

JUDGMENT OF THE COURT (FIRST CHAMBER)  
12 NOVEMBER 1981<sup>1</sup>

**Marco Airola**  
**v Commission of the European Communities**

(Officials — Rate of exchange for calculating remuneration)

Case 72/80

*Officials — Remuneration — Allowance compensating for the separation allowance paid prior to the Staff Regulations — Payment of a currency other than the Belgian franc — Application of updated exchange rates — Inapplicability of weightings*  
(*Staff Regulations of Officials, Arts 63, 64 and 106*)

Article 106 of the Staff Regulations must be understood as meaning that it entitles an official to receive a separation allowance the amount of which, expressed in Belgian francs, has been frozen at the 1961 level. That amount must be calculated in the national

currency of the place where an official is employed at the rate fixed in Article 63 of the Staff Regulations as in force when the allowance has to be paid. The weighting referred to in Article 64 of the Staff Regulations does not apply to that allowance.

In Case 72/80

MARCO AIROLA, residing at Angera (Varese), Italy, an official of the Commission of the European Communities employed at the Joint Research Centre at Ispra, represented by Cesare Ribolzi of the Milan Bar, with an address for service in Luxembourg at the Chambers of Victor Biel, Advocate, 18a Rue des Glacis,

applicant,

v

<sup>1</sup> — Language of the Case: Italian

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Oreste Montalto, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the Jean Monnet Building, Kirchberg,

defendant,

APPLICATION in the terms set out in the pleadings,

THE COURT (First Chamber)

composed of: G. Bosco, President of Chamber, A. O’Keeffe and T. Koopmans, Judges,

Advocate General: F. Capotorti  
Registrar: J. A. Pompe, Deputy Registrar

gives the following

## JUDGMENT

### Facts and Issues

The facts of the case and the conclusions and arguments of the parties put forward during the written procedure may be summarized as follows:

employment was more than 70 kilometres (25 kilometres under the Staff Regulations of the European Coal and Steel Community of 1956) from their place of origin. Nationality was not taken into consideration.

#### I — Facts and written procedure

The rules in force before 1 January 1962 prior to the adoption of the Staff Regulations provided for a so-called “separation” allowance equal to 20% of basic salary to be paid to officials who could prove that their place of

The Staff Regulations which entered into force on 1 January 1962 replaced that allowance by the “expatriation” allowance, so-called because an official has to work in a Member State other than that of which he is a national. As a transitional provision Article 106 provided that:

“Any official in receipt of a separation allowance before these regulations were applied who does not qualify for an expatriation allowance under Article 4 of Annex VII shall be allowed the same amount as that which he would have received by way of separation allowance under the scale of remuneration existing before these Staff Regulations entered into force. Such amount shall not in future be varied for any reason whatever, save where the official qualifies for an expatriation allowance by satisfying the requirements therefor.”

It is to be noted that Article 106 was applied after May 1974 with retroactive effect from 1 February 1973 to officials who had been recruited between 19 June 1960 and 31 December 1961 by the former Commission of the European Atomic Energy Community and had never received the separation allowance. By letter of 14 March officials in that category belonging to the Joint Research Centre were sent a circular in which the amount of the separation allowance was expressed in Belgian francs on the basis of the basic salary, likewise expressed in Belgian francs, shown in their letters of employment.

The allowance in question continued to be paid to officials on the basis of the exchange rate of 1 Belgian franc to 12.50 Italian lire. On 15 February 1976 an administrative provision, which the applicant claims was never brought to the notice of the staff, provided for the allowance to be paid on the basis of updated exchange rates, that is to say, rates revised every three months. However, the provision remained a dead letter as far as the allowance in question is concerned.

A new system of rates of exchange was introduced by Council Regulation No 3085/78 of 21 December 1978, amending with particular reference to the monetary parities to be used, Regulation No 259/68 laying down the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of these Communities, Regulation No 2530/72 and Regulation No 1543/73 concerning certain special measures (Official Journal L 369, p. 6), and entering into force from 1 April 1979, and by Council Regulation No 3086/78 of 21 December 1978, adjusting the weightings applicable to the remuneration and pensions of officials and other servants of the European Communities following the amendment of the provisions of the Staff Regulations concerning the monetary parities to be used in implementing the Staff Regulations (Official Journal L 369, p. 8). The officials concerned thereupon found that in their salary statements for April 1979 the amount expressed in Belgian francs was considerably reduced whilst that paid in Italian lire remained unchanged.

