JUDGMENT OF THE COURT (Second Chamber)

17 July 2008 *

In Case C-71/07 P,

APPEAL under Article 56 of the Statute of the Court of Justice, lodged on 8 February 2007,

Franco Campoli, a former official of the Commission of the European Communities, residing in London (United Kingdom), represented by G. Vandersanden, L. Levi and S. Rodrigues, avocats,

appellant,

the other parties to the proceedings being:

Commission of the European Communities, represented by V. Joris and D. Martin, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

* Language of the case: French.

Council of the European Union, represented by M. Arpio Santacruz and I. Šulce, acting as Agents,

intervener at first instance,

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, L. Bay Larsen, K. Schiemann, P. Kūris and C. Toader (Rapporteur), Judges,

Advocate General: P. Mengozzi,
Registrar: R. Grass,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 8 April 2008,

gives the following

Judgment

1 By his appeal, Mr Campoli seeks to have set aside the judgment of the Court of First Instance of the European Communities 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'), by which the Court dismissed as partly inadmissible and partly unfounded his action which, essentially, sought the annulment of his pension statements for the months of May to July 2004, in so far as they applied for the first time a correction coefficient calculated unlawfully by reference to the average cost of living in his country of residence and no longer on the basis of the cost of living in the capital of that country.

I — Legal context

2 The second subparagraph of Article 82(1) of the Staff Regulations of Officials of the European Communities, in the version applicable before 1 May 2004 ('the old Staff Regulations'), provided that pensions were to be weighted at the rate fixed for the country inside the Communities where the recipient proves he has his residence.

3 Since no specific provision of the old Staff Regulations laid down the method of calculating the correction coefficients applicable to pensions, in practice, the correction coefficients applied were those calculated for the remuneration of officials in active employment pursuant to the first paragraph of Article 64 of and Annex XI to the old Staff Regulations, that is to say, according to a method intended to ensure the same purchasing power irrespective of the place in which officials were employed. That method reflected the average difference for a typical official between the cost

of living in the capital of the country in which he was employed and the cost of living in Brussels (Belgium) (the 'capital method'). With regard to pensioners, the reference factor was the cost of living in the capital of the country of residence compared to the cost of living in Brussels.

4 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) extensively reformed the old Staff Regulations. One of the changes made by that regulation was the abolition, from 1 May 2004, of the correction coefficients applied to pensions.

5 By way of explanation, recital 30 in the preamble to Regulation No 723/2004 states as follows:

'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.'

6 Consequently, the second subparagraph of Article 82(1) and Article 82(3) of the Staff Regulations, in the version in force from 1 May 2004 ('the new Staff Regulations'), provide that no correction coefficient is to be applicable to pensions or invalidity allowances.

7 The abolition of the correction coefficients does not affect officials who retired before 1 May 2004. Thus, the first subparagraph of Article 20(1) of Annex XIII to the new Staff Regulations states that the pensions of those officials are to remain subject to the correction coefficient for the Member State in which they have established proven main residence.

8 At the same time, the second subparagraph of Article 20(1) of Annex XIII to the new Staff Regulations introduces the rule that the minimum correction coefficient applicable to pensions is 100%.

9 According to Article 20(4) of Annex XIII to the new Staff Regulations, the transitional arrangements concerning correction coefficients are also to apply to invalidity allowances.

10 According to Article 1(3)(a) and Article 3(5)(b) of Annex XI to the new Staff Regulations, the correction coefficients applicable under the transitional arrangements are to be determined on the basis of the average difference between the cost of living in the Member State in which the pensioner in question resides and the cost of living in Belgium (the 'country method'), whereas the 'capital method' is still applied to the salaries of officials in active employment.

