

In Joined Cases 63 to 75/70

FRITZ-AUGUST BODE,
FRIEDHELM DILETTI,
WERNER HORN,
EUGÉNIE KATZMAREK,
HEINRICH KLITZ,
HANS MAIER,
INGEBURG NOLDEN-HORNSCHUH,
WOLFGANG SACHS,
MANFRED SCHMITT,
ERNA VORDERMAYER,
KURT WEIGHARDT,
HANS JOACHIM WETEKAM,
WALTER ZASTRAU,

officials of the European Communities, represented by Victor Biel, Advocate at the Cour Supérieure de Justice, Luxembourg, with an address for service in Luxembourg at the Chambers of the said Advocate, 71 rue des Glacis,

applicants,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Jürgen Utermann, with an address for service in Luxembourg at the offices of Émile Reuter, 4 boulevard Royal,

defendant,

Application for compensation for losses which have been suffered and will have to be suffered because of the revaluation of the Deutschmark,

THE COURT (First Chamber),

composed of: A. M. Donner (Rapporteur), President of Chamber, R. Monaco and J. Mertens de Wilmars, Judges,

Advocate-General: A. Dutheillet de Lamothe
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I—Summary of facts and procedure

The facts which form the basis of the action and the procedure may be summarized as follows:

With effect from 27 October 1969, the Deutschmark was revalued, the result of which was to increase its official par value in relation to the Belgian franc from Bfrs 12.50 to Bfrs 13.66. Therefore, servants of the Communities who had taken on obligations in Deutschmarks but whose place of employment is not in the Federal Republic of Germany were compelled to devote larger sums of money in Belgian francs for transfers relating to these obligations. Since approaches to the Commission to obtain compensation for the losses resulting from this change were without success, on 16 July 1970 the applicants submitted a complaint under Article 90 of the Staff Regulations. Finding that the Commission had not replied to this complaint within the prescribed period of two months, the applicants lodged the present applications against the implied decision rejecting their complaint on 16 November 1970.

Article 76 of the Staff Regulations of Officials, the provision upon which the applicants rely in particular, reads as follows:

'Gifts, loans or advances may be made to officials, former officials or where an official has died, to those entitled under him who are in a particularly difficult position as a result *inter alia* of serious or protracted illness or by reason of family circumstances.'

Because these cases are related to one another, the Court, by order of 30 November 1970, decided to join them for the purposes of the procedure and the judgment.

The written procedure followed the nor-

mal course. The defendant did not submit a rejoinder.

After hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the First Chamber of the Court decided to open the oral procedure without instituting a preparatory inquiry.

The parties presented oral argument at the hearing on 1 April 1971.

The Advocate-General delivered his opinion at the hearing on 5 May 1971.

II—Conclusions of the parties

The *applicants* claim that the Court should:

- (a) order the Commission of the European Communities to pay as compensation for loss of income from 15 November 1969 to 15 November 1970 specified sums to each applicant in accordance with the calculation annexed to his application;
 - (b) declare that the defendant must moreover pay the applicants in the future sums of money to compensate for loss of income;
 - (c) order the defendant to bear the costs.
- The applicant in Case 65/70 (Mr Werner Horn) claimed in addition to the abovementioned conclusions that the Court should:

'urge the defendant to insert in the next edition of the Staff Regulations a provision making the employer of officials of the European Communities generally responsible for all financial risks.'

The defendant contends that the Court should:

- '(a) dismiss the applications as unfounded;
- (b) order the applicants to bear the costs.'

III—Submissions and arguments of the parties

The submissions and arguments of the parties may be summarized as follows:

A — Admissibility

The *defendant* does not contest the admissibility of the applications. However, during the oral procedure, it contested the admissibility of the special conclusions of Mr Horn, on the ground that, on the one hand, they were submitted out of time, since a similar request had not been made when the appeal through official channels was lodged with the administration and that, on the other, they are too general to be able to form the subject-matter of an application.

