ORDER OF THE PRESIDENT
OF THE FIRST CHAMBER OF THE COURT
OF 22 MAY 1980 [1]

Renato Albini
v Council and Commission of the European Communities

Case 33/80 R

In Case 33/80 R

RENATO ALBINI, a former official of the Commission of the European Communities and nine other former officials of the Commission, represented and assisted by Raimondo Marini-Clarelli, of the Rome Bar, with an address for service in Luxembourg at the Chambers of Victor Biel, Advocate, 18 A Rue des Glacis,

applicants,

v

COUNCIL OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, John Carbery, acting as Agent, with an address for service in Luxembourg at the Office of Douglas Fontein, Director of the Legal Department of the European Investment Bank, 2 Place de Metz,

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Joseph Griesmar, and by Oreste Montalto, a member of the Legal Department, acting as Agents, with an address for service in Luxembourg at the office of its Legal Adviser, Mario Cervino, Jean Monnet Building, Kirchberg,

defendants,

APPLICATION for the adoption of interim measures ordering the defendants to desist forthwith from applying in the case of the applicants Council Regulations Nos 3085/78 and 3086/78 of 21 December 1978 (Official Journal L 369 of 29 December 1978, pp. 6 and 8) amending the Staff Regulations of Officials with particular reference to the monetary

1 — Language of the Case: Italian.

parities to be used in the payment in particular of remuneration and pensions respectively, and consequently adjusting the weightings applicable to such monetary entitlements,

THE PRESIDENT OF THE FIRST CHAMBER OF THE COURT,

on hearing the views of the Advocate General,

has made the following

ORDER

Facts and Issues

Council Regulations Nos 3085/78 and 3086/78 adjusted the monetary parities to be used in the calculation of remuneration and pensions of officials as well as the weightings applied to these. They provide as follows:

1. Remuneration paid in a currency other than Belgian francs shall be calculated on the basis of the exchange rates used for the implementation of the general budget of the European Communities on 1 July 1978, a date which may be changed at the time of the annual review of remuneration provided for in Article 65 of the Staff Regulations;

2. The weightings applied to the remuneration and pensions of officials and other servants of the European Communities are to be adjusted pursuant to the alteration of the monetary parities (Articles 1 and 2 of Regulation No 3086):

— The transferable part of the remuneration is also to be transferred at the exchange rates used for the implementation of the general budget of the European Communities on 1 July 1978;

— The amounts transferred are to be adjusted by the application of the weighting resulting from the relationship existing between the weighting fixed for the country in whose currency the transfer is made and the weighting fixed for the country where the official performs his duties.

The applicants, who are former Commission officials receiving their pension in Italy, lodged, within the specified period, a complaint within the meaning of Article 90 (2) of the Staff Regulations of Officials in order to challenge the decisions contained in the said regulations. As yet no decision has been taken on those complaints. In the meantime the applicants have brought an action for the annulment of Regulations Nos 3085/78 and 3086/78 or, in any case, a declaration that their provisions do not apply to the various applicants.

On 1 April 1980, pursuant to Article 186 of the Treaty and Article 83 of the Rules of Procedure, the applicants made an application for the adoption of provisional measures in which they ask the Court to order the suspension, with regard to them, of the operation of Council Regulations Nos 3085 and 3086/78.

The Commission submitted written observations on 22 April 1980 and the Council on 23 April 1980.

The *applicants* claim that the application of the regulations referred to above will entail a reduction by more than 50% of the amounts paid to them as pension. In fact from September 1979 the difference between the net amounts resulting from the application of the new regulations and the amount received in respect of September 1979 is reduced by 10% each month until it is completely absorbed in July 1980. Furthermore, the very serious damage suffered by the applicants, which is increasing month by month and will become stabilized as from July 1980, justifies this application and will be irreparable in the event of the main action's succeeding.

The pensioners have arranged their standard of living and entered into commitments and obligations on the basis of the resources which they thought with good reason were guaranteed to them for their entire lifetime. These resources are now reduced by more than half and the problems which this situation causes to pensioners and the difficulties which they are now compelled to face may well be imagined.