11 In order to facilitate the transfer, for the pensioners concerned, from the 'capital method' to the new 'country method', the latter was introduced gradually over a four-year transitional period. For that purpose, Article 20(2) of Annex XIII to the new Staff Regulations provided that the relative composition of the pensions was to be varied in accordance with the following timetable:

— From 1 May 2004: 80% 'capital method' and 20% 'country method';

— From 1 May 2005: 60% 'capital method' and 40% 'country method';

— From 1 May 2006: 40% 'capital method' and 60% 'country method';

— From 1 May 2007: 20% 'capital method' and 80% 'country method';

— From 1 May 2008: 100% 'country method'.

12 In addition, the second subparagraph of Article 24(2) of Annex XIII to the new Staff Regulations guarantees payment of the nominal amount of net pension payable before 1 May 2004.

II — Background to the dispute

13 From his retirement in February 2003, the appellant received an invalidity allowance pursuant to Articles 53 and 78 of the old Staff Regulations which, in accordance with Article 82 thereof, was weighted at the rate fixed for the country in which the recipient proved he had his residence, namely, the United Kingdom, since he had settled in London and bought a house there. From 1 January 2004, the appellant's invalidity allowance was therefore weighted at the rate of 139.6% set for the United Kingdom. The correction coefficient was calculated in accordance with the 'capital method', so as to reflect the difference in the cost of living between London and Brussels.

14 By letter of 13 May 2004, the Office for the Administration and Payment of Individual Entitlements of the Commission of the European Communities informed the appellant of the effects on his pension rights of the entry into force of the new Staff Regulations. That letter indicated, inter alia, that the appellant's pension rights would not be altered if his pension had been determined before May 2004.

15 However, the appellant noticed that the amount he received was being reduced under the new Staff Regulations, since the correction coefficient applied to pensions paid to

former officials residing in London was being gradually abolished and replaced by a new, lower, correction coefficient.

16 Consequently, on 20 August 2004, the appellant submitted a complaint to the Appointing Authority under Article 90 of the new Staff Regulations against the Commission decision constituted by the pension statements for the months of May, June and July 2004. He claimed that the reduction of his pension rights, unjustified in his opinion, and in particular of the correction coefficient, infringed a number of general principles of law. By decision of 13 December 2004, the Commission rejected the complaint (the 'contested decision').

III — The judgment under appeal

17 In the judgment under appeal, the Court of First Instance dismissed the appellant's action for the annulment of the contested decision, together with, first, the decision of the Appointing Authority which was challenged in the appellant's complaint and altered the correction coefficient, the household allowance and the education allowance applicable to his pension on 1 May 2004 and, second, his pension statements to the extent that they applied that decision from May 2004.

18 The Court of First Instance considered, first, that the head of claim relating to the household allowance and the education allowance was inadmissible, since it did not appear in the appellant's complaint, and the same was true of the heads of claim seeking annulment of the decision constituted by the pension statements for May and June 2004 in the absence of a legal interest in bringing proceedings. On the other hand, the Court of First Instance accepted that the appellant had such an interest in challenging the pension statement for July 2004, since the correction coefficient applicable to the remuneration of officials in active employment in the United Kingdom had been set, in accordance with the 'capital method', at 142.7%, with retroactive effect for that month, whereas the amount of the appellant's pension remained fixed, by virtue of the guarantee of the nominal amount, at a level obtained by application of the correction coefficient of 139.6% at the same date.

19 The Court of First Instance then held to be unfounded the seven limbs of the objection of illegality concerning Article 20 of Annex XIII to the new Staff Regulations, constituting the sole plea in law put forward by the appellant, alleging, respectively, infringement of the principles of the protection of legitimate expectations, legal certainty, non-retroactivity and acquired rights, equal treatment, proportionality and good administration, and alleging misuse of powers and an inadequate statement of reasons.

20 Four arguments were relied upon in support of the part of that plea alleging breach of the principle of equal treatment, the Court of First Instance's findings on which are challenged in the present appeal.

