JUDGMENT OF THE COURT
3 July 1985 *

In Case 3/83

Roland Abrias and 267 other officials and servants of the Commission of the European Communities, represented by G. Vandersanden, of the Brussels Bar, 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 J. Pipkorn, a member of its Legal Department, acting as Agent, assisted by R. Andersen, of the Brussels Bar, with an address for service in Luxembourg at the office of O. Montalto, Jean Monnet Building, Kirchberg,

defendant

supported by

The Council of the European Communities, represented by J. Carbery, an adviser in its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of H. J. Pabbruwe, Director of the Legal Affairs Directorate of the European Investment Bank, 100 boulevard K. Adenauer,

by

1. **The European Public Service Union**, Luxembourg, 2A rue des Capucins, Luxembourg, in the person of its president, S. Picciolo, and its secretary general, A. Buick,

2. **Santo Picciolo**, an official of the Commission of the European Communities, and

3. **Adam Buick**, an official of the Commission of the European Communities,

represented by J. N. Louis, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of N. Decker, 16 avenue Marie-Thérèse,

* Language of the Case: French.

and by

1. **The European Public Service Union**, Brussels, 9 rond-point Schumann, Brussels, in the person of its president, A. M. Grynberg, and its secretary general, K. Mellor,

2. **Arlette M. Grynberg**, an official of the Commission of the European Communities, and

3. **Keith Mellor**, an official in the General Secretariat of the Council of Ministers of the European Communities,

represented by J. N. Louis, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of N. Decker, 16 avenue Marie-Thérèse,

interveners,

APPLICATION for the annulment of salary statements for February 1982, to which was applied, for the first time, the exceptional crisis levy introduced by Council Regulation No 3821/81 of 15 December 1981 amending the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities, and by Council Decision No 81/1061 of the same date amending the method of adjusting the remuneration of officials and other servants of the Communities (Official Journal 1981, L 386, pp. 1 and 6),

THE COURT

composed of:

Lord Mackenzie Stuart, President, G. Bosco, O. Due and C. Kakouris, Presidents of Chambers, P. Pescatore, T. Koopmans, U. Everling, K. Bahlmann and R. Joliet, Judges,

Advocate General: M. Darmon
Registrar: P. Heim

after hearing the Opinion of the Advocate General delivered at the sitting on 6 March 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 an application lodged at the Court Registry on 7 January 1983, Roland Abrias and 267 other officials and servants of the Commission brought an action for the annulment of the salary statements which they had received for February 1982.

2 Those salary statements reflected, for the first time, the application to the applicants of Council Regulation No 3821/81 of 15 December 1981 and of Council Decision No 81/1061 of the same date (Official Journal 1981, L 386, pp. 1 and 6). The applicants claim that those two measures are invalid and that the salary statements to which they were applied are therefore also invalid.

3 The legal context of the present case will be better appreciated if it is borne in mind that by Decision No 81/1061 the Council, in reliance upon Article 65 of the Staff Regulations and the corresponding provisions of the Conditions of Employment of Other Servants, adopted a method of adjusting the remuneration of officials and other servants of the Communities which replaces the method used since 1976 and applies to the period from 1 July 1981 to 30 June 1991. Under the new method the following factors are taken into consideration in the annual review of salary levels: (a) the joint cost-of-living indexes; (b) the specific indicator, that is to say, the change in the purchasing power of the salaries of national civil servants; (c) the economic and social situation, considered in the light of objective data to be supplied by the Commission; and (d) recruitment needs.

4 The last recital in the preamble to Decision No 81/1061 states that the particular difficulties of the economic and social situation make it advisable to introduce an exceptional levy on salaries, pensions and termination-of- service allowances at the same time as adjustments are made to remuneration under the new method.

5 The exceptional levy was actually introduced by Council Regulation No 3821/81. Article 1 of that regulation inserts a new Article 66a in the Staff Regulations and Article 2 inserts corresponding provisions in the Conditions of Employment of Other Servants. The preamble to the regulation states that the levy is justified by 'the specific difficulties of the economic and social situation' and is to be assessed on the basis 'of the economic data reflecting the average gaps recorded in the Member States' between, on the one hand, the trend in real *per capita* wages and salaries and, on the other, the trend in the following factors: (a) total productivity (gross domestic product in volume terms per person employed) and (b) productivity available for distribution, that is, productivity corrected for terms of trade; and (c) productivity per member of the active population, including persons in employment and the unemployed.