B — On the substance of the case

The *applicants* consider that the Commission, by refusing to compensate them for the loss of revenue which the revaluation of the Deutschmark caused them, infringed Article 76 of the Staff Regulations of Officials. In this connexion, they rely upon the following considerations:

They claim that, since they transfer money to the Federal Republic of Germany each month both to fulfil certain standing commitments which they have taken upon themselves there and to discharge certain family obligations, the change in the par value of the Deutschmark involves a loss of income for them and places them in a particularly difficult position.

In such a situation, it falls to the official authority to compensate these officials for the loss of income which they have suffered. Moreover, the Commission has acknowledged the validity of that principle, since it granted special assistance for those of its servants who were affected by the devaluations of the English pound and the French franc in 1969. In addition, a 'gentleman's agreement' which was made by the Council on 27 September 1960 also provided for the

possibility of measures of compensation for servants of the Communities where the par values were changed.

The applicants claim that in so far as the provisions of the Staff Regulations and the annexes thereto which relate to the emoluments of officials cannot be adapted to the abovementioned principle, Article 76 of the Staff Regulations must be applied. They consider that in the present cases the conditions for the application of this provision are fulfilled since they are in a particularly difficult position owing to completely extraneous causes. Although, however, the application of Article 76 comes in principle within the discretionary power of the Community authorities, in this case the margin of discretion is in fact particularly narrow in view both of the principle of the duty of care towards its officials on the part of the public authority and of the prohibition on any discrimination between different groups of employees. It follows that in this case Article 76 creates a personal right for the applicants, and that the Commission failed to recognize this right by not allowing their complaint.

The defendant states that in this case any measures to be taken depend on the Council's consent. Both when the florin and the Deutschmark were revalued in 1961 and when the Deutschmark was revalued in 1969, it had sought from the Council on the basis of the Council's 'declaration of intent' of 1960, quoted by the applicants, measures of compensation for officials affected by these changes in par values. But in 1961 the Council refused any measures of compensation, whilst as regards the more recent revaluation it decided at its meeting on 14 and 15 December 1970 to await the deliberations of the 'Coordinating Committee' which the 'joint organizations' set up on this subject.

As for the decisions which were made when the English pound was devalued on the one hand and when the French franc was devalued on the other, the defendant states that they involved a

question which was quite different from the one in the present case. In those cases, there was in fact no general grant of compensatory payments because of losses owing to these devaluations, but the problem was the carrying out of transfers to be made abroad under Article 17 (2) of Annex VII to the Staff Regulations by certain servants carrying out their duties in England and France. This question was solved by the Commission to the effect that these transfers were henceforth carried out on the basis of a corresponding part of the salary, expressed in Belgian francs, and no longer, as had been the case until then, by calculating them on the basis of the national currency of the country where the official was carrying out his duties, in which the salary was in principle paid in accordance with Article 17 (1) of Annex VII. The defendant points out that, although the result of these decisions was that those concerned did not have to sustain completely the negative effects of the devaluations, this result was purely incidental and was limited to the field of transfers made under Article 17, (2) of Annex VII.

As regards the legal basis of the applicants' requests, the defendant states first that the authors of the Staff Regulations deliberately excluded automatic compensatory payments to servants affected by changes in par values. Moreover, the argument which the applicants purport to derive from Article 76 of the Staff Regulations is unfounded. In fact, on the one hand, this provision does not create a personal right to specific benefits and confers a discretionary power on the competent authorities. On the other hand, this is a provision of a social nature which provides for an exception to the general rule and this precludes measures which are so general and unlimited as to time as those which the applicants claim.

Although, on the other hand, it is possible that in certain particular cases losses owing to a revaluation may have caused a 'particularly difficult position',

the applicants, in the opinion of the defendant, have not adduced the necessary evidence in this respect. As for the calculations annexed to the applications, the defendant observes that the applicants were only able to profit before the revaluation from the official rate of DM 1.00 for Bfrs 12.50 up to the maximum amount transferable under Article 17 (2) of Annex VII upon which they base their calculations. With regard to the remainder of their obligations, they were obliged to buy the necessary foreign currency on the open market where, since the end of 1968, the rate for the Deutschmark was sometimes much higher than the official rate.

Finally, the defendant adopts a definite viewpoint on certain particular cases among those in the present cases in which very heavy losses owing to the revaluation were declared, losses which do not seem to rule out the possible application of Article 76 of the Staff Regulations.