21 At paragraphs 99 to 109 of the judgment under appeal, the Court of First Instance rejected the appellant's first argument that the application of the 'country method' to the calculation of the transitional correction coefficients for the pensions of officials who retired before 1 May 2004 infringed the principle of equal treatment, since the correction coefficients calculated in accordance with the new method did not guarantee equality of purchasing power for all pensioners. It referred, first of all, to its conclusion in Case T-184/00 *Drouvis* v *Commission* [2003] ECR-SC I-A-51 and II-297, paragraph 60, that a single correction coefficient per country could constitute an appropriate indicator to reflect, in a necessarily approximate manner, the cost of living in a Member State and appropriately serve the purpose of ensuring equal treatment between pensioners.

22 The Court of First Instance also considered that, by replacing the 'capital method' with the 'country method', the legislature had not exceeded the limits imposed on its discretion in that matter. At paragraph 105 of the judgment under appeal, it pointed out, inter alia, that the legislature is free to adopt 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 obstructed by invoking the principle of equality of purchasing power, particularly since the transitional arrangements guarantee pensioners that the nominal amount of net pension received before the new Staff Regulations came into force was to be maintained.

23 At paragraphs 110 to 115 of the judgment under appeal, the Court of First Instance rejected the appellant's second argument, alleging discrimination between officials in active employment, to whom the 'capital method' is still applied, and retired officials, by pointing out that the two categories of officials are in objectively different situations.

24 The appellant's third argument, to the effect that there is discrimination if a comparison is made with pensioners living in Belgium, by virtue of the fact that the pensions paid to the latter were determined on the basis of the cost of living in Brussels as a capital city, was rejected by the Court of First Instance at paragraphs 116 to 130 of the judgment under appeal. The Court of First Instance, first, stated that, in accordance with the provisions of Article 1(3)(a)(ii) of Annex XI to the new Staff Regulations in conjunction with Article 3(5)(b) thereof, the correction coefficients applicable to pensions paid in Member States other than the Kingdom of Belgium are to be determined 'with reference to Belgium' and there is nothing in the new pension rules to lead to the conclusion that the legislature intended that pensioners residing in Belgium should have the advantage of a correction coefficient which took account of the cost of living in Brussels as a capital city.

25 It added, at paragraphs 120 to 123 of the judgment under appeal, that it is true that, when the transition was made from the 'capital method' to the 'country method', neither the basic amount of 'Belgian' pensions nor the 100% correction coefficient applied to that amount was reduced in a manner which took account of the new method. The Commission stated at the hearing that, in practice, the statisticians had reached the conclusion that the method consisting of measuring the difference between prices in Brussels and prices in another capital, such as London, provided a perfectly valid estimate of the difference between prices in Belgium and prices in the United Kingdom for all products but one, namely rents. The Commission stated that, in order to determine the correction coefficients to be applied to pensions, the statisticians compared average rents in the country in question with average rents in Belgium. On that basis, it could be concluded that 'the difference between Brussels and the Belgian average is around 2%'. Nevertheless, a correction coefficient of 98% was not fixed for Belgium.

26 At paragraph 124 of the judgment under appeal, the Court of First Instance pointed out that the explanations provided by the Commission related to the implementation

of the new pension rules, as carried out by Eurostat (the statistical office of the European Communities) and finalised in the regulations adjusting correction coefficients applied to pensions, whereas the objection of illegality raised by the appellant refers only to Article 20 of Annex XIII to the new Staff Regulations. However, the lawfulness of a Community legislative act cannot depend on the manner in which it is applied in practice. It added, at paragraph 125 of the judgment under appeal, that, in any event, in so far as the practice described by the Commission conferred an advantage upon pensioners residing in Belgium by departing from the new 'country method', it should be pointed out that 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.

27 Finally, at paragraphs 131 to 140 of the judgment under appeal, the Court of First Instance rejected the fourth argument, in which the appellant alleged discrimination in comparison with pensioners residing in one of the 'less expensive' Member States, who had had a correction coefficient of less than 100% applied to them before 1 May 2004 and for whom the new pension rules introduced a minimum correction coefficient of 100%, with the result that those pensioners had the benefit of a correction coefficient manifestly greater than the actual cost of living in their place of residence.