Complaints were submitted in good time to the Commission under Article 90 of the Staff Regulations against the “reductions in real terms” of the allowance paid to the officials concerned. By a letter of 21 November 1979 the Commission rejected those complaints.

This application dated 3 March 1980 was received at the Court on 7 March 1980 at the same time as those of the other officials concerned (Cases 73 to 94/80).

It was subsequently decided that this case should become a test case.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court (First Chamber) decided to open the oral procedure without any preparatory inquiry.

arising from the application, from no later than 15 February 1976, of the updated rate of exchange to the allowance in question;

- (5) Order the opposite party to pay the costs.

## II — Conclusions of the parties

The *Commission* contends that the Court should:

The *applicant* claims that the Court should:

— Dismiss the application as unfounded;

- (1) Annul the decision of 21 November 1979 whereby the Commission rejected the complaint submitted by the applicant in so far as that decision infringes Article 106 of the Staff Regulations and breaches the general principles governing the application of secondary Community law (the principles of non-discrimination, of protection of acquired rights and of good faith);

— Order the applicant to pay the costs.

## III — Submissions and arguments of the parties

- (2) Declare unlawful, on the foregoing grounds, the reduction occurring as from the payment of the remuneration for April 1979 in the basic amount in Belgian francs of the allowance due to the applicant under Article 106 of the Staff Regulations;

In his first submission the *applicant* alleges infringement of Article 106 of the Staff Regulations. The Commission begs the question in replying to the applicant's complaint that he receives an "allowance the amount of which may not exceed that received in Italian lire at Ispra if it had been paid there by way of separation allowance for December 1961 or which the applicant would have received if he had been assigned there". The first corollary which must be rejected is the reference to the (converted) amount in Italian lire. Under the Staff Regulations and in the period prior to their adoption the remuneration of officials is and was expressed in Belgian francs. The applicant therefore believes that the amount referred to in Article 106 is that of the allowance expressed in Belgian francs and that alone must remain constant. The use of the word "received" does not militate against that view. Only a Byzantine construction could sustain the contention that that expression refers only to the value of the actual payment. In the second place it is not possible to accept the arguments of the Commission as to the allowance being unalterable

- (3) Declare, in the exercise of its jurisdiction to decide the substance of the matter, that the applicant is entitled to retain the said amount unaltered and to have the updated exchange rate or, alternatively, the exchange rate resulting from the combined provisions of Regulations Nos 3085/78 and 3086/78 applied to it when it is converted;

- (4) Declare, further, that, pursuant to the administrative provisions of 21 January 1976, the applicant is entitled to arrears of payments

with exclusive reference to the amount paid in Italian lire. The Commission is wrong to consider in its reply to the complaint that the letter and spirit of Article 106 have been observed in full when the amount in Italian lire paid to the applicant in December 1961 is the same as the amount in Italian lire paid — on the same basis — for April 1979. In stating that the amount of the allowance might not be adjusted in future the legislature was simply saying that the amount loses any relationship in percentage terms with an official's salary (which existed at the time of the separation allowance) and becomes an amount which stays unaltered irrespective of the course of an official's career or increases in salary.

The Commission's contention that the exchange system provided for by Regulation No 3085/78 may not be applied to the allowance in question also proves to be wrong. The Commission did apply it in this case but by the converse method. Instead of re-assessing the sum obtained from the conversion into lire, it reduced the basic amount in Belgian francs which the applicant considers to be the proper unalterable element. Since in the past the Commission excluded the allowance provided for in Article 106 from both possible adjustments, the applicant now claims nothing more than what is strictly due to him. As a result, there is no question of unjust enrichment. The alleged "neutrality" of the operation does not therefore hold good; the fixing of the amount in Italian lire perpetuates the damage complained of by the applicant whereas neutrality could only

have been obtained by the application of an adequate rate of exchange.