6 Paragraph (1) of Article 66a provides that the levy is to be temporary and is to be applied for the same period of 10 years as the new method provided for in Decision No 81/1061 and that, by way of derogation from Article 3 (1) of Regulation No 260/68, it is to apply to net salaries, pensions and termination-of-service allowances. Paragraph (2) determines the rate of levy, which is to increase from 2.54% to 12.7% over the first five years. With respect to the subsequent years, it is provided that 'The rate of 12.7% for the fifth year shall continue to apply . . . unless the Council, acting on a proposal from the Commission by the qualified majority provided for in the first indent of the second subparagraph of Article 148 (2) of the Treaty establishing the European Economic Community and after consultation of the European Parliament, decides otherwise'.

7 Paragraph (3) determines the remuneration to which the levy is applied. For officials in active employment, on secondment or on leave for military service, the levy is applied to the basic salary after deduction of (a) tax and social security and pension contributions and (b) a fixed amount equal to the basic salary of an official in Grade D 4, Step 1. The latter amount is deducted in order to ensure that the levy affects the salaries of officials in the lowest grades only to a limited extent or not at all. Moreover, the fixed amount to be deducted is doubled for pensioners, and the levy does not apply to them for the first five years.

8 Paragraph (4) lays down the principle that the levy is not to be applied if it would bring salaries, pensions or termination-of-service allowances below the amounts payable before the introduction of the levy. Paragraph (5) provides that each new

rate of the levy is to be introduced at the same time as the decision on the annual adjustment of remuneration in accordance with the method laid down in Decision No 81/1061.

9 Finally, paragraph (6) provides that the levy is to be deducted monthly at source and that the proceeds are to be entered as revenue in the general budget of the Communities.

10 It is to be noted that the legislative framework created, on the one hand, by the new method of adjusting remuneration provided for in Decision No 81/1061 and, on the other, by the new Article 66a incorporated in the Staff Regulations by Regulation No 3821/81 is the result of an agreement arrived at after long negotiations between the institutions and the most representative trade-union organizations of the staff of the Communities.

11 It must also be borne in mind that, as is apparent from the replies of the defendant and the interveners to the questions put by the Court, in recent years all Member States have, in determining their policies relating to civil service salaries, pursued the objective, by methods which vary from one State to another, of achieving moderation of salaries with a view to promoting investment and employment. That has resulted in a general decrease in the purchasing power of national civil servants, whose salaries have not kept pace with inflation during that period. Moreover, in certain Member States, the salaries of civil servants have been subject to 'solidarity' contributions.

Definition of the subject matter of the dispute

12 By way of preliminary, it is to be observed that, although in their application the applicants level their criticisms against Decision No 81/1061 and Regulation No 3821/81 without distinction, a number of their submissions are intended only to contest the legality of the latter measure in so far as it introduced the exceptional levy.

13 In a second set of submissions, the applicants attack Decision No 81/1061, in so far as it introduced a new method of adjusting remuneration.

The legality of the exceptional levy

14 In support of their view that it is illegal, the applicants contend that the introduction of the exceptional levy provided for in Regulation No 3821/81:

(i) is in breach of the principle of 'parallelism', as laid down in the second subparagraph of Article 65 (1) of the Staff Regulations;

(ii) is in breach of the legitimate expectations of officials and servants of the Communities;

(iii) infringes Article 190 of the EEC Treaty;

(iv) constitutes a misuse of powers; and

(v) is the result of a misuse of procedure.

The submissions alleging breach of the principle of 'parallelism' and misuse of powers

15 In their first submission the applicants claim that the introduction of the exceptional levy is contrary to what is known as the principle of 'parallelism', as laid down in the second subparagraph of Article 65 (1) of the Staff Regulations. According to that provision, in order to decide whether the remuneration of Community officials should be adjusted, the Council is to take into account in particular 'any increases in salaries in the public service'. In the applicants' view that principle is binding upon the Council and therefore, as is apparent from the judgment of the Court of 6 October 1982 (Case 59/81, *Commission* v *Council*, [1982] ECR 3329), the Council is not entitled to disregard it.

16 The applicants maintain that the introduction of the exceptional levy is incompatible with the principle of parallelism, since it has resulted in a decrease in the purchasing power of the remuneration of Community officials, whereas, by contrast, the average remuneration of civil servants in the various Member States has increased.

17 Those arguments coincide substantially with those put forward by the applicants in support of their submission alleging a misuse of powers. According to the applicants, by introducing the exceptional levy the Council misused its powers

inasmuch as it relied upon grounds not expressly mentioned in Article 65 of the Staff Regulations.