28 At paragraphs 132 to 135 of the judgment under appeal, the Court of First Instance therefore found that that argument was inadmissible since the appellant had not established that he could benefit financially from a judgment declaring the application of a minimum correction coefficient of 100% to pensions paid to pensioners residing in the 'less expensive' Member States illegal. In particular, he did not claim that the alleged 'financial gift' to pensioners residing in such a Member State necessarily entailed a corresponding loss for pensioners residing in an 'expensive' Member State. Moreover, since the Community pension scheme does not operate as a pension fund but is based on the principle of solidarity, the rule introducing a minimum correction coefficient of 100% did not have the effect in law of enriching the pensioners concerned at the expense of the category of pensioners to which the appellant belongs.

29 At paragraph 136 of the judgment under appeal, the Court of First Instance stated that, in any event, the introduction of a minimum correction coefficient of 100% cannot be characterised as manifestly arbitrary or inappropriate, since that rule was adopted in order to bring, as far as possible, the transitional arrangements protecting

the correction coefficients applied to pensions into line with the definitive rules, which abolish them. To that extent, that rule merely anticipates, for a large number of Member States and the pensioners concerned, the abolition of correction coefficients applied to pensions.

IV — The appeal

30 By his appeal, Mr Campoli claims that the Court should:

— set aside the judgment under appeal;

— grant the appellant the relief sought by him in the proceedings at first instance, modified in the light of the inadmissibility of his claims regarding the household allowance and the education allowance and, therefore, annul the decision of the Appointing Authority of 13 December 2004 rejecting his complaint, along with, first, the decision of the Appointing Authority challenged in the complaint, which altered on 1 May 2004 the correction coefficient applicable to his pension, and, second, his pension statements, in so far as they apply that decision from May 2004; and

— order the defendant to pay all the costs.

31 The Commission, which also lodged a cross-appeal, contends that the Court should:

— dismiss the appeal as inadmissible;

— in the alternative, dismiss the appeal in its entirety as unfounded; and

— order the appellant to pay all the costs.

32 The Council contends that the Court should:

— dismiss the appeal as unfounded; and

— order the appellant to pay the costs.

33 By his appeal, the appellant challenges the findings of the Court of First Instance concerning the first, third and fourth arguments put forward in support of that part of his plea alleging infringement of the principle of equal treatment. Relying on a single plea in law in his appeal, the appellant claims that the Court of First Instance failed to have proper regard to the principle of equal treatment, the principle of the rights of the defence, the principle of equal treatment of the parties before the Community judicature, the obligation to state reasons, which is binding on the institutions, the concept of legal interest in bringing proceedings in the context of an objection of illegality, and its own obligation to state reasons.

34 Before considering whether this plea is well founded, it is necessary to rule on the Commission's cross-appeal, since it seeks a declaration that the appellant's appeal is inadmissible.

A — *The cross-appeal*

1. Arguments of the parties

35 The Commission maintains that the Court of First Instance should have declared inadmissible, of its own motion, the first, third and fourth arguments put forward in support of the part of the plea alleging infringement of the principle of equal treatment since those arguments were not raised at the pre-litigation stage. It argues that, in his complaints submitted in the pre-litigation procedure, the appellant raised, in relation to the part of that plea, only the second argument, alleging discrimination between officials and pensioners, and that that argument is separate from the three other arguments put forward subsequently.

36 The Commission states in its rejoinder that the purpose of its cross-appeal is to have the appeal declared inadmissible, since it refers exclusively to the three inadmissible arguments. It acknowledges that, even formulated in that way, the purpose of its cross-appeal does not conform fully with the terms of Article 56 of the Statute of the Court of Justice, but it considers that the Court is none the less required to consider of its own motion whether the Court of First Instance erred in law in not declaring the three arguments at issue inadmissible of its own motion.