The applicant makes a second submission concerning the breach of the general principles of law governing the application of secondary Community law. The Commission's practice of considering as unalterable solely the amount of the allowance converted into national currency causes obvious discrimination between officials of that institution. Officials employed in Member States which have strong currencies are at an advantage compared to those employed in countries the currency of which has fallen in value in relation to the Belgian franc. That again results from the unjustified abandonment of the Belgian franc as an established base for reference. The corollary to the infringement of Article 106 of the Staff Regulations is the failure to observe the principle of the inviolability of acquired rights and of the protection of legitimate expectation. In the first place, the amount of the allowance was invariably indicated either *per relationem* (letter of employment prior to the Staff Regulations) or explicitly (measures awarding the substitutional allowance to certain EAEC officials). That confirmed the belief of the recipients of the allowance that the amount was fixed and unalterable. Secondly, the existence of possible weightings and above all the reasonable hopes placed in the regulations on the updating of exchange rates raised the expectation that the issue would be equitably resolved. Furthermore, the administrative provisions adopted by the Director-General for Administration on 21 January 1976 according to which the

allowance provided for by Article 106 was to be paid on the basis of a rate of exchange updated every three months could only increase anticipation of a solution's being found different from that which was finally adopted.

The *Commission* states in reply that the rules in force before the Staff Regulations were adopted provided officials with a specific salary expressed in Belgian francs but paid in lire, florins, marks and so on, depending on their place of employment, on the basis of the official monetary parities in force on 31 December 1961 but they did not make provision for a weighting. When drafting Article 106 the legislature had no intention other than to freeze the allowance at the level at which it was or would be under the scale of remuneration in force on 31 December 1961. The *Commission* was therefore right not to have applied the weighting provided for in Article 64 of the Staff Regulations to the allowance. The allowance provided for by Article 106 was introduced as a transitional provision and the legislature was careful to state in the article itself that the amount resulting from the application of the previous scale of remuneration "shall not in future be varied for any reason whatever". Therefore in relation to Articles 63 and 64 of the Staff Regulations Article 106 is a *lex specialis* derogating from a *lex generalis*.

The *Commission* points out that on 6 November 1974 it took the decision in principle to apply an updated rate to all amounts payable under the Staff Regulations where the weighting referred to in Article 64 of the Staff Regulations was not applicable to such amounts. The *Commission* does not deny that the

allowance referred to in Article 106 was one of the amounts to which the updated exchange rate would have to be applied. But it claims that that list was drawn up for reference purposes. After a careful check of the various items of payment, it was deliberately and properly decided not to apply the updated exchange rate to the allowance paid under Article 106 because it is an allowance governed by Article 63.

In fact from 31 December 1961 the sum expressed in Belgian francs was paid to the applicant in Italian lire at the rate resulting from the parities in force under the scale of remuneration applied at the time when the allowances were "frozen". Those parities happened still to correspond (it was then a period of monetary stability) with those declared to the International Monetary Fund, and in force on 1 January 1965 and to which the new version of Article 63 of the Staff Regulations expressly referred. The applicant is therefore wrong in his belief that the *Commission* converted into lire the amount expressed in Belgian francs of the allowance referred to in Article 106 by using for this purpose the parities declared to the International Monetary Fund and in force on 1 January 1965. The *Commission* has always used the parities in force on 31 December 1961 to which Article 106 refers and those happen to be identical to those of 1 January 1965. The applicant may not claim to be entitled to the amount (expressed in Belgian francs) of the separation allowance to which he would have been entitled under the previous rules. However, the applicant excludes from those rules the element which is unfavourable to him, namely the monetary parities applied at the time to that amount. According to the applicant, in order to convert the said amount into Italian lire, the exchange rates used for the implementation of the general budget

of the European Communities on 1 July 1978 should be applied, pursuant to the new Staff Regulations of Officials as amended by Regulations Nos 3085/78 and 3086/78. The applicant is thereby seeking to benefit from the two sets of rules, from the one prevailing prior to the Staff Regulations and from the Staff Regulations themselves. In Joined Cases 177/73 and 5/74 *Reinarz* [1974] ECR 819 the Court stated that: "a transitional provision issued on the transition to a less generous system does not normally seek to give employees greater rights than they would have had under the system which is revoked". In this case Article 106 leaves no room for doubt because it states that "such amount shall not in future be varied for any reason whatever ...". Moreover, in that judgment the Court went on to state: "such a provision cannot therefore be interpreted as allowing a combination of the more favourable method of calculation of one system with the more favourable salary scale of another". Therefore, since there has been no infringement of Article 106 of the Staff Regulations, acquired rights have not been infringed nor has the principle of the protection of legitimate expectation been breached.