In their reply, the *applicants* gave further particulars *inter alia* of the submission based on the principle of equality. In this connexion they point out.

— on the one hand, that the Communities did indeed make up for the negative effects of the last revaluation of the Deutschmark in respect of some of their servants by taking the 1965 par values as the basis for the payment of salaries (in the country where the currency was revalued) (see the third paragraph of Article 63 of the Staff Regulations as amended by Regulation No 30/65/EEC, OJ, English Special Edition 1965-1966, p. 43);

— on the other hand, that in the very words of the defendant in its statement of defence, officials carrying out their duties in England and in France when the English pound and the French franc were devalued did not, because of a decision of the Commission, suffer the full negative effects of these changes in par values. The reference in the statement of defence

to Article 17 (2) of Annex VII is not sufficient to justify this inequality of treatment, since the Staff Regulations lay down measures and rules applicable to all officials in order to compensate for the disadvantages which are the result of decreases in purchasing power and monetary fluctuations (see the third paragraph of Article 63 and Article 65 of the Staff Regulations).

Moreover, the applicants allege that the Council wrongly referred to the decision of the 'Coordinating Committee' mentioned above, in that the position of officials of the Communities who are the holders of the rights granted by the Staff Regulations cannot be compared with the position of servants of the 'joint organizations' which is much less settled.

Finally the applicants state that they were right to rely upon the official rate of the Deutschmark when drawing up their calculations, because even if the special facilities provided for by Article

17 (2) of Annex VII are disregarded, like all officials of the Communities they have their bankers' orders carried out not through the open market in foreign currency but by convertible accounts for which the exchange rate differs from the official par value by not more than 1%. During the oral procedure, the applicants alleged in particular that Article 76 of the Staff Regulations is in fact the application and concrete expression of the principle of the employer's duty of care ('Fürsorgepflicht') which is laid down by Article 24. The special provision can only be explained by the concern to enable the Commission to cover the expenses laid down therein by the normal budgetary means. The applicants pointed out that, moreover, where officials could have suffered losses through a slight delay in the payment of severance grants because of the revaluation of the Deutschmark the Commission had indeed adjusted its calculations without feeling itself obliged to seek the prior consent of the Council.

Grounds of judgment

- ¹ By applications lodged on 16 November 1970, the applicants requested the Court to declare that the European Communities, acting through the Commission, are under an obligation to compensate for the increase in expenditure incurred by the applicants resulting from the fact that, in order to meet the financial obligations which they have undertaken in the Federal Republic of Germany, they have had to transfer a greater sum in Belgian francs, the currency in which their salary is expressed and paid, following the revaluation of the Deutschmark which occurred in October 1969. They requested that the Commission be accordingly ordered to pay them in respect of loss of income, the sums of money corresponding to the loss which that revaluation had caused them for the period from 15 November 1969 to 15 November 1970, according to a calculation annexed to each of the applications. In addition, the applicant Werner Horn requests that the Commission be ordered to insert in the Staff Regulations of Officials a provision making the employer of officials of the European Communities generally responsible for monetary risks.

- ² It is not for the Court of Justice to give orders to the Community authorities. Therefore this additional request must be dismissed as inadmissible.
- ³ In support of their argument the applicants rely chiefly on Article 76 of the Staff Regulations which provides that gifts, loans or advances may be made to officials, former officials or where an official has died, to those entitled under him who are in a particularly difficult position as a result *inter alia* of serious or protracted illness or by reason of family circumstances. They claim that since the difficulties in this case stem in particular from the family obligations of the parties, they should therefore be considered to constitute a particularly difficult position within the meaning of Article 76.
- ⁴ Article 76 does not impose any specific obligation on the Community authorities, but is intended to give them the power to come to the assistance of officials or former officials who are in difficulties. This provision constitutes an exception to the general principle that all officials are subject to the same Staff Regulations and cannot obtain privileges, other than those which are laid down in a general and objective manner. Therefore, the appointing authority must assess the individual circumstances of each case in which there is a request for the application of this article before it can acknowledge the existence of a particularly difficult position. Thus the provision prohibits its automatic application as soon as certain events occur, such as a serious or protracted illness.
- ⁵ Although the facts upon which the applicants rely are capable, in appropriate cases, of creating a particularly difficult position within the meaning of Article 76 of the Staff Regulations, the mere fact that they have had to meet larger payments following the revaluation of the Deutschmark cannot by itself constitute a sufficient reason for applying that provision. Although therefore it falls to the officials concerned to apply individually to the Commission so that the latter can assess whether Article 76 should be applied in view *inter alia* of the amount of their salary, the fact that they suffered loss through the revaluation of the Deutschmark cannot, however, be sufficient by itself to justify such application.
- ⁶ Therefore, the submission based on the alleged infringement of that provision must be rejected.
- ⁷ The applicants have in addition invoked the principle of equality of treatment between officials of the Communities.
- ⁸ However the principle which has been invoked has been expressed in the Staff Regulations to the effect that all Community officials employed in the

