On those grounds,

THE COURT (Second Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the parties to bear their own costs.**

Pescatore Touffait Due

Delivered in open court in Luxembourg on 21 May 1981.

A. Van Houtte
Registrar

P. Pescatore
President of the Second Chamber

OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN DELIVERED ON 9 APRIL 1981

My Lords,

Mr Reinarz was employed in the Coal and Steel Community from 1952 until 1959 when he was appointed by the EEC Commission as an official in Grade A 2. His service with the latter was terminated at his request on 1 May 1973 pursuant to Article 2 of Regulation No 2530/72 of the Council of 4 December 1972. For one year he was entitled to be paid a monthly allowance equal to his last remuneration. Thereafter by virtue of Article 3 (1) of that regulation he became entitled to an allowance equal initially to 80 % and, after 30 months

for the remainder of the period fixed by the regulation, to 70 % of his basic salary. Article 3 (3) provides for these allowances to be weighted in accordance with Article 82 (1) of the Staff Regulations for the Community country where the recipient provides proof of residence and "if the recipient of that allowance resides outside the Community countries the weighting to be applied to the allowance shall be that valid for Belgium.

The allowance shall be expressed in Belgian francs. It shall be paid on the basis of the values referred to in Article 63, third subparagraph of the Staff Regulations".

In addition the French text of the regulation provides expressly "[l'indemnité] est payée dans la monnaie du pays de la résidence du bénéficiaire".

When Mr Reinarz's service ended, Article 63 of the Staff Regulations provided that "remuneration paid in a currency other than that of the country where the Community which he serves has its provisional seat shall be calculated on the basis of the par values accepted by the International Monetary Fund, which were in force on 1 January 1965".

For one year Mr Reinarz was paid in Belgian francs into an account in Belgium where he lived. No question turns upon that payment. From 1 May 1974 he was paid in Canadian dollars in Canada where he then resided on a ranch purchased by him some years before his withdrawal from the service of the Commission. Following Article 3 (3) of Regulation No 2530/72 and Article 63 of the Staff Regulations, his allowance was converted at the rate laid down, namely 46.25 Belgian francs to one Canadian dollar. The current market exchange rate was in the region of 35 Belgian francs to the Canadian dollar. Mr Reinarz contends that over the period from 1974 to 1977 when he again began to reside in Belgium (and when once again he was paid in Belgian francs) he lost approximately one million Belgian francs because of the difference in the two rates of exchange.

By an application to the Court registered on 18 January 1980 Mr Reinarz claims (a) that the provisions of Article 3 (3) of Regulation No 2530/72 and Article 63 were not applicable to him during the period 1974 to 1977, and (b) that he should be indemnified or receive damages for the loss he has suffered on grounds of equity.

The Commission contends first that this application is inadmissible. They do so on two grounds. The first is that Mr Reinarz has not complied with the limitation provisions of Article 90 (2) of the Staff Regulations. The second is that the claim made in these proceedings is identical with that made in Case 48/76 which was dismissed by the Court on 17 February 1977 ([1977] ECR 291).

In this application (which replaces an earlier claim 732/79 which he abandoned) Mr Reinarz relies on letters sent by him to the Commission in 1978 and 1979 and on the Commission's replies. By letter dated 9 May 1978 (which was not received by the Commission until Mr Reinarz sent a copy of it under cover of a letter dated 28 November 1978) Mr Reinarz made a request pursuant to Article 90 (1) of the Staff Regulations for a decision that in

equity he should be compensated for his loss due to the conversion rate adopted by the Commission. Also as a secondary point, in case the decision he asked for was not given, he made a complaint under Article 90 (2) of the Regulations challenging the legality of the conversion rate adopted and asking that Article 3 (3) of Regulation No 2530/72 and Article 63 of the Staff Regulations should be declared void, alternatively that they should be declared inapplicable so far as he was concerned. Such provisions he said were arbitrary, discriminatory, and inequitable and the Council had failed to take the corrective measures which were necessary to protect him from loss compared with others who had continued to live in the Community. By letter dated 28 March 1978 the Commission rejected the complaint under Article 90 (2) on the basis that what had been done was fully in accord with the regulation and that the complaint was not in any event brought in time. Although the Commission referred to Mr Reinarz's claim based on equity (which was the foundation of the request under Article 90 (1)) they do not deal with it as such. Mr Reinarz's letter of 9 May 1979 is treated by the Commission entirely as a complaint.

Mr Reinarz by letter dated 22 June 1979 pointed this out. He treated the letter of 28 March 1979 as a rejection of his request for an indemnity on grounds of equity and he submitted a complaint to the Commission against that pursuant to Article 90 (2). He repeated his claims that the application of the regulation had been arbitrary and that the Commission had been negligent in not ensuring that he did not suffer because of the exchange rate which was far less favourable to him than that applied to those former officials who had remained in the Community.