18 These two submissions may therefore be examined together.

19 In response to the arguments put forward by the applicants, the Commission and the Council state that the introduction of the exceptional levy did not constitute a measure implementing Article 65 of the Staff Regulations but was effected by means of an amendment to the Staff Regulations under Article 24 of the Treaty establishing a single Council and a single Commission of the European Communities. That amendment took the form of the insertion of a new Article 66a in the Staff Regulations, under which the exceptional levy was introduced.

20 It is to be noted in that connection that the exceptional levy was introduced by an amendment to the Staff Regulations involving the insertion of a new Article 66a and that the legality of such an amendment cannot be called in question on the basis of another provision of the Staff Regulations, namely Article 65 (1).

21 It is also apparent from the information before the Court that the agreement of the most representative trade-union organizations to bear some of the consequences of the particular difficulties of the economic and social situation that had emerged in the Community, by accepting an exceptional and single measure affecting remuneration, was counterbalanced by the adoption of a method of adjusting remuneration which preserved the principle of parallelism.

22 Therefore the submissions alleging breach of the principle of parallelism and misuse of powers must be dismissed.

The submission alleging breach of the legitimate expectations of officials

23 The applicants maintain that they were entitled to expect that the principle of parallelism, as laid down in the second subparagraph of Article 65 (1) of the Staff Regulations and adopted in the method applied since 1976 and also in the previous method dating from 1972, would be respected by the Council, which is no longer the case since the introduction of the exceptional levy.

24 They claim in that connection that, even though the status of the Staff Regulations as secondary legislation enables the Council to amend them, that possibility is not open where the proposed amendment goes to the root of the employment relationship between officials and institutions, as in the case of the exceptional levy.

25 In that connection it should be borne in mind, in the first place, that the Council's intention to amend the method of adjusting remuneration which had been in force since 1976 was expressed as early as 1980, upon the adoption of Council Regulation No 161/80 of 21 January 1980 (Official Journal 1980, L 20, p. 5), adjusting remuneration and weightings. On that occasion, the Council had invited the Commission to submit proposals to it for a new method.

26 Secondly, it should be noted that the staff trade-union organizations were closely involved in the discussions which culminated in the implementation of both the new method of adjustment and the exceptional levy.

27 In those circumstances, it is inappropriate to speak of a legitimate expectation on the part of officials that the method applied since 1976 would be maintained, without amendment, particularly since that method itself contained a clause whereby the Council reserved the right to determine 'possible improvements and rectify any distortions'.

28 The submission must therefore be rejected.

The submission alleging an inadequate statement of reasons

29 According to the applicants, Regulation No 3821/81 does not contain an adequate statement of the reasons for introducing the exceptional levy and therefore infringes the requirements of Article 190 of the EEC Treaty. Neither is any clarification in that connexion given by Decision No 81/1061. The reference to the particular 'difficulties of the economic and social situation' appearing in the preamble to both the decision and the regulation cannot, in the opinion of the applicants, be regarded as an adequate statement of reasons, particularly since their purpose was to introduce a measure of an exceptional nature, namely the crisis levy.

30 With regard to that submission, it should be borne in mind in the first place that, as is apparent from consistent decisions of the Court (see in particular the judgment of 30 November 1978 in Case 87/78, *Welding* v *Hauptzollamt Hamburg-Waltershof*, [1978] ECR 2457), the extent of the duty to provide a statement of reasons under Article 190 of the EEC Treaty depends on the nature of the measure in question and, in the case of a regulation or a measure of general application, the statement of reasons may be confined to indicating, on the one hand, the general situation which led to its adoption and, on the other, the general objectives which it is intended to achieve.

31 Those conditions are fulfilled, in the case of Regulation No 3821/81, as far as the introduction of the exceptional levy is concerned. The reference to the 'specific difficulties of the economic and social situation' was merely a succinct way of alluding to circumstances which were so well known that a more detailed explanation would have been superfluous. Furthermore, by stating in the preamble to Regulation No 3821/81 the objective criteria on the basis of which the levy was to be assessed, the Council indicated with sufficient clarity the aims pursued by it in introducing the levy. Moreover, those aims could not have been unknown to the applicants, because the Council had involved the trade-union organizations in the work of drawing up Regulation No 3821/81 and Decision No 1061/81 and those organizations did not neglect to inform the staff as a whole.

32 The submission must therefore be dismissed.

The submission alleging misuse of procedure

33 The applicants consider that, since the levy constitutes a new tax supplementary to the Community tax provided for in Regulation No 260/68 (Official Journal, English Special Edition 1968 (I), p. 30) — a point which the Commission expressly conceded in its pleadings and at the hearing -, it should have been introduced not by inserting Article 66a in the Staff Regulations but by amending Regulation No 260/68.