37 In the appellant's view, the cross-appeal is inadmissible since, contrary to the requirements of the aforementioned Article 56, the Commission was not unsuccessful in its submissions at first instance. In particular, it did not plead that the action was inadmissible and the Court of First Instance fully accepted its pleas by dismissing the action as unfounded. Moreover, although it has brought a cross-appeal, the Commission does not seek to have the judgment under appeal set aside, in whole or in part.

38 In the alternative, the appellant maintains that the cross-appeal is unfounded. The first, third and fourth arguments in question are linked to the infringement of the principle of equal treatment relied on in his complaint. In the contested decision,

the Commission itself clearly identified his argument as a criticism of the fact that 'the inhabitants of an "expensive" area were therefore deprived of purchasing power equal to that of the inhabitants who have taken up residence in "less expensive" areas' and that 'pensioners no longer enjoy the same purchasing power according to their residence'. The report for the hearing of the Court of First Instance clearly states the four arguments put forward by the appellant in support of the allegation of infringement of the principle of non-discrimination and the Commission did not criticise the report or contest the admissibility of those arguments.

2. Findings of the Court

39 Pursuant to the second paragraph of Article 56 of the Statute of the Court of Justice, an appeal may be brought by any party which has been unsuccessful, in whole or in part, in its submissions.

40 As the Commission itself states in its rejoinder, the judgment under appeal grants the form of order it sought before the Court of First Instance in its entirety. It should be pointed out, in particular, that, although it pleaded that the appellant's claims in regard to the household allowance and the education allowance were inadmissible on the ground that they had not been raised in the complaint, the Commission did not contend before the Court of First Instance that the part of the plea alleging infringement of the principle of equal treatment was inadmissible.

41 Moreover, as is clear from Article 61 of the Statute of the Court of Justice, inter alia, all appeals must seek the setting-aside in whole or in part of a judgment of the Court of First Instance, since the Court of Justice may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the Court of First Instance for judgment.

42 In this case, the Commission's cross-appeal does not seek to have the judgment under appeal set aside but rather a declaration that the principal appeal lodged by the appellant is inadmissible.

43 It follows that the cross-appeal must be dismissed as inadmissible.

B — *The principal appeal*

1. The findings made by the Court of First Instance in relation to the first argument, alleging infringement of the principle of equal treatment and claiming that the new 'country method' did not guarantee equality of purchasing power for all pensioners

(a) Arguments of the parties

44 The appellant claims that by rejecting that first argument, the Court of First Instance failed to have proper regard to the principle of equal treatment and the obligation to state reasons, which is binding on the Community judicature. In fact, the judgment under appeal places the legislature's broad discretion above that principle. Paragraph 105 of that judgment is decisive in that regard. The existence of a sufficiently long transitional period, referred to by the Court of First Instance, is an important factor to be taken into account when considering whether the principles of legal certainty, non-retroactivity and acquired rights have been adhered to but is irrelevant to the consideration of whether a measure is lawful in the light of the principle of equal treatment.

45 The appellant also points out that a correction coefficient determined in accordance with the 'country method' disregards the principle of equal treatment inasmuch as it does not make it possible to reflect, even approximately, the cost of living in

a particular country and thus serve the purpose of ensuring among former officials equal purchasing power. The new method, in fact, penalises pensioners living in the capital or other 'expensive' cities or regions who find it impossible to meet the costs connected with their place of residence.

46 In the Commission's view, paragraph 105 of the judgment under appeal simply gives due effect to the legislature's discretion in the matter in question. In that paragraph, the Court of First Instance held, in particular, that equality of purchasing power, as a specific expression of the principle of equal treatment, is not infringed by the change in method in question, since no arbitrary or manifestly inappropriate distinction is made which goes beyond the legislature's discretion, all the more so as the transitional arrangements guarantee that the nominal amount of the net pension is to be maintained.

