OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN
delivered on 2 June 1988

My Lords,

Mr Pizziolo worked at the Joint Research Centre in Karlsruhe in the Federal Republic of Germany until 1 March 1970 when he was given leave on personal grounds, the period of leave to expire on 28 February 1971. At the end of that period he wanted to be reinstated, but the Commission did not reinstate him. He came first to the Court to ask that he should be reinstated with effect from 1 March 1971, but the Court refused that application (Case 785/79 [1981] ECR 969).

Instead, it asked for an expert's report as to whether Mr Pizziolo had the qualifications to fill *inter alia* another vacancy which had been advertised under the reference COM/1531/76. The experts thought that he was qualified for that vacancy and Mr Pizziolo came back to the Court. On that occasion (Case 785/79 [1983] ECR 1343), the Court found that he should have been reinstated with effect from 1 January 1977. The Court accordingly ordered the Commission to reinstate him with effect from that date. It also ordered the Commission to pay to the applicant a sum of money equivalent to the net remuneration which he would have received up to the date of his actual reinstatement if he had been reinstated on 1 January 1977, subject to deduction of net earnings received in respect of that period from any other activity.

At the same time, the Court made it clear, in paragraph 13 of the judgment, that he must make reasonable efforts to mitigate his losses, if necessary by looking for alternative employment. In fact, Mr Pizziolo went to work in Italy for an Italian company, AGIP Nucleare. From 1 January 1977 until 30 September 1983 he was paid by the Commission, in Italian lira, the difference between what he would have received, had he been reinstated on 1 January 1977, and what he received by way of salary from AGIP Nucleare. The remuneration which he would have received from the Community was treated as subject to the appropriate weighting in force in Italy.

On 24 September 1983, Mr Pizziolo informed the Commission that his employment with AGIP Nucleare would come to an end on 30 September 1983. He appears to have had no reply from the Commission until, on 24 February 1984, a telegram was sent to him which was subsequently confirmed by a letter of 27 February. That telegram offered him reinstatement in a post at the Joint Research Centre at Petten in the Netherlands. He was told that he should take up that employment as soon as was reasonably possible. In fact he took up the post as from 7 March 1984.

From 1 October 1983 when he stopped working for AGIP Nucleare until 7 March 1984, the Commission continued to pay him the difference between what he would have earned from the Commission and what he

would have earned had he continued to work for AGIP Nucleare during that period. The Commission took the stand that it would have been reasonable for him to continue working, in order to mitigate his losses, until he was actually offered employment and reinstated by the Commission.

He was not satisfied with that and so he brought the present action before the Court. He makes a number of claims for orders to be made by the Court, but, in substance, they boil down to a claim first for the full amount of compensation to be paid during the relevant period, that is, the whole salary which he would have received from the Commission had he been reinstated; and second, for an order that the payments made to him should be made in German marks with the weighting appropriate to the Federal Republic of Germany.

The first point is obviously the major point. Mr Pizziolo's case is that he could not wait until 24 February 1984 to give notice to AGIP Nucleare so that he was entitled to leave earlier having given notice and to wait for the vacancy with the Commission.

It is to be noted that it was not the Commission which specified the date when he was to take up his new appointment. It was he who fixed the date of 7 March 1984 as being a convenient date for him to begin his new work. It does not seem to me, on the evidence which is before the Court, that it can be said with confidence that when he gave notice to AGIP Nucleare he knew of the particular vacancy which was subsequently offered to him. Certainly there is no indication that anything had been said by the Commission to him that he would be offered this vacancy, nor was he given any indication as to when he was to start.

Although he may be entitled to criticize the length of time which the Commission took before finally offering him a post, the real point in this case is whether he is entitled to full compensation for that period.

In my view, not only was he bound, in accordance with paragraph 13 of the Court's judgment of 1983, to seek alternative employment, but if he found employment reasonably suitable for him with his qualifications, he was, in my view, bound to remain in it until such time as he received an offer so long as the Commission did not unreasonably drag its feet.

