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

In Case 264/83,

René Delhez and Others, officials of the Commission of the European Communities employed in Brussels,

R. Besenthal and Others, officials of the Commission of the European Communities employed at Geel,

M. Faes, a member of the temporary staff of the Commission of the European Communities employed at Geel,

M. Beers and Others, officials of the Commission of the European Communities employed at Petten,

R. Schnitzler, an official of the Commission of the European Communities employed in Luxembourg,

H. C. Herold and Others, officials and members of the temporary staff of the Commission of the European Communities employed at Ispra,

assisted and represented by Georges Vandersanden, of the Brussels Bar, avenue des Klauwaerts 38, 1050 Brussels, with an address for service in Luxembourg at the Chambers of J. Biver, 2 rue Goethe,

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, avenue Louise 341, 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,

* Language of the Case: French.

APPLICATION requesting the Court to:

annul the salary slips for December 1982 in respect of salary arrears inasmuch as Council Regulation No 3139/82 of 22 November 1982 under which those arrears were paid is illegal;

in so far as is necessary, declare void the Commission's letter of 29 June 1983 expressly rejecting the applicants' complaints;

award the applicants compensation for the loss of purchasing power and default interest in respect of each monthly financial supplement on the basis of the settlement of the arrears owed;

order the defendant to pay the whole of the costs,

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 28 November 1983, R. Delhez and other officials of the Commission of the European Communities, grouped according to their place of employment, namely Brussels, Geel, Petten, Luxembourg and Ispra, brought an action for the annulment of their salary slips for December 1982 in respect 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 Commission's express decision of 29 June 1983 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 from 1 July 1980 to 30 November 1982 were not increased, by default interest calculated according to the laws in force in the various places of employment or by any other uniform method accepted by the Court. The applicants also seek an order requiring the Commission to pay them compensatory interest on account of the loss of purchasing power in the intervening period.

2 On 20 January 1981 the Council adopted, pursuant to Article 65 of the Staff Regulations, 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), departing from the corresponding proposal 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 19.1.1981, p. 1).

4 On 16 March 1981 the Commission brought an action requesting the Court to declare void Regulation 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 proceeded to calculate and pay the salary arrears for the period from 1 July 1980 to 30 November 1982 pursuant to that regulation.

8 Between December 1982 and the middle of March 1983, 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 On 29 June 1983 the Commission expressly rejected those complaints. Identical letters of rejection were received between 6 and 8 July 1983 by the officials employed in Brussels, Geel, Petten and Luxembourg and at the beginning of September 1983 by the officials and temporary servants employed at Ispra. The applicants subsequently commenced these proceedings.

Admissibility

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

Application out of time

11 In its first objection, the Commission maintains that only the application of H. C. Herold and his colleagues has been shown to be admissible, having regard to the time-limits prescribed by Article 91 (2) of the Staff Regulations of Officials, whereas R. Delhez and Others, R. Besenthal and Others, M. Beers and Others, M. Faes and R. Schnitzler have failed to show that they instituted proceedings within the period prescribed by the Staff Regulations since their application was lodged at the Court Registry on 28 November 1983, and they state that they received the letter rejecting their complaint between 6 and 8 July 1983.

12 The applicants emphasize that the officials employed in Brussels, Luxembourg, Geel and Petten received a reply to their complaints between 6 and 8 July 1983, whereas those employed at Ispra did not acknowledge receipt of the Commission's reply until between 28 August and 9 September 1983. They maintain that a collective application, submitted by several hundred members of staff working in different places of employment, directed against the same institution and challenging the same measure, must be considered as a whole in order to determine whether it is admissible; the applicants not employed at Ispra learned of

the rejection of their complaints prematurely, inasmuch as their complaints were rejected prior to the date of the last decision rejecting complaints. Consequently, such knowledge cannot cause the periods for the submission of applications to start to run.

13 The applicants point out that the officials not employed at Ispra had preferred to lodge a single application together with those who are employed there because all the applicants received, albeit at intervals, the same reply rejecting their complaints for the same reasons. They consider that consolidated proceedings initiated by a single application contribute to the rational organization of the procedure by simplifying it and by assembling all the arguments in one and the same application. Finally, they note that only 29 applicants out of a total of 302 are not employed at Ispra and that this consideration influenced their decision not to take action until their colleagues at Ispra were in a position to do so in order to lodge a single collective application.

14 The applicants therefore consider that the date on which the period for instituting proceedings starts to run should be the date of receipt of the last rejection of a complaint, since it follows from the collective nature of the application that the earlier replies rejecting the complaints of the applicants not employed at Ispra should not be regarded as the defendant's final standpoint which causes the period for instituting proceedings to start to run.