same place are paid in the same currency and according to a uniform scale, whatever their nationality and regardless of the fact that they spend their salary in their place of work or elsewhere. No doubt, the salary may represent a different purchasing power according to where it is spent. These differences stem from a large number of economic and social circumstances which are peculiar to these different places and of which the par value of the national currency is only one of the possible factors. Therefore an automatic adjustment according to the changes in the par value of the currencies of Member States, such as is envisaged by the applicants, would, as regards other officials who have to bear the consequences of other fluctuations in purchasing power which are less obvious but just as substantial, constitute a discriminatory advantage incompatible with the principle which has been invoked.

⁹ Therefore, the submission cannot be accepted.

¹⁰ The applications must therefore be dismissed.

Costs

¹¹ Under the provisions of Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs, subject to the reservation that under Article 70 of those rules, institutions shall bear their own costs in applications by servants of the Communities.

The applicants have failed in their submissions.

On those grounds,

Upon reading the pleadings;

Upon hearing the report of the Judge-Rapporteur;

Upon hearing the parties;

Upon hearing the opinion of the Advocate-General;

Having regard to the Treaties establishing the European Communities;

Having regard to the Staff Regulations of Officials of the European Communities, especially Article 76;

Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;

Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT (First Chamber)

hereby:

1. Dismisses the applications;
2. Orders the parties to bear their own costs.

Donner

Monaco

Mertens de Wilmars

Delivered in open court in Luxembourg on 16 June 1971.

A. Van Houtte
Registrar

A. M. Donner
President of the First Chamber

OPINION OF MR ADVOCATE-GENERAL
DUTHEILLET DE LAMOTHE
DELIVERED ON 5 MAY 1971¹

*Mr President,
Members of the Court,*

Like many of their colleagues of other nationalities, many German officials in the service of the Communities still take on certain financial obligations in the Federal Republic of Germany.

Some stem from family liabilities (for example, children at university and parents in need of help) and some from liabilities which are of a more permanent type: buying a house or a flat by instalments or setting up a retirement pension. It is certain that for all these servants the revaluations of the Deutschmark and in particular the revaluation in 1969 had the effect of increasing the burden of these financial liabilities and even put some of them in an extremely difficult situation. The problem may, it seems, arise again if certain information is to be believed.

The Commission is moreover aware of this and declares itself willing to give favourable consideration to the possibility of assistance in certain particularly difficult cases.

But what some of the officials in ques-

tion seek to obtain is something quite different.

They consider in fact that the Community is under an obligation to make compensation for the increase in expenditure resulting for them from the fact that in order to meet the same obligations expressed in Deutschmarks they have been obliged since the revaluation of the mark to transfer a greater sum in Belgian francs, that is, the currency in which their salary is expressed and paid. Because the Commission did not acknowledge the existence of that obligation, 13 of the officials concerned, all in service in Luxembourg, have lodged the present applications to this Court which all request principally

1. that the Court acknowledge the existence of the right which the applicants invoke,
2. that accordingly the Court order the Commission to pay to each of them compensation equal to the loss caused him by the revaluation of the Deutschmark,
3. that the Court lay down the principle of compensation of the same kind as regards future losses.

¹ — Translated from the French.