

OPINION OF ADVOCATE GENERAL

MENGOLZI

delivered on 8 April 2008¹

I — Introduction

1. By judgment of 29 November 2006 in Case T-135/05 *Campoli v Commission* [2006] ECR-SC I-A-2-297 and II-A-2-1527 (the ‘judgment under appeal’), the Court of First Instance of the European Communities dismissed as inadmissible in part and unfounded in part the action in which Mr Franco Campoli sought annulment of his pension statements for the months from May to July 2004 on the ground that they were unlawful in several respects.

2. The Court of Justice is now required to give a ruling in an appeal brought by Mr Campoli against the abovementioned judgment.

the pensions of former officials of the Communities under the Staff Regulations of Officials of the European Communities (‘the Staff Regulations’).

4. It should first be recalled that, in 2004, the Staff Regulations were extensively amended by Regulation No 723/2004:² the ‘new Staff Regulations’, as the amended version of the Staff Regulations is often referred to, came into effect on 1 May 2004.

5. In the version applicable before the abovementioned reform, the part of Article 82 of the Staff Regulations that is of relevance in this case provided as follows:

II — Legislative background

3. The relevant regulations for the purposes of the present dispute are those governing

‘1. The pensions provided for above shall be calculated by reference to salary scales in force on the first day of the month in which entitlement commences.

1 — Original language: Italian.

2 — Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities (OJ 2004 L 124, p. 1).

They shall be weighted at the rate fixed for the country inside the Communities where the recipient proves he has his residence.

preamble to Regulation No 723/2004, which is worded as follows:

...'

6. In the absence of specific provisions regarding the correction coefficient to be applied to pensions, the coefficient applied to serving officials of the Communities has always been used, the benchmark for which was the cost of living in the various capitals of the Member States (the so-called 'capital method').

'Deepened integration of the European Union and the free choice of pensioners of their place of residence within the European Union has made the system of correction coefficients for pensions obsolete. This system has also created monitoring problems as regards the place of residence of pensioners which should be overcome. This system should therefore be abolished with an appropriate transition for pensioners and officials recruited before the entry into force of this Regulation.'

7. In the version applicable from 1 May 2004, by contrast, Article 82 reads as follows:

'1. ...

No correction coefficient shall be applicable to pensions.

...'

8. The decision of the Community legislature to abolish the system of correction coefficients as far as pensions are concerned is explained, at least in part, in recital 30 in the

9. In concrete terms, however, the period of transition laid down in the new version of the Staff Regulations is not, as the above-mentioned recital might lead one to suppose, a period of transition from a pension calculated using a correction coefficient to a pension without such a coefficient. In fact, for all pension rights acquired before 1 May 2004 (and hence, in the case of the appellant, who has been retired since 2003, *all* his pension rights), the legislature simply laid down transitional arrangements for a gradual switch from a correction coefficient calculated using the 'capital method' to one calculated in accordance with the 'country method'. In other words, for persons who acquired pension rights before 1 May 2004, the reference cost of living for calculating the correction coefficient is no longer solely that for the capital of the Member State where he resides but the average for all of the State in question. This derives, specifically, from the provisions of Article 20 of Annex XIII

to the Staff Regulations in conjunction with Articles 1(3) and 3(5) of Annex XI to the Staff Regulations.

III — Facts

10. As a further safeguard for officials who retired before 1 May 2004, the first subparagraph of Article 24(2) of Annex XIII to the Staff Regulations provides that:

‘When these provisions enter into force, the nominal amount of net pension received before 1 May 2004 shall be guaranteed. ...’

11. However, the adjustment of correction coefficients provided for in the reform of the Staff Regulations came into effect for the first time only with the advent of Regulation No 31/2005,³ which provided for the adjustment to apply with retroactive effect as from 1 July 2004.

³ — Council Regulation (EC, Euratom) No 31/2005 of 20 December 2004 adjusting, with effect from 1 July 2004, the remuneration and pensions of officials and other servants of the European Communities and the correction coefficients applied thereto (OJ 2005 L 8, p. 1).

12. The appellant retired in February 2003. He then took up residence in London, in the United Kingdom. Consequently, a correction coefficient of 139.6%, calculated on the basis of the cost of living in London (the ‘capital method’), was applied to his pension.

13. With the entry into force of the new Staff Regulations, that correction coefficient was gradually to decrease and become the coefficient calculated in accordance with the ‘country method’, subject, however, to the guarantee that the nominal amount of the pension received before 1 May 2004 would not be reduced.

14. On 14 August 2004, the appellant submitted a complaint to the Appointing Authority under Article 90 of the Staff Regulations, in which he asked for his pension statements for the months of May, June and July 2004 to be annulled. The complaint was rejected by decision of 13 December 2004.

IV — Proceedings before the Court of First Instance and the judgment under appeal

15. By application lodged at the Registry of the Court of First Instance on 29 March 2005, the appellant appealed against the above-mentioned decision rejecting his complaint.

16. By order of the President of the Second Chamber of the Court of First Instance of 6 July 2005, the Council of the European Union was granted leave to intervene in the case.

17. In the judgment under appeal, the Court of First Instance first ruled that the criticism relating to the method of calculating the household allowance and the education allowance was inadmissible as it had not been raised in the complaint. It also ruled inadmissible, for lack of a legal interest in bringing proceedings, the part of the application directed against the pension statements for May and June 2004, since the adjustment of the correction coefficients did not take effect until July 2004, as we have seen.

18. The Court of First Instance then dismissed the appellant's pleas alleging breach of the principles of the protection of legitimate expectations, legal certainty, non-retroactivity, acquired rights, equal treatment, proportionality and good administration and alleging misuse of powers and lack of an adequate statement of reasons.