The Commission explains that if the applicant found a considerable reduction of the amount expressed in Belgian francs in his salary statement for April 1979 this was in order that the new parities introduced by the Staff Regulations might be applied to such amount. The end result is the same and the sum received by the applicant is that to which he was entitled under Article 106. However, without adequate explanation, the manner of presentation might have led the applicant to believe that his entitlement had been substantially

altered. For example, in the case of an allowance paid under Article 106 of BFR 1 000, it would have been necessary to state in the April statement: allowance in accordance with Article 106 = BFR 1 000 × 12.50 (parity in force on 31 December 1961) = LIT 12 500.

Finally, as regards the principle of the equal treatment of officials, the Commission contends that, since entitlement to the allowance referred to in Article 106 has not in fact been altered at all, only the manner of presentation being changed, in the case of an official working in Germany and the payment of an allowance of BFR 1 000, it would have been necessary to include the following in the April salary statement: allowance in accordance with Art. 106 = 1 000 × 0.08 (parity in force on 31 December 1961) = DM 80. The Commission does not deny that since the legislature has not altered the amount of the allowance provided for by Article 106 in relation to the amount which would have been paid under the rules in force on 31 December 1961, some difference in treatment occurred owing to fluctuations in the respective strengths of the currencies of the Member States. It replies however that the relationship between an official and the Commission is governed by regulations and staff rules and the regulatory authority was not bound to introduce the transitional allowance provided for in Article 106 into the new Staff Regulations. Since it was a transitional provision, currency depreciation was anticipated, even if it was not possible to ensure the same degree of depreciation in every case. That situation of varying degrees of depreciation had existed for many years and no substantial change was made in April 1979.

The *applicant* replies that in introducing the allowance provided for by Article 106 and in stating that the amount thereof “shall not in future be varied for any reason whatever” the legislature wished to establish that, as a compensatory measure adopted when the separation allowance was being replaced by the expatriation allowance and to which were attached new conditions for its award, the allowance loses all relation in percentage terms to the amount of salary. Furthermore, the weighting was excluded since the legislature wished once and for all to freeze the amount of the allowance paid under Article 106 at that shown in Belgian francs in the item of account for the separation allowance paid to officials in December 1961. It is not claimed that the amount in national currency paid in the various places of employment on that date should be considered to be frozen instead. That is inconsistent with the Commission’s interpretation of the provision on the basis of conclusive facts when it “extended” the allowance paid under Article 106 to those officials of the Commission of the European Atomic Energy Community who had not actually received any sum by way of separation allowance in December 1961. It is sufficient to accept that the recipients of the allowance paid under Article 106 must suffer the consequences of the depreciation of the Belgian franc. To add to that depreciation the losses, not foreseeable by that same legislature in 1962, due to the development of the rates of exchange of the Belgian franc with particularly weak national currencies, is unfair and discriminatory.

The Commission’s statement that “the allowance referred to in Article 106 ...

has always been expressed in Belgian francs and paid in the currency of the various places of employment of the officials receiving it at the exchange rate and on the conditions laid down by the rules preceding the entry into force of the Staff Regulations, that is to say in accordance with the rules in force on 31 December 1961” has the following corollaries: applicability of the exchange rate on the money market (which was stable for a long time before and after the Staff Regulations entered into force in 1962 but would not necessarily remain so) and, conversely, inapplicability of “frozen” rates as later provided for by Article 63.

It may not be contended that the legislature wished to “freeze” the rate of exchange applied in 1961 in order to pay remuneration in the various national currencies. On the contrary, in introducing the allowance in question in a period of monetary stability the legislature intended to give those entitled to it simply an allowance which remained constant. If the contrary view were taken anomalies would arise. Everyone remembers how on a certain date the monetary unit was replaced in the French Republic by a multiple (100) of the franc. Such a measure has been frequently mooted in Italy. In that case would the sum paid in lire by way of allowance under Article 106 to officials working in Italy remain unchanged or conversely would it be adjusted to the different value of the national unit of currency? To sustain its case the Commission is using an “amalgam” of the system of fixed rates, where they are provided for by specific provisions of the

Staff Regulations, and the system of market rates (that is to say "updated rates") when no provision is made in law for the former.

