

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
11 December 1996

Case T-177/95

Patrick Barraux and Others
v
Commission of the European Communities

(Officials – Specific weighting)

Full text in French II - 1451

Application for: annulment of the pay slips making calculation in arrear for the period from 1 July to 31 December 1994 under Council Regulation (ECSC, EC, Euratom) No 3161/94 of 19 December 1994 adjusting, with effect from 1 July 1994, the remuneration and pensions of officials and other servants of the European Communities and the weightings applied thereto (OJ 1994 L 335, p. 1) in so far as those pay slips retrospectively apply a specific weighting for Karlsruhe fixed at 99.8%.

Decision: Application dismissed.

Abstract of the Judgment

The first paragraph of Article 63 of the Staff Regulations of Officials of the European Communities ('the Staff Regulations') provides: '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.'

To ensure that all officials, irrespective of their place of employment, have equal purchasing power for the remuneration they receive, the first paragraph of Article 64 of the Staff Regulations provides that: 'An official's remuneration 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 second paragraph of Article 64 of the Staff Regulations provides that those weightings are to be adopted by the Council acting on a proposal from the Commission.

Article 65 of the Staff Regulations concerns the level of remuneration. In its first paragraph, it lays down the procedure and detailed rules for the annual examination of that level and, in appropriate cases, its adaptation. Under Article 65(2) of the Staff Regulations, 'in the event of a substantial change in the cost of living, the Council shall decide, within two months, what adjustments should be made to the weightings and if appropriate to apply them retrospectively'.

Article 9 of Annex XI to the Staff Regulations provides that 'On the basis of a report by the Statistical Office and when objective factors reveal an appreciable distortion in purchasing power in a given place of employment compared with that in the capital of the Member State concerned, the Council, on a proposal from the Commission, and in accordance with the second paragraph of Article 64 of the Staff Regulations shall decide to set a weighting for that place' (specific weighting).

The applicants are Commission officials employed at the European Institute for Transuranic Elements at Karlsruhe (Germany).

In its judgment in *Chavane de Dalmassy and Others v Commission*, the Court of First Instance annulled the pay slips of officials employed at Karlsruhe in so far as those pay slips applied Council Regulation (ECSC, EEC, Euratom) No 3834/91 of 19 December 1991 adjusting, with effect from 1 July 1991, the remuneration and pensions of officials and other servants of the European Communities and the weightings applied thereto (OJ 1991 L 361, p. 13). The Court of First Instance held that Article 6(2) of that regulation infringed the principle, laid down in Annex XI to the Staff Regulations, that the weighting for a Member State is to be fixed by reference to the cost of living in its capital, by fixing a provisional weighting for Germany based on the cost of living in Bonn, even though Berlin had been the new capital since 1 October 1990.

See: T-64/92 *Chavane de Dalmassy and Others v Commission* [1994] ECR-SC II-723

Following a proposal by the Commission of 14 November 1994, the Council adopted Council Regulation (ECSC, EC, Euratom) No 3161/94 of 19 December 1994 adjusting, with effect from 1 July 1994, the remuneration and pensions of officials and other servants of the European Communities and the weightings applied thereto ('Regulation No 3161/94'). The regulation entered into force on 24 December 1994. It replaced Council Regulation (Euratom, ECSC, EC) No 3608/93 of 20 December 1993 adjusting, with effect from 1 July 1993, the remuneration and pensions of officials and other servants of the European Communities and the weightings applied thereto (OJ 1993 L 328, p. 1), which established, by reference to the cost of living in Bonn, a weighting for Germany of 99.8 and specific weightings of 113 for Berlin and 110.6 for Munich.

Article 6(1) of Regulation No 3161/94 fixes, with effect from 1 July 1994 and by reference to the cost of living in Berlin, a weighting for Germany of 111.4. The same article prescribes a specific weighting of 99.8 for the remuneration of officials employed in Karlsruhe.

On 29 December 1994, applying Regulation No 3161/94, the Commission drew up the applicants' pay slips making calculation in arrear in respect of the period between 1 July and 31 December 1994.

Those pay slips were sent to the applicants at the beginning of January 1995.

By letter of 28 March 1995, the applicants submitted a complaint against the pay slips under Article 90(2) of the Staff Regulations.

By decision of 19 July 1995, notified to the applicants by letter of 24 July 1995, the Director-General of Personnel and Administration of the Commission rejected the complaint.

Substance

The subject-matter of the action

This action for annulment is directed against the applicants' pay slips making calculation in arrear in respect of the period between 1 July and 31 December 1994, even though the applicants' claims for relief, as formulated, refer to the 'applicants'

pay slips for the period between 1 July and 31 December 1994'. Those latter pay slips have not been the subject-matter of a complaint and, at the hearing, the applicants' representative stated that he regarded them as lawful, having been drawn up in compliance with the legislation applicable at the time. That reading of the applicants' claims is, moreover, confirmed by paragraphs 20 and 21 of the application, worded as follows: 'It was in application of [Regulation No 3161/94] that the Commission drew up the applicants' pay slips making calculation in arrear in respect of the period between 1 July and 31 December 1994. The disputed pay slips are the first to apply, with retrospective effect from 1 July 1994, a specific weighting for Karlsruhe of 99.8.' Moreover, the applicants' complaint had the same subject-matter (paragraph 32).