19. As regards the appellant's arguments in support of his claim of a difference in treatment — which, as we shall see, are the only ones he reiterates in the appeal — the Court of First Instance first dismissed the claim that the correction coefficient based on the 'country method', unlike the coefficient based on the 'capital method', could not guarantee that all pensioners would have equal purchasing power, irrespective of their place of residence. In particular, the Court of First Instance observed that, since any system for adjusting pensions is by its very nature approximate, there is no reason to believe that, of itself, the choice of the 'country method' in place of the 'capital method' is less able to guarantee equal treatment, all the more so as the Community legislature has very wide discretion in that sphere.⁴

20. As to the argument that the new coefficients are discriminatory in that the coefficient they apply to pensioners is based on a different method from that used for serving officials (for whom the 'capital method' continues to apply), the Court of First Instance noted that the situation of a serving official, who is tied to a specific place of employment, and that of a retired official, who is free to settle where he wishes, are not objectively comparable.⁵

21. The Court of First Instance then rejected the argument on which the appellant based

⁴ — The judgment under appeal, paragraphs 99 to 109.

⁵ — *Ibid.*, paragraphs 110 to 115.

his claim of a difference in treatment in relation to pensioners living in Belgium, to whom a correction coefficient calculated on the basis of the cost of living in Brussels, instead of the entire territory of Belgium, continued to be applied, despite the switch to the 'country method'. The Court of First Instance observed that the rules of the new Staff Regulations on correction coefficients for pensioners make absolutely no reference to Brussels but simply to Belgium. The possible unlawfulness of which the appellant complains concerns not the Staff Regulations but only the practical procedures for implementing those rules. The Court of First Instance also noted that it is in fact the amount of pension paid to former officials resident in Belgium that constitutes the benchmark for applying any correction coefficients for pensioners living in other Member States. Finally, it stated that, in any event, the principle that no person may rely, in support of his claim, on unlawful acts committed in favour of third parties was to be heeded.⁶

22. Lastly, the Court of First Instance rejected the appellant's argument that he suffered discrimination by comparison with pensioners living in 'less expensive' Member States. Before the reform, a correction coefficient of less than 100% was applied to the pensions of pensioners living in such States (in other words, their pensions were reduced in relation to the reference amount). As a result of the reform, however, a minimum correction coefficient of 100% was applied to all pensioners, which means that no pensioner, irrespective of his place of residence, will henceforth be paid a lower pension than that paid to pensioners living in Belgium. The Court of First Instance held the appellant's argument to be inadmissible,

since to have accepted it would have entailed simply a reduction in the pensions of former officials living in 'less expensive' States and would have conferred no advantage on the appellant himself. In any event, the Court of First Instance also observed that the legislature's introduction of a minimum correction coefficient of 100% also for 'less expensive' Member States cannot be considered a manifestly arbitrary or inappropriate act.⁷

V — Procedure before the Court of Justice and forms of order sought by the parties

23. By application lodged at the Registry of the Court of Justice on 8 February 2007, the appellant appealed against the abovementioned judgment.

24. The appellant claims that the Court should:

- set aside the judgment under appeal;
- grant the forms of order sought by the appellant in his complaint, thereby

6 — Ibid., paragraphs 116 to 130.

7 — Ibid., paragraphs 131 to 139.

annulling the decision on the complaint and his pension statements;

— order the appellant to pay the costs.

- order the Commission to pay the costs both of the proceedings before the Court of First Instance and those before the Court of Justice.

VI — Legal analysis

A — Preliminary observations

25. The Commission contends that the Court should:

- declare that the appeal is inadmissible;

- in the alternative, dismiss the appeal in its entirety as unfounded;

- order the appellant to pay the costs in accordance with Article 122 of the Rules of Procedure of the Court.

27. In these appeal proceedings, the appellant pursues, among the many pleas in law relied on before the Court of First Instance, only the plea alleging infringement of the principle of equal treatment.

28. More specifically, the appellant focuses his criticism on the response of the Court of First Instance to three of the four arguments adduced in support of that plea: the appellant expressly states that he does not intend to call into question the findings of the Court of First Instance on the second of those arguments, relating to alleged discrimination between pensioners and serving officials.⁸

26. The Council contends that the Court should:

29. Before examining the appellant's criticism of the judgment under appeal, however,

- dismiss the appeal as unfounded;

⁸ — See paragraph 14 of the appeal.

it is necessary to assess the ‘cross-appeal’ brought by the Commission.

the outset are, as we have seen, the only ones repeated by the appellant in the appeal.

B — *The Commission’s ‘cross-appeal’*

1. Arguments of the parties

30. In the final part of its defence, the Commission lodges a ‘cross-appeal’, in which it claims that the Court of First Instance should have ruled, first and foremost, that the fourth argument alleging infringement of the principle of equal treatment was inadmissible because it had been raised for the first time only in the reply. I shall deal with this specific question below, as a preface to discussion of the substance of the argument itself.

31. The Commission then maintains that the Court of First Instance should also have ruled that the first, third and (again) fourth arguments were inadmissible, since they had not been presented in the administrative complaint lodged by the appellant before bringing proceedings before the Court of First Instance.

32. Moreover, the three arguments which the Commission maintains the Court of First Instance should have ruled inadmissible from

33. The appellant, in his reply, maintains that the ‘cross-appeal’ is inadmissible, since the Commission was not unsuccessful in any of its submissions before the Court of First Instance, as required by Article 56 of the Statute of the Court of Justice. Indeed, according to the appellant, the Commission did not raise the present objection of inadmissibility before the Court of First Instance and was therefore not unsuccessful on that point. Furthermore, the appellant asserts that the Commission is not seeking the annulment or amendment of the judgment of the Court of First Instance but simply a ruling that the appeal is inadmissible.

