmissible in so far as it concerns the payment of compensatory interest.

Substance

20 As regards the substance, the case raises certain questions which should be reserved for consideration by the full Court.

Costs

21 It is appropriate at this stage of the proceedings to reserve the costs.

On those grounds,

THE COURT (Third Chamber)

before giving judgment on the substance of the case, hereby:

(1) Dismisses the application as inadmissible in so far as it contains a claim for the payment of compensatory interest;

(2) Refers the other claims put forward by the applicants to the full Court for consideration of the substance;

(3) Reserves the costs.

Kakouris Everling Galmot

Delivered in open court in Luxembourg on 4 July 1985.

P. Heim
Registrar

C. Kakouris
President of the Third Chamber