47 The Council contends that the appellant is confusing the principle of equal treatment with the 'principle of equality of purchasing power'. 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', which is simply one possible way of ensuring equal treatment. Moreover, the 'country method' complies with the principle of equal treatment in exactly the same way as the 'capital method' and does not undermine the freedom of movement of pensioners. The former system favoured the choice of places within a State where the cost of living was less expensive to the same extent as the present system and thereby affected the choice of place of residence.

(b) Findings of the Court

48 In criticising the findings made by the Court of First Instance concerning the argument alleging infringement of the principle of equal treatment on the basis that the new 'country method' does not guarantee equality of purchasing power for all pensioners, the appellant is essentially seeking a declaration that the Court of First Instance erred in holding that the Community legislature did not exceed its discretion in this domain by substituting the 'country method' for the 'capital method' for the purpose of determining the correction coefficients in the transitional pension arrangements.

49 In order to determine whether that argument is well founded, it must first be established whether it is compatible with the principle of equal treatment to apply to pensions a single correction coefficient per country, calculated in accordance with the 'country method'.

50 The principle of equal treatment or non-discrimination 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 (Case C-344/04 *IATA and ELFAA* [2006] ECR I-403, paragraph 95, and Case C-227/04 P *Lindorfer* v *Council* [2007] ECR I-6767, paragraph 63).

51 With regard to the provisions of the old Staff Regulations providing for the application of a correction coefficient to the remuneration and pensions of officials, the Court has already held that it is unsustainable to contend that a provision whose objective is to maintain equality of purchasing power for all retired officials regardless of their place of residence is incompatible with the principle of equal treatment (see the order of 29 April 2004 in Case C-187/03 P *Drouvis* v *Commission*, paragraphs 25 and 26 and the case-law cited).

52 However, as the Court of First Instance rightly pointed out at paragraphs 99 to 101 of the judgment under appeal, a system of correction coefficients, by its very nature, cannot ensure absolutely equal treatment for former officials, since it is clearly impossible to take account of the cost of living and its variations in all areas of the various Member States in which pensioners may establish their residence and to apply a specific correction coefficient to each of those areas. Under those circumstances, a single correction coefficient per country can constitute an appropriate indicator to reflect, in a necessarily approximate way, the cost of living in a Member State.

53 With regard to the method to be chosen for the calculation of such a single correction coefficient per country, it is common ground, as the Advocate General pointed out in points 69 and 70 of his Opinion, that, whatever system is chosen, it can at best constitute a reasonable approximation of the actual cost of living of each former

official and that, viewed in that light, both the 'capital method' and the 'country method' have advantages and disadvantages.

54 Given the necessarily approximate nature of a single correction coefficient per country, it must be considered that the goal of ensuring a certain parity of purchasing power among former officials residing in the various Member States has been attained, to the extent that the single correction coefficient is determined according to criteria which ensure that it is representative. It is undeniable that the 'country method' reflects the cost of living in a State in a manner that is at least as representative as the 'capital method'.

55 Since the 'country method' is therefore an appropriate method of calculation for the purpose of ensuring, as far as possible, equality of purchasing power for all pensioners, the Court of First Instance did not err in law in holding that the Community legislature had not infringed the principle of equal treatment by substituting the 'country method' for the 'capital method' for the purpose of determining correction coefficients in the transitional pension arrangements.

56 The appellant's criticisms of paragraph 105 of the judgment under appeal must be regarded as unfounded. It is clear from the reasoning set out at paragraphs 99 to 104 of the judgment under appeal that, contrary to the appellant's argument, the Court of First Instance gave a negative answer to the question whether the new method of determining correction coefficients constitutes an arbitrary or manifestly inappropriate differentiation in the light of the objective to be achieved. In so doing, it in no way held that the existence of a sufficiently long transitional period is the sole restriction on the legislature's power, as the appellant suggests, but, on the contrary and on the basis of reasoning similar to that set out at paragraphs 51 to 54 of the present judgment, examined the question whether the Community legislature had infringed the principle of equal treatment by substituting the 'country method' for the 'capital method'. When the paragraph at issue is read in its proper context, it is therefore clear that the reasoning of the Court of First Instance is not based on the premiss that, in restructuring the pension scheme, the Community legislature was bound by the principles of legal certainty and acquired rights but not by the principle of equal treatment.