34. The appellant maintains, moreover, that the Commission’s cross-appeal is unfounded as to the substance, since infringement of the principle of equal treatment had previously been alleged in the complaint lodged under Article 90 of the Staff Regulations. All of the arguments put forward in the proceedings before the Court in support of the claim alleging unequal treatment, although not specifically previously presented in the complaint, were nevertheless closely connected with the assertions previously made.

35. In its reply, the Commission confirms that the aim of its cross-appeal is not to obtain the annulment or amendment of the

judgment of the Court of First Instance.⁹ It none the less maintains that the original inadmissibility of part of the arguments put forward by the appellant before the Court of First Instance translates into a ground of inadmissibility, in relation to the same arguments, of the appeal lodged by the appellant before the Court of Justice. Since the arguments in question constitute the totality of those repeated in the appeal, in the view of the Commission the appeal itself should be declared inadmissible in its entirety.

2. Assessment

36. The 'cross-appeal' lodged by the Commission is undoubtedly unconventional, as that institution itself recognises in its reply.¹⁰ In particular, it is significant that the Commission has not sought, as a consequence of such a 'cross-appeal', the annulment of the judgment under appeal. This shows incontrovertibly that, before the Court of First Instance, the Commission was not unsuccessful in any of its own submissions.

9 — That is the sense of the conclusions of the Commission's reply and point 31 thereof. I note, however, that at point 40 of that document the Commission states that '... the Court of Justice should therefore annul the part of the judgment of the Court of First Instance in which it did not rule that the first and third parts of the plea were inadmissible in that they were not raised in the pre-litigation complaint, and also the fourth part since it was raised only in the reply'. However, in the light of the position that I intend to adopt with regard to the 'cross-appeal', it is not necessary to determine whether the Commission does or does not, as a preliminary matter, seek the annulment of the judgment under appeal.

10 — Point 32 of the Commission's reply.

37. The Commission's 'cross-appeal' could therefore appear to be inadmissible, since it fails to satisfy the requirement of having been unsuccessful within the meaning of Article 56 of the Statute of the Court of Justice, the second paragraph of which provides that an appeal may be brought 'by any party which has been unsuccessful, in whole or in part, in its submissions'.

38. I consider, however, that the solution I have just outlined is not correct and that a different approach to resolving the problem in question is to be preferred.

39. The Commission's 'cross-appeal' is based on the principle that there should be consistency between, on the one hand, the content of the administrative complaint lodged by the appellant under Article 90 of the Staff Regulations and, on the other, the content of the action brought before the Court of First Instance.

40. The scope of that principle has been examined and clarified in a long series of rulings by the Community Courts. In particular, the Court of Justice has stated that the pre-litigation procedure laid down in the Staff Regulations and, in particular, the lodging of a complaint are an 'essential procedural requirement'.¹¹ The Court has also stated that compliance with the time-limits for the pre-litigation procedure in question is a matter of public policy, which

11 — Case 91/76 *de Lacroix v Court of Justice* [1977] ECR 225, paragraph 11.

the Court can verify of its own motion.¹² The Court of First Instance, for its part, on the basis of that case-law of the Court of Justice, has stated that the question of consistency between the prior complaint through official channels and the application to the Court is also a public policy issue and may therefore be examined by the Court of its own motion.¹³ I consider that that case-law of the Court of First Instance, which is closely linked to the doctrine of the Court of Justice, can be wholeheartedly endorsed.

41. Hence, if verification of the consistency between the content of the administrative complaint and the application to the Court is a matter of public policy that can be raised of the Court's own motion, it is, in my opinion, possible to classify the 'cross-appeal' brought by the Commission, leaving aside the *nomen iuris*, simply as a matter that can be examined by the Court of its own motion.

42. Following that line of reasoning, the question of the consistency, in the present case, between the administrative complaint lodged by the appellant under Article 90 of the Staff Regulations and the action subsequently brought before the Court of First Instance can be examined by the Court of Justice.

43. With regard to the precise definition of the concept and limits of the principle of consistency, according to the settled case-law of the Court of Justice, in general, a complaint through administrative channels does not bind any judicial proceedings strictly and absolutely, but, at the same time, claims submitted at this latter stage may change neither the cause nor the object of the complaint.¹⁴ The Court of Justice has also stated that, in an action before the Courts, submissions and arguments which do not appear in the administrative complaint but are closely linked to it are admissible.¹⁵

44. As regards the subject-matter of the administrative complaint and that of the application in the case under examination, there can be no doubt that they are exactly the same: hence, from that point of view, no problem of admissibility arises.

45. Identification of the 'cause' underlying the request for annulment contained in the administrative complaint is more problematic.

46. With regard to the plea alleging a difference in treatment — the only plea repeated by the appellant in the present appeal proceedings — the complaint lodged under

12 — See, for example, Joined Cases 122/79 and 123/79 *Schiavo v Council* [1981] ECR 473, paragraph 22; Joined Cases 75/82 and 117/82 *Razzouk and Beydoun v Commission* [1984] ECR 1509, paragraph 13; and Case 302/85 *Pressler-Hoeft v Court of Auditors* [1987] ECR 513, paragraph 5.

13 — Case T-57/89 *Alexandrakis v Commission* [1990] ECR II-143, paragraph 8. This stance has been consistently reiterated: see, for example, Case T-19/90 *von Hoessle v Court of Auditors* [1991] ECR II-615; Case T-1/91 *Della Pietra v Commission* [1992] ECR II-2145; and Case T-127/00 *Nevin v Commission* [2002] ECR-SC I-A-149 and II-781.

14 — See, for example *Razzouk and Beydoun v Commission*, paragraph 9, and Case C-316/97 P *Parliament v Gaspari* [1998] ECR I-7597, paragraph 17.

15 — Case 52/85 *Rihoux and Others v Commission* [1986] ECR 1555, paragraph 13; Case 242/85 *Geist v Commission* [1987] ECR 2181, paragraph 9; Case 346/87 *Bossi v Commission* [1989] ECR 303, paragraph 27; and Case 126/87 *Del Plato v Commission* [1989] ECR 643, paragraph 12.