34 In that connection, it should be noted that, whilst it is true that the procedure followed for the adoption of Regulation No 3821/81 was that prescribed by Article 24 (2) of the Treaty establishing a single Council and a single Commission of the European Communities for the purpose of laying down and amending the Staff Regulations, and not that prescribed by Article 13 of the Protocol on the

Privileges and Immunities of the European Communities, which provides that the remuneration of officials is to be subject to a tax for the benefit of the Communities, that fact, as the Commission has correctly stated, did not entail any consequence of which the applicants might be entitled to complain, in so far as the procedure laid down in Article 24 provides for consultation of the institutions concerned, in particular the European Parliament, and thus offers more guarantees than the procedure prescribed by the abovementioned Article 13, which requires no consultation of that kind.

35 It must also be emphasized that Regulation No 3821/81 is based, as indicated in the preamble thereto, both on Article 24 and on Article 13 of the respective instruments mentioned above and that Article 66a (1) expressly provides that the levy is to be applied to salaries, pensions and termination- of-service allowances by way of derogation from Article 3 (1) of Regulation No 260/68.

36 As regards the fact that the levy was introduced by means of an amendment to the Staff Regulations, whereas it would have been possible to amend Regulation No 260/68, the Commission has given an adequate legal explanation as to why the amendment of that regulation was not justified in this case, inasmuch as the levy is of a temporary nature and is applied in accordance with rules other than those laid down for the tax governed by Regulation No 260/68.

37 The submission must therefore be dismissed.

38 It must therefore be concluded that none of the submissions put forward by the applicants has disclosed any legal defect in Regulation No 3821/81.

The legality of the new method of adjusting remuneration

39 In support of their view that the new method of adjusting remuneration provided for in Decision No 81/1061 is illegal, the applicants claim that that method infringes Article 65 (1) of the Staff Regulations inasmuch as the Council:

(i) took account of 'particular difficulties of the economic and social situation', whereas Article 65 (1) requires the Council to take account of 'the economic and social policy of the Communities';

(ii) pursued objectives alien to Article 65 (1);

(iii) did not take into consideration 'any increases in salaries in the public service'.

40 As regards the first submission, it need only be stated that, whilst it is true that the terms 'economic and social policy' and 'economic and social situation' are not the same, they are necessarily connected and an economic and social policy cannot be established unless the economic and social situation is taken into account. Moreover, as is apparent from the answers to the questions put by the Court to the defendant and interveners, wage moderation based on the establishment of a relationship between wage increases and productivity is one of the most important objectives indicated to Member States by the Council in its reports on economic policy and is pursued by all the Member States, by means which vary from one country to another. It does not therefore appear that, by including the economic and social situation among the factors to be taken into account in deciding upon adjustments to the remuneration of officials under Article 65 of the Staff Regulations, the Council infringed that article.

41 In their second submission, the applicants claim that, in so far as the entry into force of Decision No 81/1061 was simultaneous with that of Regulation No 3821/81, the Council used a measure adopted under Article 65 of the Staff Regulations for the purpose of introducing the exceptional levy, an objective which is alien to that provision. In this regard, however, it suffices to observe that, as stated above regarding the legality of Regulation No 3821/81, the exceptional levy was introduced by means of an amendment to the Staff Regulations and not on the basis of a measure — in this case Decision No 81/1061 — adopted pursuant to Article 65 of the Staff Regulations.

42 As regards the third submission, it is to be observed that the arguments put forward by the applicants merely contest the compatibility of the introduction of the exceptional levy with Article 65 of the Staff Regulations. Since those arguments have been rejected for the reasons set out in the discussion of the legality of Regulation No 3821/81, it is unnecessary to reconsider them.

43 It is apparent from all the foregoing considerations that none of the submissions put forward by the applicants has disclosed any legal defect in Decision No 81/1061.

44 It follows that the application must be dismissed.

Costs

45 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 instituted by servants of the Communities. It is also appropriate to order the parties which intervened in support of the Commission to bear their own costs.

46 The parties should therefore be ordered to bear their own costs.

On those grounds,

THE COURT

hereby:

(1) Dismisses the application;

(2) Orders the parties to bear their own costs.

Mackenzie Stuart Bosco Due Kakouris

Pescatore Koopmans Everling Bahlmann Joliet

Delivered in open court in Luxembourg on 3 July 1985.

P. Heim
Registrar

A. J. Mackenzie Stuart
President