

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
22 June 1994

Joined Cases T-98/92 and T-99/92

Lello Di Marzio and Giorgio Lebedef
v
Commission of the European Communities

(Officials – Detailed rules for adjusting remuneration annually – Temporary contribution)

Full text in French II - 541

Application for: annulment of the applicants' pay slips for January 1992, for a declaration that Council Regulations Nos 3830/91, 3831/91, 3833/91 and 3834/91 of 19 December 1991 are invalid and inapplicable, for a declaration that Council Regulation No 3832/91 of the same date is without effect as from 1 January 1993, and for an order to reimburse the amounts unlawfully retained in application of those regulations.

Decision: Application dismissed.

Abstract of the Judgment

Article 65 of the Staff Regulations provides that the Council is to review the remuneration of officials annually, any adjustments being made in accordance with a method to be determined by the Council. By Decision 81/1061 (OJ 1981 L 386, p. 6) the Council laid down the method of applying Article 65 for the period from 1 July 1981 to 30 June 1991. At the same time, Regulation No 3821/81 (OJ 1981 L 386, p. 1) imposed a 'crisis levy' on remunerations for a period ending on 1 July 1991.

After extensive consultation with Community staff, the Council adopted on 19 December 1991:

- Regulation No 3830/91, renewing the method of adjusting remuneration for a further ten years while at the same time adding it to the Staff Regulations as Annex XI together with some modifications, including the weighting of the joint index provided for in Article 65 of the Staff Regulations in such a way that the Belgian index (Brussels capital component) counted for 25% (OJ 1991 L 361, p. 1);
- Regulation No 3831/91, introducing a temporary contribution of 5.83 % gross as from 1 January 1992 by the insertion of a new Article 66a in the Staff Regulations (OJ 1991 L 361, p. 7);
- Regulations Nos 3833/91 and 3834/91, retrospectively adjusting the amounts shown in the table of basic monthly salaries (OJ 1991 L 361, pp. 10 and 13).

Towards the end of December 1991 the applicants each received an additional pay slip, concerning the retrospective adjustments to their basic salary. On 15 January 1992, they received their pay slips for January 1992, drawn up in such a way as to take account of the above regulations.

On 13 and 14 April 1992 respectively the applicants lodged identical complaints against their pay slips, calling in question the legality of the regulations, which went unanswered.

Admissibility of the claims concerning Regulations Nos 3830/91 and 3834/91

The Court points out that notification of the monthly salary statement has the effect of setting time running for the purpose of the time-limit for proceedings against an administrative decision where the scope of such a decision is clearly apparent from the statement (paragraph 24).

See: T-7/91 *Schavoir v Council* [1992] ECR II-2307, para. 34

However, the pay slips stating the adjustments to the applicants' remuneration in December 1991 do not set time running for the purpose of the time-limit for submitting a complaint under Article 90(2) of the Staff Regulations. Those slips were sent to the applicants before the contested regulations on which they were based entered into force and were published, and the applicants were not in a position, at the time they received those slips, fully to appreciate the relevant legal context. That conclusion is not altered by the fact that the regulations were published subsequently, or by the fact that an informal notice was sent to staff in December 1991 (paragraphs 22, 26 and 27).

Substance

The taking into account, when adjusting the remuneration of Community officials, of the falling purchasing power of national civil servants

The Court is of the opinion, first, that the principle of parallel development, within the meaning of Regulation No 3830/91, both upwards and downwards, of the purchasing power of the salaries of national civil servants and Community officials is not incompatible with Article 65(1) of the Staff Regulations. It is clear from the wording of that provision, first, that the Council enjoys a wide discretion as to

whether it is appropriate to adjust remunerations and as to the factors to be taken into account in that respect and, secondly, that increases in salaries in the public service in the Member States constitute only one of those factors, the taking into account of any diminution in such salaries being by no means excluded, as was, moreover, already envisaged in the previous method laid down by Decision 81/1061. Furthermore, the very concept of ‘parallel development’ necessarily implies that a reduction in the purchasing power of national civil servants should be reflected in the adjustment of Community remunerations (paragraphs 41, 43 and 44).