57 It follows from the foregoing that the first part of the sole ground of appeal, alleging infringement of the principle of equal treatment and the obligation to state reasons, which is binding on the Community judicature, must be rejected as unfounded.

2. The findings of the Court of First Instance concerning the fourth argument, alleging discrimination in comparison with pensioners residing in one of the 'less expensive' Member States on the basis of the introduction of a minimum correction coefficient of 100%

(a) Arguments of the parties

58 The appellant claims that, contrary to what was held at paragraphs 132 to 135 of the judgment under appeal, he can establish an interest in bringing proceedings. He disputes that such an interest can flow only from the enrichment of pensioners living in a 'less expensive' Member State at the expense of pensioners residing in an 'expensive' Member State and states that his criticism is based on infringement of the 'principle of equality of purchasing power'. Even if it were necessary to consider the relationship between the benefits paid to one group of pensioners and those paid to another group, it would have to be concluded that the cost incurred in applying the minimum correction coefficient of 100% is 'compensated for' by the introduction of the 'country method'.

59 With regard to the finding made by the Court of First Instance at paragraph 136 of the judgment under appeal that the introduction of a minimum correction coefficient of 100% cannot in any event be characterised as manifestly arbitrary or inappropriate, the appellant claims that the simple reference to the legislature's wide power and to the objective of bringing the transitional arrangements into line with the definitive rules cannot justify that conclusion. In addition, no transitional arrangements were made for pensioners residing in 'less expensive' countries. There is no objective justification in the nature or the substance of the transitional arrangements for the differentiation resulting from the fact that the introduction of a minimum correction coefficient conferred upon those pensioners benefits which substantially exceeded the cost of living in their place of residence.

60 The Commission and the Council consider that the Court of First Instance was correct in declaring the appellant's argument inadmissible. They contend that, even if the Court of First Instance had considered the argument well founded, the consequence would have been a reduction in the amount of the pension paid to pensioners residing in 'less expensive' Member States, which would not have made any change whatsoever in the appellant's situation. In the alternative, they contend that, by aligning the transitional arrangements with the definitive rules for a large number of Member States and to the advantage of pensioners residing in 'less expensive' Member States, the legislature made a consistent and appropriate choice. The Council points out that, for that group of pensioners, there were no legitimate expectations to be protected, which explains why no transitional measures were necessary for them.

(b) Findings of the Court

61 The criticisms of the grounds on which the Court of First Instance, in the judgment under appeal, rejected the appellant's argument alleging discrimination by comparison with pensioners residing in one of the 'less expensive' Member States as a result of the introduction of a minimum correction coefficient of 100% relate both to that Court's findings on the admissibility of that argument and its examination of the substance of the argument. In fact, the appellant is seeking to show that, contrary to what the Court of First Instance held, that argument is admissible and well founded.

62 Before addressing those criticisms, the objection of inadmissibility raised by the Commission must be considered. The Commission contends that the Court of First Instance should have declared the argument inadmissible of its own motion, since it was put forward by the appellant for the first time only in his reply in the proceedings at first instance and is therefore a new argument.

63 It is sufficient to note in that regard that, as the Advocate General pointed out at points 103 and 104 of his Opinion, the argument in question appeared, albeit in embryonic form, in the part of the application alleging misuse of powers and

infringement of the principle of proportionality and the obligation to state reasons. It is clear from the case-law that a plea which may be regarded as amplifying a plea made previously, whether directly or by implication, in the original application, must be considered admissible (see, to that effect, Case 306/81 *Verros* v *Parliament* [1983] ECR 1755, paragraph 9, and Case C-412/05 P *Alcon* v *OHIM* [2007] ECR I-3569, paragraphs 38 to 40).