Article 90 of the Staff Regulations was, in fact, extremely brief, being confined to the following points:

‘(b) Infringement of the principle of equal treatment

17. The new pension scheme established by the European Commission on 1 May 2004 is not even justified in the light of the principle of equal treatment.

18. The purpose of the correction coefficient is to guarantee the same purchasing power to officials and former officials in the same situation.

19. It is clear that creating two correction coefficients for the same place, in this case London, gives rise to discrimination between officials living in London for professional reasons and former officials living there in retirement.

20. Former officials, including Mr Campoli, who live in the same city of London, who have a lower correction coefficient than that applied to officials, are clearly discriminated against because, since 1 May 2004, they no longer enjoy the same treatment.’

47. The Commission has therefore correctly stated that, of the various arguments put forward by the appellant to support the claim of a difference in treatment, only that based on alleged discrimination between serving officials and former officials appeared in the administrative complaint.

48. It must therefore be ascertained whether, in the case in point, the other arguments presented by the appellant in the judicial proceedings to support the claim of a difference in treatment can be regarded as being ‘closely linked’ to that set out in the administrative complaint.

49. The situation in the case in point is rather delicate, being situated on the fine line between admissibility and inadmissibility.

50. As I have pointed out above, the Community Courts have ruled repeatedly on the question of consistency between the administrative complaint and the application to the Court, adopting a position that seeks to reconcile the interests of the appellant and those of the administration, which tend to be conflicting. The Court of Justice has stated that one of the purposes of the administrative complaint is to allow the administration to know with sufficient certainty what the complainant is contesting and what his requests are. On the other hand, however, when the administration receives a complaint through official channels, it must

not interpret it restrictively, but with an ‘open mind’.¹⁶

51. It could be maintained, as essentially does the Commission, that despite being based on the same legal premiss, that is to say infringement of the principle of equal treatment, the appellant’s arguments in support of his claim of discrimination in relation to other former officials cannot be considered to have been foreshadowed, even indirectly or implicitly, in the administrative complaint. As we have seen, the only situation cited in that complaint as a point of reference for assessing whether the appellant is the victim of discrimination is that of officials still in employment.

52. Against that background, the three arguments under examination should therefore be considered not simply as arguments to support a plea that has already been made but as ‘new pleas’ in the true sense. In other words, when a difference in treatment is claimed there are as many different ‘pleas’ as there are (groups of) persons in relation to whom there is claimed to be discrimination.

53. According to the Commission, that would also be the implication of the judgment of the Court of Justice in *Koninklijke*

Coöperatie Cosun v Commission,¹⁷ in which a plea introduced on appeal alleging a difference in treatment in relation to persons other than those indicated in the action before the Court of First Instance, in which a difference in treatment was also alleged, was considered a new plea in law.

54. I note, however, that that judgment does not relate to the principle of consistency between the administrative complaint and the action before the Court but to the question of pleas in law in the appeal that were not raised in the action at first instance. It seems obvious to me that the two situations are not the same. In particular, one of the reasons which, in my opinion, militate in favour of a less strict approach in assessing the principle of consistency between the complaint and the action before the Court and to which consideration should be given is the fact, highlighted in the case-law of the Court of Justice, that the administrative complaint is usually drawn up without the assistance of a lawyer.¹⁸ This is obviously not the case with an action brought before the Court of First Instance, where it is logical to expect greater precision and completeness.

55. It must also be noted that, although in the proceedings before the Court of First Instance the Commission maintained that the appellant’s requests regarding the household allowance and the education allowance were inadmissible because they were not included in the complaint, it did not raise any

16 — See, for example, Case 133/88 *Casto Del Amo Martinez v Parliament* [1989] ECR 689, paragraph 13.

17 — Case C-68/05 P [2006] ECR I-10367, paragraphs 95 to 98. See also the Opinion of Advocate General Stix-Hackl in that case (in particular, points 89 to 103).

18 — *Casto Del Amo Martinez v Parliament*, paragraph 11.

objection of inadmissibility with regard to the plea based on a difference in treatment.

59. I therefore consider that the objection of inadmissibility based on the alleged infringement of the principle of consistency must be rejected.

56. It is clear that that factor cannot be considered decisive for ruling on a question which, as we have seen above, can be raised of the Court's own motion. Nevertheless, to my mind, it is undeniable that it is not entirely without significance.

60. I shall now move on to examine the substance of the three arguments put forward by the appellant.

C — The legality of the 'country method'

57. I consider that submission of the arguments in question before the Court of First Instance did not infringe the principle of consistency. Indeed, it appears to me that, in the light of the case-law I have cited, and in particular the abovementioned assertion of the need for the complaint to be interpreted with an open mind, since it is a document drawn up without legal assistance, to rule that such arguments are inadmissible could excessively restrict the right to effective judicial protection, which is a general principle of Community law.¹⁹

1. Arguments of the parties

61. The appellant maintains that, by upholding the legality of the legislature's decision to replace the 'capital method' with the 'country method', the Court of First Instance wrongly gave precedence to the legislature's discretion over the principle of equal treatment. In the appellant's view, this is particularly evident at paragraph 105 of the judgment under appeal. He also alleges that the Court of First Instance failed to observe the obligation to state reasons for its decision.

58. Moreover, it can also be observed that in cases such as the present one, where the subject of the dispute is a legislative act, the possibility that the pre-litigation procedure might lead to a beneficial outcome is, in reality, entirely theoretical.