A rule must not be treated as being transitional because its effects are bound to be nullified by currency depreciation but rather because it was enacted when one set of rules was being replaced by another and, possibly, because it is applied to a closed category of persons entitled. Secondly, the point in issue here is not currency depreciation but rather the unjustified losses resulting from the depreciation of the Italian lira in relation to the Belgian franc which is the reference currency for the payment of officials' entitlements. That is confirmation of the fact that the applicant is not seeking to benefit from two systems of payment but is rather seeking to avoid any further damage.

The *Commission* replies that, far from weakening its case, the extension of the allowance to officials of the Commission of the European Atomic Energy Community strengthens it. The allowance referred to in Article 106 of the Staff Regulations was granted with retroactive effect from 1 February 1973 and was expressed in Belgian francs by reference to the basic salary set out in each official's letter of employment. It was paid however in lire, marks and so on, depending on each official's place of employment, at the exchange rate obtained from the application of the official parities in force on 31 December 1961. Even in 1961 the Commission had official fixed parities. In providing that any official shall be allowed the same amount as that which he would have

received by way of separation allowance under the scale of remuneration existing before the Staff Regulations entered into force, Article 106 is referring not only to the amount of that allowance expressed in Belgian francs but also to the rules relating to the old scale, that is to say the official monetary parities applied at that time.

The applicant's situation has in no way been changed as a result of the adoption of Regulations Nos 3085 and 3086/78. The amount of allowance paid under Article 106 and received on 15 April 1979 in Italian lire, the currency in which payment of the applicant's remuneration had been and was being made, is identical to that received on 15 March 1979. Certainly, if the applicant's argument were accepted, namely that the amount of the allowance paid under Article 106 and expressed in Belgian francs should be converted into lire by applying the new monetary parities specified by Regulation No 3085/78, there would be a considerable increase in the sum payable in lire. By analogy, however, and still applying the applicant's argument, the Commission would have to reduce the amount paid in German marks or Dutch guilders to officials employed in the two countries concerned. By leaving unchanged the amount expressed in Belgian francs of the allowance paid under Article 106, as it stood on 31 December 1961, and by converting that amount into German marks or Dutch guilders pursuant to the rules in force on 31 December 1961, in other words by applying the official fixed rates in force on that date, the Commission has in fact constantly paid the same quantity of German marks or Dutch guilders from 1961 until the present time. It is not difficult to imagine the consequences of a reduction in the amount in marks or guilders, particularly

in view of the fact that the Commission had clearly indicated that the adoption of Regulations Nos 3085 and 3086/78 would not entail any reduction in the amount received in the currency of the place of employment, disregarding of course the problem of transfers.

#### IV — Oral procedure

The parties presented oral argument at the sitting on 19 and 20 February 1981.

The Advocate General delivered his opinion at the sitting on 14 May 1981.

## Decision

By application lodged at the Court Registry on 7 March 1980 pursuant to Article 91 of the Staff Regulations of Officials, the applicant, Mr Airola, an official of the Commission employed at the Joint Research Centre at Ispra in Italy, brought an action against the Commission of the European Communities in which he asks the Court to:

- (1) Annul the decision of 21 November 1979 whereby the Commission rejected the complaint submitted by the applicant in so far as that decision infringes Article 106 of the Staff Regulations and breaches general principles governing the application of secondary Community law (the principles of non-discrimination, of protection of acquired rights and of good faith);
- (2) Declare unlawful, on the foregoing grounds the reduction occurring as from the payment of the remuneration for April 1979 in the basic amount in Belgian francs of the allowance due to the applicant under Article 106 of the Staff Regulations;
- (3) Declare, in the exercise of its jurisdiction to decide the substance of the matter, that the applicant is entitled to retain the said amount unaltered and to have the updated exchange rate or, alternatively, the exchange rate resulting from the combined provisions of Regulations Nos 3085/78 and 3086/78 applied to it when it is converted;
- (4) Declare, further, that, pursuant to the administrative provisions of 21 January 1976, the applicant is entitled to arrears of payments arising from the application, from no later than 15 February 1976, of the updated rate of exchange to the allowance in question.

2 In the version in force until the end of 1978, Articles 63 and 64 of the Staff Regulations of Officials provided that: “An official’s remuneration shall be expressed in Belgian francs. It shall be paid in the currency of the country in which the official performs his duties. Remuneration paid in a currency other than Belgian francs shall be calculated on the basis of the par values accepted by the International Monetary Fund on 1 January 1965. An official’s remuneration expressed in Belgian francs shall . . . be weighted at a rate above, below or equal to 100% depending on living conditions in the various places of employment . . . The weighting applicable to the remuneration of officials employed at the provisional seats of the Communities shall be equal to 100% as at 1 January 1962.”