The *Commission* seeks the dismissal of the application for the adoption of interim measures on the following grounds:

— Since Application 33/80 appears to be inadmissible, the application for the adoption of interim measures must be dismissed as inadmissible;

— Article 83 (2) of the Rules of Procedure stipulates that an application to suspend the operation of any measure or for the adoption of any other interim measure must state the subject-matter of the dispute, the circumstances giving rise to urgency and the factual and legal grounds establishing a *prima facie* case for the interim measures applied for;

— The application for the adoption of interim measures does not contain any evidence of irreparable damage caused to the applicants by the application of Regulations Nos 3085 and 3086/78;

— It has been held *inter alia* that the suspension of remuneration "is ... not of such a nature ... as to cause serious or irreparable damage" to the rights and interests of the applicant (Case 62/74, *Vellozzi* v *Commission* [1974] ECR 895; Case 75/72, *Perinciolo* v *Council* [1972] ECR

1202; and Case 48/79, *Ooms and Others* v *Commission*, [1979] ECR 1705);

— Nothing in the applicants' arguments leads to the belief that there are in this case "circumstances giving rise to urgency". Six months have already gone by since the disputed regulations were brought into force. It is difficult to understand, in these circumstances, why the applicants should suddenly discover, at the the beginning of April, that the matter will admit of no delay.

The *Council* primarily recalls that it has raised an objection of inadmissibility against the main action and confirms the arguments which it submitted when doing so.

The measures challenged are in fact Council regulations, which puts them outside the scope of application of the remedies available under Articles 90 and 91 of the Staff Regulations. Under that system, which derogates from the ordinary law laid down in Article 173 of the Treaty, acts adversely affecting an official and capable of being submitted in the Court are in fact defined as being acts within the meaning of Article 90 (2), that is to say either a decision taken by the appointing authority or where the said authority has failed to "adopt a measure prescribed by the Staff Regulations". Regulations Nos 3085 and 3086/78 lie entirely outside that definition of an act adversely affecting an official and may not therefore be referred to the Court under the remedies available under the Staff Regulations, which are intended to enable the Court to review acts and omissions by the appointing authority which are likely to affect the position of officials under the Staff Regulations. Moreover the Council is not the appointing authority in regard to the applicants and it has never received from them a complaint within the meaning of Article 90 (2) of the Staff Regulations.

The Council then puts forward the same arguments as the Commission regarding the application for the adoption of interim measures.

In the absence of the President of the Court, the President of the First Chamber decided to hear the oral submissions of the parties on 19 May 1980.

Decision

1 The applicants ask the Court to order that the application of Council Regulations Nos 3085/78 and 3086/78 of 21 December 1978 (Official Journal L 369 of 29 December 1978, pp. 6 and 8) be suspended in regard to them.

2 These regulations, which adjust the monetary parities to be used in the calculation of remuneration and pensions of officials as well as the weightings applied to them, is claimed to cause a reduction of more than 50% in the

amounts paid to the applicants as pensions, thus causing them serious financial damage.

3 Article 83 of the Rules of Procedure of the Court provides that:

— "An application to suspend the operation of any measure adopted by an institution ... shall be admissible only if the applicant is challenging that measure in proceedings before the Court." That condition is fulfilled in the case of the applicants.

— An application of this kind is required to "state the subject-matter of the dispute, the circumstances giving rise to urgency and the factual and legal grounds establishing a *prima facie* case for the interim measures applied for".

4 In numerous previous cases the Court has held that an applicant seeking the adoption of interim measures must be in such a position as to be likely to suffer irreparable damage.

5 The application by the applicants does not show that they are suffering damage which cannot be made good by the definitive judgment. If the applicants succeed they will be entitled to the difference between the net amounts resulting from the application of Regulations Nos 3085/78 and 3086/78 and the pensions payable before those regulations came into force.

6 If, on the other hand, the applicants are not successful and a suspension of the operation of Regulations Nos 3085/78 and 3086/78 has in the meantime been ordered, the Commission would be empowered under Article 85 of the Staff Regulations of Officials to recover the sums overpaid. This situation might also entail financial difficulties for the applicants.

7 Consequently the application for the adoption of interim measures must be dismissed.

Costs

8 It is appropriate, at this stage, to reserve costs.

On those grounds,

THE PRESIDENT OF THE FIRST CHAMBER OF THE COURT,

as an interlocutory decision,

hereby orders as follows:

1. **The application for the adoption of interim measures is dismissed.**

2. **The costs are reserved.**

Luxembourg, 22 May 1980.

A. Van Houtte
Registrar

A. O'Keeffe
President of the First Chamber