62. Moreover, he considers that the 'country method' is of itself contrary to the principle of equal treatment, as it penalises all pensioners living in the capital and, more generally, in the parts of a State where the cost of living is higher than the average for that State. In addition, the 'country method'

¹⁹ — On that right, see, for example, Case C-432/05 *Unibet* [2007] ECR I-2271, paragraph 37, and the case-law cited.

also effectively impedes the freedom of movement and residence within the territory of the Community.

than that required by the cost of living in the place where they live.

63. In his view, recital 30 in the preamble to Regulation No 723/2004, in providing reasons for the legislature's decision to abolish the system of correction coefficients for the pensions of former officials of the Communities, sets out from an extremely dubious assumption of soundness, since integration between the Member States allows significant differences to remain between them as regards the cost of living.

64. The Commission states that, in its view, the appellant's plea gives a distorted interpretation of the line of argument of the Court of First Instance. In particular, the Court of First Instance did not assert the supremacy of the legislature's discretion over the principle of equality but merely observed that the transition from the 'capital method' to the 'country method' did not entail an arbitrary or manifestly inappropriate distinction that infringed the principle of equal treatment.

65. As regards the substance of the appellant's observations on the alleged difference in treatment between pensioners according to their place of residence, the Commission observes that the 'capital method' also results in a difference in treatment, benefiting pensioners living outside the capital by guaranteeing them a higher correction coefficient

66. The Council, like the Commission, disputes above all that the judgment of the Court of First Instance can be interpreted as meaning that it places the discretion of the legislature above observance of the principle of equal treatment. In particular, in the opinion of the Council, the appellant confuses the principle of equal treatment with the principle of equality of purchasing power. According to the Council, paragraph 105 of the judgment under appeal refers not to the principle of equal treatment in general but simply to the principle of equality of purchasing power.

2. Assessment

67. The main issue to be addressed in order to answer this argument is to determine whether the Community legislature's decision to introduce the 'country method' in place of the 'capital method' for calculating the correction coefficients for the pensions of former officials of the Communities constitutes a legitimate exercise of the discretion conferred upon the legislature in this matter or whether the principle of equal treatment has thereby been infringed.

68. I consider that it is first essential to observe that any system of correction coefficients (and, more generally, any system

for adjusting salaries and/or pensions) is by its very nature necessarily imprecise. As the Court of First Instance rightly observed,²⁰ in order to be truly precise, the system would have to contemplate a specific correction coefficient for each place where former officials of the Communities live. Even different districts within the same city would probably, in many cases, have to be assessed separately, with different coefficients being applied on the basis of the respective cost of living.

69. It is therefore inevitable that, whatever system is chosen, it can at best constitute a reasonable approximation of the actual cost of living borne by each former official.

70. Viewed in that light, it seems perfectly plain to me that both the 'capital method' and the 'country method' have advantages and disadvantages. For example, although it is true that the 'capital method' tends to give better protection to those living in the capitals and major cities, at the same time it gives those living outside such cities much better actual economic treatment, in real terms, because of the lower cost of living in the provinces. On the other hand, the 'country method', which uses a coefficient that tends to be somewhere between the cost of living in the capital and that in less 'expensive' parts of the Member State, may to some extent penalise residents of the more

expensive areas in the State: however, since a single correction coefficient must be chosen for each Member State, the 'country method' is, in my view, not only entirely legitimately practicable but also in some respects more equitable .

71. The appellant emphasises that, in his opinion, the 'country method' does not comply with the principle of equal treatment and therefore acts as a discriminatory criterion. His underlying idea is clearly that, in practice, only the 'capital method' avoids possible criticism based on the prohibition of discrimination.

72. I do not think that this is the place for a detailed examination of the principles of equality and the prohibition of discrimination in the context of Community law.²¹ As I have already pointed out, a guarantee of absolute parity in terms of purchasing power among all former officials of the Communities would be utterly impossible to achieve. I therefore consider that the Court of First Instance could legitimately assert that, within the scope of the discretion enjoyed by the Community legislature to organise the pension scheme of former officials, the decision to use the 'country method' instead of

20 — The judgment under appeal, paragraph 100.

21 — That principle is crystallised in the formula that requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified. See, for example, Case C-273/04 *Poland v Council* [2007] ECR I-8925, paragraph 86; Joined Cases C-87/03 and C-100/03 *Spain v Council* [2006] ECR I-2915, paragraph 48; Case C-44/94 *Fishermen's Organisations and Others* [1995] ECR I-3115, paragraph 46. For the Community public employment sector, see, for example, Case 119/83 *Appelbaum v Commission* [1985] ECR 2423 and Joined Cases T-18/89 and T-24/89 *Tagaras v Court of Justice* [1991] ECR II-53, paragraph 68.

the ‘capital method’ does not constitute an arbitrary or manifestly inappropriate distinction likely to infringe the principle of equal treatment.

73. In his criticism of the judgment under appeal, the appellant focuses in particular on paragraph 105 thereof, maintaining that it indicates that the Court of First Instance considered that the discretion granted to the legislature takes precedence over the principle of equality. The text of paragraph 105 reads as follows:

‘Although it is true that, in financial terms, the new method is less advantageous than the previous one, it is also true, as indicated above ... in connection with the plea alleging infringement of acquired rights, that the Community legislature is free to amend the Staff Regulations by adopting provisions that are less advantageous for the officials concerned than the previous ones, on condition that it sets a sufficiently long transitional period. Nor can that freedom be limited by invoking the principle of equality of purchasing power, particularly as the transitional arrangements laid down in Article 24(2) of Annex XIII to the new Staff Regulations guarantees to pensioners such as the applicant that the nominal amount of the net pension received before the new Staff Regulations came into effect will be maintained for an unlimited period ...’²²

74. I do not share the appellant’s interpretation of the passage I have just quoted. It seems clear to me that the Court of First Instance did not maintain, as the appellant appears to suggest, that the provision of an adequate transitional period is the only

limitation on the introduction of a difference in treatment. In fact, paragraph 105 quoted above *does not in any way justify the introduction of a difference in treatment*. It merely states that, if a less favourable pension scheme is introduced, the Community legislature is required to provide an adequate transitional period. In this case, the transitional period is provided for in Article 20 of Annex XIII to the new Staff Regulations, under which the changeover from the correction coefficient calculated using the ‘capital method’ to that calculated using the ‘country method’ was to be achieved progressively and gradually between 2004 and 2008. Moreover, it is significant that the Court of First Instance touched upon this question even earlier than paragraph 105, in the part of the judgment on the alleged infringement of acquired rights (when dealing with a plea in law which the appellant did not repeat in these appeal proceedings).