3 On 21 December 1978 the Council adopted Regulation (Euratom, ECSC, EEC) No 3085/78 (Official Journal L 369, p. 6). Article 1 thereof provides that Article 63 of the Staff Regulations is to be replaced by the following provision:

“Officials’ remuneration shall be expressed in Belgian francs. It shall be paid in the currency of the country in which the official performs his duties.

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.

This date shall be changed, at the time of the annual review of remuneration provided for in Article 65, by the Council acting by a qualified majority upon a proposal from the Commission as provided in the first indent of the second subparagraph of Articles 148 (2) of the EEC Treaty and of 118 (2) of the Euratom Treaty.

Without prejudice to the application of Articles 64 and 65, the weightings fixed pursuant to these articles shall, whenever the above date is changed, be adjusted by the Council, which, acting in accordance with the procedure mentioned in the third paragraph, shall correct the effect of the variation in the Belgian franc with respect to the rates referred to in the second paragraph.”

Article 4 of the regulations provides that the regulation is to enter into force on 1 January 1979 and that it is to apply from 1 April 1979.

- 4 On 21 December 1978 the Council also adopted Regulation (Euratom, ECSC, EEC) No 3086/78 adjusting the weightings applicable to the remuneration and pensions of officials and other servants of the European Communities following the amendment of the provisions of the Staff Regulations concerning the monetary parities to be used in implementing the Staff Regulations. Article 1 (1) of the regulation fixes amongst other things the weighting applicable to the remuneration of officials and other servants.
- 5 The rules in force before 1 January 1962 prior to the adoption of the Staff Regulations provided for a so-called “separation” allowance equal to 20% of the basic salary to be paid to officials who could prove that their place of employment was more than 70 kilometres (25 kilometres under the Staff Regulations of the European Coal and Steel Community of 1956) from their place of origin. Nationality was not taken into consideration.
- 6 The Staff Regulations which entered into force on 1 January 1962 replaced that allowance by the “expatriation” allowance, so-called because an official has to work in a Member State other than that of which he is a national. As a transitional provision Article 106 provided that:

“Any official in receipt of a separation allowance before these regulations were applied who does not qualify for an expatriation allowance under Article 4 of Annex VII shall be allowed the same amount as that which he would have received by way of separation allowance under the scale of remuneration existing before the Staff Regulations entered into force. Such amount shall not in future be varied for any reason whatever, save where the official qualifies for an expatriation allowance by satisfying the requirements therefor.”

- 7 Article 106 was applied after May 1974 and with retroactive effect from 1 February 1973 to officials who had been recruited between 19 June 1960 and 31 December 1961 by the former Commission of the European Atomic Energy Community and had never received the separation allowance. By letter of 14 March 1974 officials in that category belonging to the Joint Research Centre were sent a circular in which the amount of the separation allowance was expressed in Belgian francs on the basis of the basic salary, likewise expressed in Belgian francs, shown in their letters of employment.
- 8 The allowance in question continued to be paid to officials on the basis of the exchange rate of 1 Belgian franc to 12.50 Italian lire. According to the applicant an administrative decision taken in January 1976 but which was never brought to the notice of the staff, provided for that allowance, amongst others, to be paid on the basis of updated exchange rates. However, that decision was never applied to the separation allowance because, according to the Commission, after a check of the various budgetary items it considered that the decision should not be applied to that allowance on the ground that Article 106 of the Staff Regulations provides that it may not be varied for any reason whatever.
- 9 After the entry into force of Regulations Nos 3085 and 3086/78 the applicant found that in his salary statement for April 1979 the amount expressed in Belgian francs was considerably reduced whilst that paid in Italian lire remained unchanged.
- 10 By letter of 27 June 1979 he consequently submitted to the Commission a complaint under Article 90 (2) of the Staff Regulations against the “reduction in real terms” of the allowance. He complained not only of the

reduction of the amount in Belgian francs which was apparent from his salary statement for April 1979 but also of the non-application of the administrative decision of 1976. The Commission rejected that complaint and the applicant brought this application.

