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

In Case 174/83

Frigen Amman and Others, officials of the Secretariat General of the Council of Ministers 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

Council of the European Communities, represented by John Carbery, Adviser in the Legal Department of the General Secretariat of the Council, Brussels, with an address for service in Luxembourg at the office of H. J. Pabbruwe, Director in the Legal Department of the European Investment Bank, 100 boulevard Konrad Adenauer,

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 arrears payable in respect of each due date until the actual date of payment;

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,

* Language of the Case: French.

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 16 August 1983, M. F. Amman and other officials of the General Secretariat of the Council of Ministers of the European Communities 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 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 default interest calculated at the normal rate to which they claim to be entitled. The applicants also seek an order requiring the Council 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 Council, 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 Council raises an objection of inadmissibility against one of the applicants, Lisbet Hansen, who allegedly brought an action before the Court without having submitted a complaint beforehand under Article 90 (2) of the Staff Regulations.

11 It is clear from the documents before the Court that the objection raised by the Council is well founded and must be upheld.

12 It must be borne in mind as the Court held in its judgment of 22 October 1975 in Case 9/75 (*Meyer-Burckhardt* v *Commission* [1975] ECR 1171), that 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.

13 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 standard 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

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

Costs

15 It is appropriate at this stage of the proceedings to reserve the costs, except as regards the applicant Lisbet Hansen 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 submitted by Lisbet Hansen;

(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 applicant referred to in paragraph 1 of this operative part and the Council 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