75. In setting out his case, the appellant makes several references to the judgment in *Drouvis v Commission*,²³ maintaining that it constitutes a precedent favourable to his arguments. Here too, I cannot share the appellant’s stance. In the *Drouvis* case, a former Commission official living in Greece asked that no correction coefficient be applied to his pension; at that time the coefficient for Greece, 86.5%, entailed a reduction in the pension actually paid by comparison with the basic amount. In that judgment the Court ruled that the system of different correction coefficients according to the place of residence of former officials of the Communities was lawful and also recognised the legality of using a single correction

22 — The translation of this and all other passages from the judgment under appeal is not official.

23 — Case T-184/00 [2003] ECR-SC I-A-51 and II-297, confirmed by order of 29 April 2004 in Case C-187/03 P.

coefficient for each Member State. It did not, however, state that the only mechanism acceptable for determining that correction coefficient was that adopted in the 'capital method'.

are concentrated, refers to the decision to abolish the system of correction coefficients, which is of no relevance for the purposes of this case, since the abolition does not affect those who, like the appellant, retired before the new Staff Regulations came into effect.

76. The appellant also focuses on recital 30 in the preamble to Regulation No 723/2004, cited at paragraph 8 above, which indicates, as reasons for the decision to abolish the system of correction coefficients, both the need for ever greater integration of the Member States of the Union and practical difficulties in operating the system. The appellant claims this to be both wrong, since, in his view, European integration is still far from being achieved, and contradictory, since he considers that the increased freedom of movement referred to in that recital should lead to a more appropriate system of correction coefficients so as to permit more effective freedom of movement.

79. I therefore consider that the first argument of the single plea in the appeal should not be accepted, since it fails to demonstrate that the Court of First Instance erred in law.

D — Discrimination in relation to pensioners living in Belgium

77. The Commission submits that such considerations are inadmissible, both because they relate to considerations of fact and as such are outside the purview of the Court of Justice in an appeal, and because they were raised for the first time in the appeal before the Court.

1. Arguments of the parties

78. In my opinion, it is far simpler than this, however; the reference to recital 30 in the preamble to Regulation No 723/2004 is irrelevant, since it relates only partly to the situation of the appellant. It is clear, in my opinion, that the first sentence of that recital, on which the appellant's criticisms

80. Reiterating the third argument raised before the Court of First Instance maintaining that the principle of equal treatment had been infringed, the appellant claims discrimination in relation to pensioners living in Belgium, who allegedly continue to enjoy a pension adjusted to the cost of living in Brussels.

81. In particular, having repeated his interpretation of the Staff Regulations, according to which the pensions of former officials living in Belgium are calculated only on the basis of the cost of living in Brussels, and hence without applying the ‘country method’, the appellant contests the arguments set out by the Court of First Instance at paragraph 124 of the judgment under appeal, where it observes that ‘the legality of a Community regulation cannot depend on the manner in which it is applied in practice’, and at paragraph 125, where it recalls the settled case-law under which ‘respect for the principle of equal treatment must be reconciled with respect for the principle of legality, according to which a person may not rely, in support of his claim, on an unlawful act committed in favour of a third party’.

82. In particular, as regards the first of the two cited statements of the Court of First Instance, the appellant not only disputes that the case-law endorses the interpretation of the Court of First Instance but also wonders what other acts (for the practical implementation of the new pension scheme) he could have challenged in order to obtain redress for his claims. As to the second statement, by contrast, the appellant observes that it is not a question here of challenging an unlawful act committed in favour of a third party but only of proving discriminatory treatment between two persons belonging to the same category.

83. The Commission first repeats the text of Article 1(3)(a) of Annex XI to the new Staff Regulations to confirm that the new pension scheme makes no provision for any link to the cost of living in Brussels.

84. All the arguments developed by the Court of First Instance in addition to that basic finding are therefore, according to the Commission, superfluous, so that the criticisms directed against them should be dismissed as incapable of altering the conclusions reached in the judgment. In any event, the Commission maintains, in the alternative, that the additional arguments put forward by the Court of First Instance are correct.

85. The Council, for its part, presents essentially the same arguments as the Commission.

2. Assessment

86. The first problem to be addressed in order to assess this argument is to determine, objectively, what result the appellant’s claim is intended to achieve.

87. If his objective is to obtain a reduction in the pensions actually paid to former officials living in Belgium, or a reduction in the reference amount for calculating the pensions of former officials of the Communities, the plea appears to be unquestionably inadmissible *ab origine*.

88. It is common ground, in the case-law, that one of the conditions for the admissibility of an action is having a legal interest in bringing proceedings. Moreover, this is a matter of public policy that can be raised of the Court's own motion.²⁴

89. It is clear that the appellant did not (and does not) have an interest in contesting the correction coefficient of 100% applied to pensioners living in Belgium (or rather, to be precise, the absence of a correction coefficient in accordance with Article 3(5) of Annex XI to the Staff Regulations). If the arguments he has presented in this regard were accepted, the result could only be a reduction in the pension paid to former officials of the Communities living in Belgium, without any concrete advantage accruing to the appellant. In fact, since, under Article 1(3) of Annex XI to the new Staff Regulations, the pensions of former officials are adjusted using correction coefficients calculated 'with reference to Belgium', it cannot be ruled out that accepting the plea from that point of view could, in the final analysis, lead to a reduction in the appellant's own pension, calculated by applying to the 'basic' pension, which is that paid to pensioners living in Belgium, a specific coefficient of more than 100% for the United Kingdom.

