

JUDGMENT OF THE COURT

of 22 February 1990

in Case C-12/89: (reference for a preliminary ruling made by the Bundessozialgericht): Antonio Gatto v. Bundesanstalt für Arbeit ⁽¹⁾

(Social security — Entitlement to family benefits when the national law of the country of employment requires the conditions laid down to be fulfilled within its own territory)

(90/C 85/06)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case C-12/89: reference to the Court under Article 177 of the EEC Treaty by the Bundessozialgericht [Federal Social Court] for a preliminary ruling in the proceedings pending before that court between Antonio Gatto, residing in Radolfzell (Federal Republic of Germany), and Bundesanstalt für Arbeit [Federal Employment Office], Nuremberg, — on the interpretation of Article 74 (1) of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community ⁽²⁾, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 ⁽³⁾ — the Court, composed of: O. Due, President, F. A. Schockweiler and M. Zuleeg (Presidents of Chambers), T. Koopmans, G. F. Mancini, J. C. Moitinho de Almeida and G. C. Rodriguez Iglesias, Judges; F. G. Jacobs, Advocate-General; J. A. Pompe, Deputy Registrar, gave a judgment on 22 February 1990, the operative part of which is as follows:

Article 74 of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community must be interpreted as meaning that where the legislation of the Member State which provides certain family benefits lays down, as a condition for the grant of those benefits, that an unemployed member of the worker's family must be at the disposal of the employment office for the territorial area in which that legislation applies, that condition must be regarded as fulfilled where the unemployed member of the family is at the disposal of the employment office of the Member State in which he resides.

⁽¹⁾ OJ No C 43, 22. 2. 1989.

⁽²⁾ OJ No L 149, 5. 7. 1971, p. 2.

⁽³⁾ OJ No L 230, 22. 8. 1983, p. 6.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 7 March 1990

in Case C-320/81: Acerbis and Others v. Commission of the European Communities ⁽¹⁾

(Officials — Adjustment of weighting)

(90/C 85/07)

(Language of the case: Italian)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case C-320/81: S. Acerbis and Others, officials of the Commission of the European Communities, assisted and represented by C. Ribolzi and G. Marchesini, Avvocati with a right of audience before the Corte di Cassazione of the Italian Republic, with an address for service in Luxembourg at the Chambers of Victor Biel, 18A rue des Glacis against Commission of the European Communities (Agent: S. Fabro) — application for the annulment of the calculation of the arrears of salary due by reason of the adjustment of the weighting with effect from 1 July 1980, on the ground that an inappropriate weighting was applied, and for a declaration that the Community institutions are required to recalculate the arrears in question, applying an appropriate weighting — the Court (Fourth Chamber), composed of: C. N. Kakouris, President of the Chamber, T. Koopmans and M. Diez de Velasco, Judges; J. Mischo, Advocate-General; H. A. Rühl, Principal Administrator, for the Registrar, gave a judgment on 7 March 1990, the operative part of which is as follows:

1. *the application is dismissed;*
2. *the parties shall bear their own costs.*

⁽¹⁾ OJ No C 26, 3. 2. 1982.

ORDER OF THE COURT

of 26 January 1990

in Case C-286/88: (reference for a preliminary ruling made by the Tribunale Amministrativo Regionale per la Lombardia): Impresa Falciola Angelo SpA v. the Municipality of Pavia ⁽¹⁾

(Compatibility of national law with Community law)

(90/C 85/08)

(Language of the case: Italian)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case C-286/88: reference to the Court under Article 177 of the EEC Treaty by the Tribunale Amministrativo Regionale per la Lombardia [Regional Administrative Court for Lombardy] for a preliminary ruling in the

⁽¹⁾ OJ No C 285, 9. 11. 1988.

proceedings pending before that Court between Impresa Falciola Angelo SpA and the Municipality of Pavia — on the interpretation of Articles 5 and 177 and the third paragraph of Article 189 of the EEC Treaty — the Court, composed of O. Due, President, Sir Gordon Slynn, C.N. Kakouris, F.A. Schockweiler and M. Zuleeg (Presidents of Chambers), T. Koopmans, G.F. Mancini, R. Joliet, T.F. O'Higgins, J.C. Moitinho de Almeida, G.C. Rodríguez Iglesias, F. Grévisse and M. Díez de Velasco, Judges; F.G. Jacobs, Advocate-General; J.-G. Giraud, Registrar, made an order on 26 January 1990, the operative part of which is as follows:

the Court has no jurisdiction to answer the questions put by the Tribunale Amministrativo Regionale per la Lombardia.

ORDER OF THE PRESIDENT OF THE COURT
of 23 February 1990

in Case C-385/89 R: Hellenic Republic v. Commission of the European Communities

(EAGGF, Guarantee Section — Clearance of accounts)

(90/C 85/09)

(Language of the case: Greek)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case C-385/89 R: Hellenic Republic (Agents: C. Stavropoulos, I. Laios, M. Tsotsanis and Y. Magoulas) against the Commission of the European Communities (Agents: D. Booss, T. Christoforou and Mrs M. Patakia) — application for suspension of the operation of Commission Decision 89/627 of 15 November 1989 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1987 of the Guarantee (*) Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) — the President of the Court of Justice of the European Communities made an order on 23 February 1990, the operative part of which is as follows:

1. *there is no need to give a decision.*
2. *the costs are reserved.*

(*) OJ No L 359, 8. 12. 1989, p. 23.

Action brought on 29 December 1989 by the Hellenic Republic against the Commission of the European Communities

(Case C-385/89)

(90/C 85/10)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 29 December 1989 by the Hellenic Republic, represented by Constantinos Stavropoulos, Legal Assistant in the Department of European Community Legal Affairs at the Ministry of Foreign Affairs, Ilias Laios, Legal Assistant at the Ministry of Economic Affairs, and Meletis Tsotsanis, Legal Adviser at the Ministry of Agriculture, assisted by Yoannis Magoulas, Legal Adviser at the Ministry of Agriculture, with an address for service in Luxembourg at the Greek Embassy (177 Val Ste Croix).

The applicant claims that the Court should:

1. annul Commission Decision 89/627/EEC of 15 November 1989 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1987 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (*) as regards the sectors described in detail in the application;
2. order the Commission to pay the costs;

Contentions and main arguments adduced in support

The Hellenic Republic relies on the following main grounds for annulment:

1. breach of essential procedural requirements, or in the alternative, breach of the treaties or of the rules of Community law in general as regards the reservations expressed in the statement of grounds of the decision at issue;
2. failure to state, or inadequate statement of, the reasons on which the decision is based, breach of the Treaty or of the rules of Community law or of general principles of law, or mistake of fact;
3. breach of Council Regulation (EEC) No 729/70 (**) and misinterpretation of its provisions;
4. mistake of fact;
5. breach of the limits to the Commission's discretionary powers;
6. breach of the general principles prohibiting unlawful enrichment and protecting legitimate expectations.

The Hellenic Republic also puts forward a number of particular grounds of annulment relating to specific points of the decision at issue.

(*) OJ No L 359, 8. 12. 1989, p. 23.

(**) OJ No L 94, 28. 4. 1970, p. 13.