By letter dated 21 December 1979 the Commission took the stand that this was a repetition of the complaint under Article 90 (2) which had already been rejected on 28 March 1979 so that it was inadmissible.

Clearly the present application to the Court is outside the period of three months, provided by Article 91 (3) of the Staff Regulations for appealing from a decision rejecting a complaint, which started to run on the receipt of the letter dated 28 March 1979. Insofar as Mr Reinarz is seeking to appeal from that decision his application is inadmissible. However, if the letter of 9 May is to be read both as a request under Article 90 (1) and as a complaint (or a complaint conditional on the request being rejected) under Article 90 (2), the letter of 28 March 1979 can fairly be read as a rejection of that request. In my opinion the letter of 9 May should be read as such a request for equitable treatment. That was rejected in my view by the letter of 28 March 1979. Alternatively it is to be treated as being rejected four months from 28 November 1979. Mr Reinarz then had three months in which to complain against the rejection. This he did on 22 June 1979.

Accordingly this present action insofar as it challenges the rejection of his complaint that he has not been treated equitably is in my opinion not barred by the limitation provisions of Article 90 or Article 91. Insofar as he seeks to appeal from the rejection of his complaint that Article 3 (3) of Regulation No 2530/72 and Article 63 of the Staff Regulations was invalid or has been wrongly applied to him, his application is out of time and should be declared inadmissible. So is his claim in the present proceedings that the Regulation was not applicable in his case — a claim in any event not raised in the complaint dated 22 June 1979.

I do not consider that the Commission is correct in its second contention that this application is in any event inadmissible because the matter has been concluded by an earlier decision of the Court in its judgment in Case 48/76. As I read the first ground of the judgment of the Court in that case it is that Mr Reinarz could not bring a case before the Court unless he had made a complaint under Article 90 (2) of the Staff Regulations. At that time he had not done so. Accordingly his case was inadmissible. Now in my opinion he has done so within the prescribed limits so far as concerns his claim that he is entitled to be indemnified or compensated on equitable grounds.

This latter claim is really put forward on the basis that the Commission followed the strict wording of Article 3 of Regulation 2530/72 and Article 63 of the Staff Regulations. He contends that this produces a result which is unfair, discriminatory and, in the light of the prevailing rates of exchange and the cost of living in Canada, was unreal. Moreover he seeks to argue that, because in 1978 by Regulation No 3085/78 of the Council of 21 December 1978 the basis of calculation was changed (so as to adopt the exchange rates used for the implementation of the general budget of the European Communities on 1 July 1979), either his allowance should be altered by analogy or the Commission should in fairness recognize its own failure to propose provisions which would enable unfairness in past payments to be rectified.

In my opinion the wording of the regulations was clear. The Commission has applied them correctly. I am not aware of any principle or rule laid down by the Court which justifies the Court in concluding that the Commission is bound in equity to pay him a sum to make up the difference between the exchange rate prescribed by the rules and that prevailing in the market even though it is clear that Mr Reinarz has received less in real terms than he would have done if he had been reimbursed in Belgian francs. I do not consider that he can rely by analogy on the provisions of Article 12 of the Protocol on the Privileges and Immunities of the European Communities or derive any benefit from the decision of the Court in Case 156/78 *Newth* v *Commission* which is reported in [1979] ECR 1941. Nor does he establish his case by his claim that there has been an infringement of the Human Rights Declaration of

Helsinki or by reference to the principle of international law, upon which he founds that a former servant of the Community is entitled to choose the country of his residence without suffering financially. Accordingly in my view his claim to be indemnified or reimbursed on equitable grounds fails.

If I had come to the view that his claim, that Article 3 (3) of Regulation No 2530/72 and Article 63 of the Staff Regulations was void or had wrongly been applied to him, was brought before the Court within three months of the Commission's rejection of his complaint, I would still have considered that such claim failed in any event. He is not entitled in my view to a declaration that Article 3 (3) of the Regulation is void. The Commission rightly concluded that he was out of time to claim that the application of the regulations to him between 1974 and 1977 was erroneous. Moreover his claim that the regulations were unlawful seems to me to be inconsistent with the reasoning of the Court in its judgment in Case 28/74 *Gillet* v *Commission* ([1975] ECR 463).

In the circumstances it does not seem necessary to express any view as to whether after such a long period of time he is in any event entitled to maintain these claims for equitable relief.

Accordingly in my opinion

(a) his claim that Article 3 (3) of Regulation No 2530/72 and Article 63 of the Staff Regulations are void or do not apply to him or have been incorrectly applied in his case is inadmissible;

(b) his claim that he is entitled in equity to an indemnity or damages calculated on the basis of the difference between the prescribed and the current rate of exchange for the Belgian franc and the Canadian dollar is admissible but should be dismissed.

In accordance with Article 70 of the Rules of Procedure the Commission should bear its own costs, whereas Mr Reinarz should bear his costs, in accordance with Article 69 (2) of those Rules.