The applicants' single plea in law

The principle of equivalent purchasing power is laid down by Article 64 of the Staff Regulations. Its aim is to ensure that all officials have equivalent purchasing power, wherever their place of employment may be. For that purpose, a weighting is applied to the remuneration of officials which may be above, below, or equal to 100%, depending on living conditions in the various places of employment (paragraph 34).

See: 114/77 *Jacquemart v Commission* [1978] ECR 1697

Rules for the implementation of that principle are based not only on that article, but also on Articles 63, 65 and 65a of the Staff Regulations, the latter providing that the rules for implementing Articles 64 and 65 are set out in Annex XI. Those articles are situated at the same level in the hierarchy of legal rules as Article 64 of the Staff Regulations and must therefore also be taken into consideration in order to determine the content and scope of the principle of equal purchasing power (paragraph 35).

Article 65(1) of the Staff Regulations requires the Council to review the level of remunerations annually. That review includes not only an assessment of the remuneration level of Community officials in relation to the salaries of national officials, but also evaluates equivalences of purchasing power between the remunerations of Community officials employed in different places. It is carried out, under the provisions of the same article, on the basis of a report submitted by the Commission and reflects the situation as at 1 July. Under the first subparagraph of Article 1(1) of Annex XI to the Staff Regulations, the report is concerned in particular with changes in the cost of living in Brussels and the economic parities between Brussels and the other places of employment in the Member States. It is drawn up before the end of September in each year by the Statistical Office of the European Communities ('the Statistical Office') (paragraph 36).

Under Articles 1(3)(a) and 9 of Annex XI to the Staff Regulations, a specific weighting may be fixed on the basis of that report, which, for that purpose, must contain a calculation of the economic parities which establish the equivalence of purchasing power of the salaries of European officials serving in the capitals of the Member States and in certain other places of employment, with reference to Brussels (paragraph 37).

The first subparagraph of Article 65(1) of the Staff Regulations, the first subparagraph of Article 1(1) of Annex XI thereto, and Article 3(1) of Annex XI impose a strict time frame on the Council for carrying out that annual review of remunerations (paragraph 38).

Thus, before the end of each year, it must decide on the basis of the report drawn up by the Statistical Office before the end of September whether it is necessary to fix or adjust the level of remunerations or the weightings and specific weightings. Under Article 3(1) of Annex XI to the Staff Regulations, that decision takes effect on 1 July, because the reference period on which the report of the Statistical Office

bases its calculations is, under the second subparagraph of Article 1(1) of Annex XI to the Staff Regulations, the 12 months preceding 1 July of the year in which the review is carried out (paragraph 39).

It is only where there is a substantial change in the cost of living in relation to the data available at the time of the annual review of remuneration levels in September, and making allowance for a forecast of changes of purchasing power during the current annual reference period which is drawn up in March of each year under the first subparagraph of Article 5(1) of Annex XI to the Staff Regulations, that the Council may make interim adjustments under Article 65(2) of the Staff Regulations. In such a situation, the Commission must submit a proposal to that effect to the Council, under Article 4(2) of Annex XI to the Staff Regulations, not later than the second half of April. The Council has a maximum period of two months in which to adopt those measures, which, under Article 4(1) of Annex XI to the Staff Regulations, take effect on 1 January (paragraph 40).

Thus, the principle of equivalent purchasing power is, in principle, implemented by means of an annual adaptation of the weightings and specific weightings, and it is only exceptionally, in the event of a substantial change in the cost of living, that an interim adjustment occurs (paragraph 41).

In accordance with Articles 3(1) and 4(1) of Annex XI to the Staff Regulations, an annex added to the Staff Regulations by Council Regulation (ECSC, EEC, Euratom) No 3830/91 of 19 December 1991 amending the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of those Communities in respect of detailed rules for adjusting the remuneration (OJ 1991 L 361, p. 1), the weightings and specific weightings have retrospective effect in principle. Article 3(1) of Annex XI provides that the annual measures for adjusting remunerations are to take effect on 1 July, even though they cannot be adopted, as has been pointed out above, before the end of September. As for interim adjustments, Article 4(1) of Annex XI provides that they are to take effect

on 1 January, even though they cannot be adopted until after the drawing up by the Statistical Office, in March, of the forecast of the change in purchasing power, and after the transmission by the Commission of a proposal to that effect, at the latest during the second half of April (paragraph 42).

Therefore, the applicants' argument that the principle of equivalent purchasing power placed an obligation on the Council to fix the specific weighting 'immediately' after discovering a substantial change in the cost of living cannot be accepted. Nor, similarly, can the applicants claim that the Council may give retrospective effect to the fixing of a new specific weighting only in the event that the latter leads to an increase in remuneration already received, since there is no provision in the Staff Regulations containing that limitation (paragraph 43).