- 11 The applicant's main claim, relating to the period beginning on 1 April 1979, should be examined first. He maintains that the amount of the separation allowance should be paid at the updated exchange rate from April 1979. That, he claims, follows from Article 63 of the Staff Regulations as it now stands. The Commission contests that argument. It maintains that under Article 106 of the Staff Regulations an official may receive only the amount which he would have received by way of separation allowance under the scale of remuneration existing prior to the entry into force of the Staff Regulations. That amount may not in future be varied for any reason whatever. It follows that the amount of the allowance in the national currency of the place where officials are employed was fixed by applying the exchange rate in 1961 and that this amount may not be changed.
  
- 12 The Commission's argument cannot be accepted. It is common ground that officials' remuneration was expressed in Belgian francs before the Staff Regulations were adopted and thereafter the amount of remuneration of each official has been fixed in Belgian francs, even if the remuneration is paid in national currency. Article 106 of the Staff Regulations must therefore be understood as meaning that it entitles an official to receive a separation allowance the amount of which, expressed in Belgian francs, has been frozen at the 1961 level. That amount must be calculated in the national currency of the place where an official is employed at the rate fixed in Article 63 of the Staff Regulations as in force when the allowance has to be paid.
  
- 13 It follows that the applicant is entitled to the difference between the amount paid to him by the Commission after 1 April 1979 by way of separation allowance and the amount which would be obtained from the application of the updated exchange rate and to that extent the Commission's decision must be annulled.

- 14 The separation allowance, to which the weighting referred to in Article 64 of the Staff Regulations has never been applied, must not be weighted either after the adoption of the updated rates.
- 15 As to the applicant's claim for a ruling that updated exchange rates must be applied to the allowance during the period from 1 January 1976 to 31 March 1979, a study of the file on the case leads to a different conclusion.
- 16 On 6 November 1974 the Commission took the decision to apply as from 1 November 1974 updated exchange rates to the refund of certain expenses incurred by officials of the Commission. That decision did not concern the separation allowance. By an internal instruction from the Director of Personnel, which was approved on 21 January 1976 by the Director-General for Personnel and Administration, the Commission's decision was extended as from 1 January 1976 "to all emoluments paid by the Commission or taken into account in order to pay an amount on the basis of the Staff Regulations of Officials or the Conditions of Employment of Other Servants of the Communities, where those amounts are not weighted under Article 64 of the Staff Regulations" except for some specific amounts expressly referred to in the second paragraph of the instruction.
- 17 Following that instruction the officers of the Commission drew up a list of the budgetary items to which it had to be applied. Amongst those items there was mention of allowances in accordance with Art. 106, Art. 95, 96 ECSC Staff Regulations. Shortly afterwards, at any rate before payments were actually made pursuant to the instruction, a check was carried out on the various items comprised in that list. It was ascertained that the separation allowance was governed by Article 63 of the Staff Regulations with the result that the instruction was never applied with respect to that allowance.
- 18 It is common ground that whatever its legal value may be the instruction was never brought to the notice of staff, which the applicant himself accepts. It was not until he made his complaint on 27 June 1979 that he first asked for updated exchange rates to be applied in respect of the period prior to 1 April 1979.

- 19 It follows from the considerations set forth above that the allowance in question must be regarded as an amount expressed in Belgian francs, but which, pursuant to Article 63 of the Staff Regulations, must be paid in the national currency of the place at which an official is employed at the rate applying on the date on which the allowance has to be paid. The Commission therefore rightly decided to apply until 1 April 1979 the exchange rate referred to in Article 63 of the old version of the Staff Regulations. It follows that in so far as the applicant's claim relates to the period prior to 1 April 1979 it must be dismissed.

### Costs

- 20 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs.

On those grounds,

THE COURT (First Chamber)

hereby:

1. **Annuls the Commission's decision of 21 November 1979 rejecting the applicant's complaint concerning the exchange rate to be applied for the payment of the separation allowance from 1 April 1979.**
2. **Orders the Commission to pay to the applicant the difference between the amounts paid from 1 April 1979 by way of separation allowance and those which would have been obtained from the application of the updated exchange rate.**

3. Dismisses the remainder of the application.
4. Orders the Commission to pay the costs.

Bosco

O'Keeffe

Koopmans

Delivered in open court in Luxembourg on 12 November 1981.

A. Van Houtte

Registrar

G. Bosco

President of the First Chamber

OPINION OF MR ADVOCATE GENERAL CAPOTORTI

(see Case 167/80, [1981] ECR 1512)