If he had waited until he received an offer the Commission would have been bound to give him a reasonable period to give notice to AGIP Nucleare and to take up his post. Nothing has been suggested to show that there was anything wrong with the job that he was doing, which justified him in leaving because the job was unsuitable. It does not seem to me that a reasonable period had expired by the time when he gave his notice of 24 September, in the light of the fact that he was being fully compensated.

I am not entirely satisfied that his complaints that the Commission took an over-long time, either, are fully justified. The Court did not order that he be reinstated immediately, it ordered that he be reinstated pursuant to Article 40 (4) (d) of the Staff Regulations. That inevitably

involved that the procedure laid down in the Staff Regulations would be carried out, and what he had to be offered was the first post corresponding to his grade which fell vacant in his category or service, provided that he satisfied the requirements for that post.

Accordingly, in my view, he is not entitled to say that he may have the whole of the salary which he would have had from the post which the Court ordered him to be reinstated in; he is only entitled to the difference between what he would have earned had he stayed with AGIP and what he would have received from the Commission.

The second claim, that he be paid in German marks with the weighting appropriate to the Federal Republic of Germany, is based on his contention that after leaving his job in Italy he went to live in Bad Herrenalb near to Karlsruhe.

The Commission does not accept, as a fact, that he did live there during the relevant period. The Court has been provided with a certificate of domicile relating to the date 18 October 1983. For my part, I would accept that he did live in Germany during this period. He apparently had a dwelling there and there is no evidence provided by the Commission to counter his claim, except the suggestion that his children were still at the University of Bologna. That seems to me to be a neutral factor, and I am prepared to approach the second part of the case on the basis that he did live where he says he lived.

On the other hand, it seems to me that if my opinion on the first part of the case is right and he fails on the first ground, he cannot, in any event, succeed on the second. If he did not mitigate his damage, if he did not act reasonably by leaving his job in Italy, it seems to me he cannot be compensated for any currency differences, any exchange differences or any weighting differences resulting from his personal decision to go to live in the Federal Republic of Germany.

He says, however, that apart from that, which he does not accept, he is entitled to be paid with the German weighting by analogy with a number of provisions of the Staff Regulations. He accepts that there is nothing in Article 40 which assists him, so he turns to a number of other articles. The first is Article 41, which is dealing with officials of the Community having a non-active status, persons who have become supernumerary by reason of reduction in the number of posts in their institution. He is clearly not directly one of those. He then relies on Article 63, which provides the appropriate remuneration and weighting for officials who are to be paid in the currency of the country in which they perform their duties. He clearly was not a person performing duties in such a country. Article 64 deals with officials' remuneration expressed in Belgian francs, which is to be weighted at the rate depending on living conditions in the various places of employment. At that time, he was not in employment by the Community, or, indeed, as far as one knows, in any employment in Germany. Accordingly, those articles, clearly, do not directly apply.

He then says that, in addition to being able to rely on those by analogy, he can rely on the judgment of the Court in Case 156/78, the case of *Newth* v *Commission* [1979] ECR 1941. In that case, an official was discharged under Article 50 of the Staff Regulations, and he became entitled to be paid an allowance on a reducing basis. The Court found that the applicant, who had been employed in Italy, had gone back to Belgium, and was paid with the weighting appropriate to Italy, received considerably less than an official in a similar position who had worked in and retired in Belgium. The Court found that discriminatory.

In my opinion, none of these situations, either under the Staff Regulations or in the decision in *Newth*, really assists Mr Pizziolo. I do not regard his position as being analogous to any of them. He is a person in a special category who has been held entitled by the Court to compensation, and what he is to have is sufficient money to make up the difference between the salary he should have had and what he actually received or could reasonably have received. The Court did not make any order as to the way in which his compensation should be calculated, or by reference to what particular country. But it seems to me that, the parties having accepted, apparently without any dispute, that whilst he was employed in Italy he should be given the Italian weighting, it was perfectly appropriate for the Commission to continue to pay him the compensation on the same basis as he had been receiving it and on which, if he had fulfilled his obligation to mitigate his damages, he would have continued to receive it.

Accordingly, in my opinion, this second part of the claim also fails. I would, for my part, dismiss the application and order each party to bear its own costs under Article 70 of the Rules of Procedure.