15 That submission cannot be accepted. The question whether an application has been filed within the period prescribed by Article 91 of the Staff Regulations of Officials, and is in that respect admissible, is considered in relation to each of the applicants viewed individually. The submission of a collective action cannot affect the application of that rule.

16 It must be noted, that at the Court's request, the Commission has furnished proof in support of its objection that certain applicants were out of time, from which it is apparent that the applicants Ian Amesz, Severino Baldo, Roger Bardina, Martine Beers, Johan Bekkering, Werner Bergmann, Franco Bo, Christian Bourgeois, K. H. Cloes, Serge Crutzen, Marinus De Groote, R. Delhez, Hermann Dietz, Marie-Thérèse Dubrulle, Dieter Droste, Lucien Duhannoy, Claude Dupont, M. Faes, Jacob Flamm, Paolo Fenici, J. Franchomme-Sant, Roland Gillot, Maria D. Giardina, H. Hansen, Hans Hasen Jager, Michel Jamet, Julius Jung, Udo Jung,

Carmen Kind, Herbert Kind, Paul Klopf, Walter Konrad, E. Lang, Wolfgang Leidert, François Leroy, A. Lohoest, Wilhelm Matthes, Machiel Mol, Peter Moerk-Moerkenstein, W. C. H. Nagal, André Piavaux, Gianluigi Prosdocini, F. Quick, Helmut Remenschneider, Hubert Ruts, Robert Schnitzler, Bernard W. M. Seysener, Iain Sepherd, Bastiaan Stal, Harry Van De Beek, V. Verdingt and Claude Vinche submitted their applications either after the expiry of the three-month period following the receipt of the reply from the Commission rejecting their complaint, or after the three months following the rejection of their complaint by implication as a result of the fact that the prescribed period expired without their having received an express reply to their complaint.

17 The objection raised by the Commission must therefore be upheld as regards the abovementioned applicants and rejected as regards the others.

Nature of the salary slips

18 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.

19 The applicants maintain, in the first place, that the salary slips for December 1982 did not include compensation both for monetary erosion and the loss of purchasing power and for the delay in payment, thereby adversely affecting their rights and interests and, secondly, that in this case the failure in the contested salary slips to provide for compensation is the result of the adoption and the application of Regulation No 3139/82 which in their view is illegal.

20 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

21 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 it 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.

22 In reply the applicants state that they seek both the annulment of the individual measures adversely affecting them, namely the contested salary slips, on the ground that Council Regulation No 3139/82 is unlawful, and damages by way of compensation for the loss which they claim to have suffered as a result of the Council's maladministration which delayed the adoption of that regulation.

23 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.

24 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.

25 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

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

Costs

27 It is appropriate at this stage of the proceedings to reserve the costs, except as regards the applicants whose application is dismissed as inadmissible. 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, institutions are to bear their own costs in proceedings by servants of the Communities.

On those grounds,

THE COURT (Third Chamber)

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

(1) Dismisses the application as being out of time in the case of Ian Amesz, Severino Baldo, Roger Bardina, Martine Beers, Johan Bekkering, Werner Bergmann, Franco Bo, Christian Bourgeois, K. H. Cloes, Serge Crutzen, Marinus De Groote, R. Delhez, Hermann Dietz, Marie-Thérèse Dubrulle, Dieter Droste, Lucien Duhannoy, Claude Dupont, M. Faes, Jacob Flamm, Paolo Fenici, J. Franchomme-Sant, Roland Gillot, Maria D. Giardina, H. Hansen, Hans Hasen Jager, Michel Jamet, Julius Jung, Udo Jung, Carmen Kind, Herbert Kind, Paul Klopf, Walter Konrad, E. Lang, Wolfgang Leidert, Franßois Leroy, A. Lohoest, Wilhelm Matthes, Machiel Mol, Peter Moerk-Moerkenstein, W. C. H. Nagal, André Piavaux, Gianluigi Prosdocini, F. Quick, Helmut Remenschneider, Hubert Ruts, Robert Schnitzler, Bernard W. M. Seysener, Iain Sepherd, Bastiaan Stal, Harry Van De Beek, V. Verdingt and Claude Vinche;

(2) As regards the other applicants, dismisses the application as inadmissible in so far as it contains a claim for the payment of compensatory interest;

(3) Refers the other claims put forward by the applicants referred to in paragraph 2 of this operative part to the full Court for consideration of the substance;

(4) Orders the applicants referred to in paragraph 1 of this operative part and the Commission to bear their own costs; for the rest, 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