90. In order for the appellant's argument to be considered admissible, in that it is

supported by a legal interest in bringing proceedings, it must therefore be held that the ultimate purpose of the argument is to claim for the appellant the application of a correction coefficient calculated using the 'capital method'.

91. However, I consider that the point of departure for the appellant's position is incorrect.

92. A brief summary of the factual situation is in order here. There is a basic amount for the pension of each former official of the Communities, which, in the scheme provided for in the new Staff Regulations, can never be reduced, irrespective of the pensioner's place of residence. In other words, the minimum correction coefficient is 100% (which obviously means that there is no need for a correction coefficient). For example, the 'minimum' level of pension is paid, under Article 3 of Regulation No 31/2005, to pensioners living in the Czech Republic, Estonia, Greece, Spain, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Portugal, Slovenia and Slovakia, and, under Annex XI to the Staff Regulations, to pensioners living in Belgium and Luxembourg, two Member States to which correction coefficients are not applied. In the other Member States, a correction coefficient calculated on the basis of the difference between the cost of living in the Member State in which they live and the cost of living in Belgium (cf. Article 1(3)(a)(ii) of Annex XI to the new Staff Regulations) is applied to pensioners in the position of the appellant, who acquired their pension rights before the new Staff Regulations came into force, which produces an increase in the amount of pension actually paid. Under Article 3 of Regulation No 31/2005,

24 — Order of 7 October 1987 in Case 108/86 *G.d.M. v Council and Economic and Social Committee* [1987] ECR 3933, paragraph 10; see also Case T-141/03 *Sniace v Commission* [2005] ECR II-1197, paragraph 22; Case T-45/91 *McAvoy v Parliament* [1993] ECR II-83, paragraph 22; Case T-144/99 *Institute of Professional Representatives before the European Patent Office v Commission* [2001] ECR II-1087, paragraphs 29 to 35. In the last-mentioned judgment, moreover, the Court of First Instance appears to have considered an interest in bringing proceedings to be a requirement on a par with those laid down in Article 230 EC.

for example, the correction coefficient for the United Kingdom from 1 July 2004 was 137.5%.

93. It is therefore obvious, on the basis of this factual background, that the Court of First Instance correctly stated, at paragraph 117 of the judgment under appeal, that the new pension scheme makes no reference to the cost of living in Brussels. Simply, for the pensions and the salaries of serving officials for Belgium (and Luxembourg), there is no provision to apply any correction coefficient to the reference amounts.

94. It is true that, in the changeover from the old to the new Staff Regulations, the reference amount for pensions was not changed. Moreover, if that amount had been reduced, the pension actually paid to the appellant would have decreased.

95. The arguments developed by the Court of First Instance in addition to the basic finding mentioned above, in particular at paragraphs 124 and 125, are in my view superfluous for the purpose of ruling on the plea put forward by the appellant, no matter how correct they may be as a matter of principle.

96. I therefore consider that the second argument relied upon by the appellant in connection with the plea should also be dismissed, there being no discriminatory difference in treatment between the appellant and retired former officials of the Communities living in Belgium.

E — Discrimination in relation to pensioners living in one of the 'less expensive' Member States

1. Arguments of the parties

97. Finally, the appellant reiterates the fourth argument raised before the Court of First Instance to support his claim of a difference in treatment, an argument based on the advantage allegedly given to pensioners living in 'less expensive' Member States by applying a correction coefficient of 100% to them under the new scheme. In particular, he maintains that the Court of First Instance was wrong to hold that he had no interest in bringing proceedings to challenge that alleged advantage.

98. The appellant recognises that, according to consistent case-law, there is a need for a legal interest to justify the admissibility of a complaint. He considers, however, in contrast to the view expressed by the Court of First Instance at paragraph 135 of the judgment under appeal, that in his case such an interest exists. In particular, his legal interest in bringing proceedings derives from the fact that, once again, the situation of pensioners living in 'less expensive' States by comparison with the situation of the appellant testifies to the existence of a discriminatory difference in treatment.

99. Moreover, the appellant also challenges the argument of the Court of First Instance that, since the pension scheme for

former officials of the Communities does not operate as a pension fund but is based on the principle of solidarity, any reduction in the pensions paid to former officials living in 'less expensive' Member States would confer no advantage on the appellant. In particular, he maintains that the saving made in this way would make it possible, for example, to return to the application of the 'capital method' (paragraph 78 of the appeal).

100. In addition, the appellant maintains that the judgment under appeal is defective in so far as it maintains that the decision of the Community legislature to apply a correction coefficient of 100% to pensioners living in 'less expensive' Member States was not manifestly arbitrary or inappropriate (paragraph 136 of the judgment under appeal).

101. The Commission and the Council first reaffirm that, in their opinion, the Court of First Instance was correct to rule that the plea was inadmissible. Moreover, according to those institutions, no criticism can be levelled at the observations of the Court of First Instance on the broad discretion which the Community legislature enjoys in this regard, the limits of which were not, in their view, exceeded in the present case.

102. The Commission goes on to maintain that the Court of First Instance should also have ruled that argument inadmissible in that it had been raised by the appellant for the first time in his reply in the proceedings at first instance (paragraph 71 of the cross-appeal).