Secondly, the Court rejects the plea based on breach of the duty to state reasons, taking the view that the general purpose of Regulation No 3830/91 is to extend the previous method of adjusting remunerations for a further 10 years, whilst making certain modifications to the detailed application of the rules but no change whatever to the basic principles. Moreover, the taking into account of upward and downward movement in the remuneration of national public servants is in no way incompatible with the taking into account of changes in the cost of living effectively borne by Community officials in Brussels, since those two independent factors are both taken into consideration in accordance with Article 3(2) of Annex XI to the Staff Regulations (paragraphs 50 to 53).

Contrary to what the applicants claim, the Court does not consider that a provision in the Staff Regulations which has been duly adopted by the Council can be called into question on the ground of an alleged breach of the principles of equity, proper administration, or the duty to have regard to officials’ interests (paragraph 58).

See: T-65/92 *Arauxo-Dumay v Commission* [1993] ECR II-597, para. 37; T-46/90 *Devillez v Parliament* [1993] ECR II-699, para. 37

Moreover, a system whereby adjustments to Community officials’ remuneration take account, *inter alia*, of fluctuations in the purchasing power of national civil servants is in no way inequitable or contrary to the principles of proper administration or the duty to have regard to officials’ interests (paragraph 59).

Finally, the Court takes the view that the principle of parallel development both upwards and downwards, which does not in any way conflict with Article 65 of the Staff Regulations, cannot breach any legitimate expectation as to the correct application of that provision (paragraph 65).

Moreover, the applicants cannot allege breach of their legitimate expectations more than ten years after the principle of parallel development was adopted by Decision 81/1061 (paragraph 67).

In any event, an official may not rely on the principle of the protection of legitimate expectations in order to challenge the legality of a new provision in a regulation, especially in an area whose subject-matter is undergoing constant change according to changes in the economic climate (paragraph 68).

See: 33/87 *Christianos v Court of Justice* [1988] ECR 2995, para. 23; T-6/92 and T-52/92 *Reinarz v Commission* [1993] ECR II-1047, para. 85

The weighting of the joint index in such a way that the Belgian index (Brussels capital component) counted for 25%

The Court points out that, in the case of 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.

See: 3/83 *Abrias v Commission* [1985] ECR 1995, paras 30 and 31

The Court is of the opinion that, by indicating that the weighting in question was introduced in the context of efforts to improve the efficiency of the relevant indexes, the statement of the reasons for Regulation No 3830/91 does, contrary to what the applicants allege, satisfy the requirements of Article 190 of the Treaty, which does

not, moreover, require a detailed statement of the reasons for the technical aspects of the calculation methods used in an implementing regulation (paragraph 81).

See: *87/78 Welding v Hauptzollamt Hamburg-Waltershof* [1978] ECR 2457, para. 11

As for the alleged incompatibility of the weighting used with the principle of parallel development and Article 65 of the Staff Regulations, the Court points out that, since the latter provision contains no definition of the joint index, there was nothing to prevent the Council, in the exercise of its discretion, from adopting Article 3(2) of Annex XI to the Staff Regulations in laying down the detailed rules for the application of Article 65 of the Staff Regulations in this way. Moreover, since it was a question of a relatively minor technical adjustment of the joint index, the Court cannot see any contradiction between Article 3(2) of Annex XI to the Staff Regulations on the one hand, and Article 65 and the other provisions of Annex XI on the other (paragraph 82).

See: *Abrias v Commission*, cited above, para. 20

The temporary contribution introduced by Regulation No 3831/91

The Court considers that, having regard to the lengthy negotiations which took place, before the contested regulation was adopted, between the Communities and their staff, all of whom were kept informed of the content and scope of those negotiations, the statement of the reasons for this regulation satisfies Article 190 of the Treaty, given that it provides a sufficient indication of the general situation which led to the adoption of the regulation and of its general objectives (paragraphs 91, 92 and 95).

See: *828/79 Adam v Commission* [1982] ECR 269, para. 37

The Court rejects the allegations of misuse of powers and abuse of process for lack of supporting evidence, bearing in mind that the contribution at issue was adopted by the Council in the exercise of its legislative power and introduced in the context

of a complex compromise concerning remuneration which was negotiated at length between the Communities and their staff (paragraph 100).

The applicants' other claims

The Court considers that, in the light of the above, these claims have become devoid of purpose or unfounded, without there being any need to examine their admissibility (paragraph 104).

Operative part:

The applications are dismissed.