Nevertheless, it still needs to be considered whether the retrospective effect of Regulation No 3161/94 as from 1 July 1994 might not, in this case, have infringed the principles of legal certainty, the protection of legitimate expectations and respect for rights already acquired (paragraph 44).

Although, in general, the principle of legal certainty precludes a Community measure from taking effect from a point in time before its publication, it may exceptionally be otherwise where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected (paragraph 45).

See: C-368/89 *Crispoltoni v Fattoria Autonoma Tabacchi* [1991] ECR I-3695, para. 17

In this case, the aim pursued in adopting the contested regulation, namely the principle of equivalent purchasing power, requires that it should have retrospective effect. Indeed, it is not possible to determine that there has been a change in the cost of living until after it has taken place, so that compliance with that principle can only be ensured retrospectively (paragraph 46).

See: C-301/90 *Commission v Council* [1992] ECR I-221, para. 29

As regards legitimate expectations, 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 47)

See: T-98/92 and T-99/92 *Di Marzio and Lebedev v Commission* [1994] ECR-SC II-541, para. 68

In this case, the variability in time of the remuneration of Community officials is obvious from the provisions of the Staff Regulations (paragraph 48.)

Moreover, the same provisions state the principle that the measures to be taken in order to ensure the maintenance of equivalent purchasing power are to have retrospective effect, by providing that the annual adjustment of remuneration levels is always to take effect on 1 July of the current year, even though the Council makes the adjustments after that date (paragraph 49).

Finally, the applicants have not established that the Commission, by giving them precise assurances, led them to entertain well-founded hopes that, in respect of the period in question, they would benefit from the application of the weighting for Germany established by reference to the cost of living in Berlin. The letter of 21 February 1992 from the Director-General of Personnel and Administration to Mr Chavane de Dalmassy, the Chairman of the European Public Service Union in Karlsruhe, cited by the applicants, does not in any way commit the Commission to apply to the remuneration of officials employed in Karlsruhe, for the disputed period between 1 July and 31 December 1994, the weighting for Germany established by reference to the cost of living in Berlin following the judgment in *Chavane de Dalmassy and Others v Commission* (paragraph 50).

See: *Chavane de Dalmassy and Others v Commission*, cited above; T-587/93 *Ortega Urretavizcaya v Commission* [1996] ECR-SC II-1027, para. 57

Moreover, the applicants cannot derive from that judgment the right to remuneration for the period concerned fixed on the basis of the weighting for Germany established by reference to the cost of living in Berlin. At paragraph 56 of that judgment the Court of First Instance observed that the Council should have fixed, first, a weighting for Germany based on the cost of living in Berlin, and, secondly, specific weightings for the various places of employment in that country where a significant difference in purchasing power was determined in comparison with the cost of living in the capital, Berlin (paragraph 51).

Thus, in its judgment in *Chavane de Dalmassy v Commission*, the Court of First Instance had already foreseen that the principle of equivalent purchasing power might require the Council, in implementing that judgment, to adopt specific weightings as from the time the weighting for Germany was fixed in relation to the cost of living in Berlin. The applicants cannot therefore rely on that judgment in order to claim, in respect of the disputed period, protection of their legitimate expectation in a fixing of remunerations on the basis of the weighting for Germany established by reference to the cost of living in Berlin. Regulation No 3161/94 constitutes the implementation of paragraph 56 of the judgment in *Chavane de Dalmassy v Commission* as from the date laid down by the relevant provisions of

the Staff Regulations, namely 1 July 1994. Thus the Council precisely applied the principle of equivalent purchasing power, and hence of equal treatment. It prevented officials employed in Karlsruhe from enjoying an undue advantage, contrary to that principle, by receiving remuneration to which a weighing for Germany established by reference to the cost of living in Berlin, which is significantly higher than that in Karlsruhe, had been applied (paragraph 52).

Moreover, concerning the alleged infringement by Regulation No 3161/94 of the applicants' acquired rights, the pay slips making calculation in arrear in respect of the period between 1 July and 31 December 1994 did not make any negative adjustment by reason of the application of Regulation No 3161/94. The latter fixed a specific weighting for Karlsruhe of 99.8, precisely corresponding to the weighting for Germany previously established by reference to the cost of living in Bonn, on the basis of which the applicants' pay slips for the period from 1 July to 31 December 1994 had been drawn up, without being challenged by them. Furthermore, in so far as the applicants are in reality claiming that the weighting for Germany established by reference to the cost of living in Berlin should be applied to them, that claim flagrantly disregards the principle of equivalent purchasing power, since living costs in Karlsruhe are considerably lower than in Berlin. They cannot therefore maintain in good faith that the principle of equivalent purchasing power leans toward entitling them to have the weighting for Germany established by reference to the cost of living in Berlin applied to their remuneration (paragraph 53).

In those circumstances, by adopting Regulation No 3161/94, the Council has infringed neither the principle of certainty in legal situations nor the principle of respect for acquired rights, but has, on the contrary, fairly applied the principle of equivalent purchasing power within the time frame established by the relevant provisions of the Staff Regulations (paragraph 54).

Operative part:

The application is dismissed.