2. Assessment

103. Beginning with the Commission's remark that the argument under examination should have been ruled inadmissible, I consider that the Commission's position cannot be endorsed. Although in the action before the Court of First Instance the appellant did not specifically mention the comparison with pensioners living in 'less expensive' Member States when dealing with the alleged infringement of the principle of equal treatment, it is none the less true that the argument in question was inherent, albeit in embryonic form, in the part of the application alleging misuse of powers, infringement of the principle of proportionality and the obligation to state reasons. In particular, paragraph 93 of the application lodged with the Court of First Instance reads as follows:

'Finally, on the basis of the various principles mentioned, the application of that rule would be contradictory because it applies to pensions a coefficient of 100 for the capitals and Member States where the coefficient is, however, below 100, as is currently the case, in particular, for Athens, Budapest, Lisbon, Prague and Warsaw.'

104. Bearing in mind the settled case-law of the Court of Justice according to which, notwithstanding the general prohibition on the submission of new pleas in law, it is possible in the course of proceedings to submit pleas that may be regarded as amplifying a plea put forward previously, whether

directly or by implication, in the original application,²⁵ I consider that the argument complaining of a difference in treatment in relation to pensioners living in ‘less expensive’ Member States is admissible.

105. I shall now move on to the appellant’s specific complaint in this regard. The appellant maintains that the Court of First Instance incorrectly held that he had no interest in bringing proceedings.

106. To that end, in particular, the appellant disputes the findings made by the Court of First Instance at paragraph 133 et seq. of the judgment under appeal, where it stated that the appellant had failed to demonstrate that he could have benefited in some way from removal of the advantage conferred by the new Staff Regulations on pensioners living in ‘less expensive’ Member States.

107. It does not appear to me that the appellant’s arguments are so convincing as to bring into question the correctness of the reasoning of the Court of First Instance.

108. It is undisputed in the case-law that, in order to contest the legality of a Community act, either directly or by way of an objection, the legal interest in bringing proceedings

must derive from the practical benefit that the appellant is likely to gain from any decision upholding his claims.²⁶

109. It seems clear to me that, here, the only object of the argument put forward by the appellant is to highlight the fact that the legislature decided to apply the rules set out in the new Staff Regulations on the abolition of correction coefficients for pensions with immediate effect to pensioners living in ‘less expensive’ Member States. By contrast, the appellant will never be subject to that new system (which would be particularly disadvantageous for him, as we have seen), since he will continue to benefit from the application of a correction coefficient of significantly more than 100%.

110. Since it is clear that any reduction in the pensions paid to former officials living in ‘less expensive’ Member States, which would be the consequence of finding the decision of the legislature unlawful, would bring the appellant no obvious advantage, the reasoning followed by the Court of First Instance in finding the argument inadmissible is not, in my view, open to criticism.

25 — See, for example, Case 306/81 *Verros v Parliament* [1983] ECR 1755, paragraph 9; the order of 13 November 2001 in Case C-430/00 P *Dürbeck v Commission* [2001] ECR I-8547, paragraph 17; and Case C-412/05 P *Alcon Inc. v OHIM* [2007] ECR I-3569, paragraphs 38 to 40.

26 — See, for example, Case 37/72 *Marcato v Commission* [1973] ECR 361, paragraph 7; Case 124/75 *Perinciolo v Council* [1976] ECR 1953, paragraph 26; and Case 85/82 *Schloh v Council* [1983] ECR 2105, paragraph 14. As one may surmise, in recent years it has been mainly the Court of First Instance and, latterly, also the Civil Service Tribunal that have considered whether or not an appellant has a legal interest in bringing proceedings, while the Court of Justice has held that there is a similar criterion for assessing the admissibility of appeals against judgments of the Court of First Instance (see, for example, Case C-19/93 P *Rendo v Commission* [1995] ECR I-3319, paragraph 13; Case C-174/99 P *Parliament v Richard* [2000] ECR I-6189, paragraph 33; and Case C-50/00 P *Unión de Pequeños Agricultores v Council* [2002] ECR I-6677, paragraph 21; and the order of 25 January 2001 in Case C-111/99 P *Lech-Stahlwerke v Commission* [2001] ECR I-727, paragraph 18).

111. Furthermore, the appellant would also have no interest in bringing proceedings if his complaint were to be interpreted as being directed, in general terms, against the decision of the legislature to abolish correction coefficients, since, as we have seen, their abolition does not affect the appellant personally.

114. I therefore consider that this final argument put forward by the appellant must also be rejected.

VII — Costs

112. Moreover, the Court of First Instance did in any case also briefly examine the substance of the argument in question observing that, even in that case, it cannot be held that the Community legislature exceeded the discretion it enjoys. These observations of the Court of First Instance, despite being succinct (having, it should be noted, been made merely in the alternative), also seem, in my opinion, to be above any possible reproach.

115. Under the first paragraph of Article 122 of the Rules of Procedure, where the appeal is unfounded, the Court is to make a decision on costs. Pursuant to Article 69(2) of those rules, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

113. The Community legislature decided to apply, with immediate effect, to pensioners living in 'less expensive' Member States, the pension calculation mechanism to be applied in the future to all former officials who have acquired their pension rights after the new Staff Regulations came into effect. Moreover, in order to safeguard the position of those who, like the appellant, live in an 'expensive' Member State and acquired their pension rights before 1 May 2004, the legislature provided for a correction coefficient to be maintained for their benefit, albeit one calculated differently, as we have seen. To my mind, it cannot be said that the legislature has manifestly exceeded the limits of its discretion.

116. On the other hand, the second paragraph of the Article 122 provides that, in appeals brought by officials or other servants of an institution, the Court may order the parties to share the costs where equity so requires.

117. Since these proceedings are the first before the Court of Justice to address the question of the reform of the pension scheme for officials of the Communities under the new Staff Regulations and as certain legal aspects of the new arrangements may indeed appear problematic, I suggest that the Court should order that the costs be shared.

VIII — Conclusion

118. In the light of the foregoing considerations, I propose that the Court of Justice:

(1) dismiss the appeal;

(2) order each party to bear its own costs.