64 As to whether the appellant's criticisms are well founded, consideration must first be given to those made in regard to paragraph 136 of the judgment under appeal, in which the Court of First Instance, having concluded that the argument in question was inadmissible on the basis that the appellant had failed to establish an interest in bringing proceedings, held that, in any event, the introduction of a minimum correction coefficient of 100% cannot be characterised as manifestly arbitrary or inappropriate, since that rule was adopted in order to bring the transitional arrangements protecting the correction coefficients applicable to pensions as far as possible into line with the definitive rules, which abolish them. It is only if that finding were vitiated by an error of law that that part of the plea relied on by the appellant could ultimately succeed. That, however, is not the case.

65 As the Court of First Instance correctly pointed out, the introduction, as part of the transitional arrangements, of a minimum correction coefficient of 100% simply anticipates the abolition of correction coefficients for certain pensioners provided for under the new rules. Whether the transitional rules are in conformity with the principle of equal treatment must therefore be analysed from that perspective.

66 The decision of the Community legislature to reform the pension scheme by abolishing the correction coefficients applicable to pensions is not incompatible with the principle of equal treatment. Although the former pension scheme, based on a system of correction coefficients and, consequently, on a certain compensation for loss of purchasing power according to the Member State in which the pensioner resided, constituted an appropriate way of implementing that principle, it cannot be inferred from this that any other system is incompatible with that principle.

67 As the Council rightly pointed out, a pension scheme intended to create equality of purchasing power is just one possible way of ensuring compliance with the principle of equal treatment. That principle is just as equally complied with by a scheme under which pensioners receive, for an equivalent contribution, the same nominal pension, which is also, as the Commission noted, generally the case under existing pension schemes in the Member States and in other international organisations.

68 Since the definitive pension scheme under the new Staff Regulations, inasmuch as it no longer pursues the objective of guaranteeing a certain equality of purchasing power among officials, regardless of their place of residence, is therefore compatible with the principle of equal treatment, the transitional arrangements, which simply anticipate the principle whereby a 'single' amount pension is paid to pensioners for whom that principle is favourable, cannot constitute discrimination.

69 It must therefore be held that the Court of First Instance was correct in finding that the appellant's argument alleging discrimination by comparison with pensioners residing in one of the 'less expensive' Member States was unfounded, since the transitional arrangements introduced a minimum correction coefficient of 100%. Under those circumstances, there is no further need to consider the objection that that argument is inadmissible since the appellant does not have *locus standi*.

70 It follows from the foregoing that this part of the sole plea in law, alleging infringement of the principle of equal treatment and failure to have regard to the concept of *locus standi*, must be rejected.

3. The findings made by the Court of First Instance on the third argument, concerning discrimination by comparison with pensioners living in Belgium

(a) Arguments of the parties

71 The appellant claims that, contrary to what was held in the judgment under appeal, the new pension scheme is linked to the cost of living in Brussels. Article 3 of Annex XI to the new Staff Regulations states that the adjustment of remuneration and pensions is to be based on a series of factors set out in Article 1 thereof, which include changes in the cost of living for Brussels (Brussels International Index). The fact that no correction coefficient is applicable in Belgium, as provided in Article 3(5) of Annex XI to the new Staff Regulations, means that a de facto correction coefficient of 100% is applied to pensions. Consequently, the income of pensioners living in Belgium is fixed solely by taking account of the cost of living in Brussels, the capital of that Member State.

72 The appellant also criticises the grounds set out at paragraph 124 of the judgment under appeal, according to which 'the lawfulness of a Community legislative act cannot depend on the manner in which it is applied in practice', and those set out at paragraph 125, which refers to the case-law to the effect that 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. The appellant invokes in that regard infringement of the principles of equal treatment and the equality of the parties before the Community judicature, the rights of the defence and the obligation to state reasons, which is binding on the Community judicature and the institutions.

73 The Commission and the Council refer to the terms of Article 1(3)(a) and the second paragraph of Article 3(5)(b) of Annex XI to the new Staff Regulations and point out that the first of those provisions provides that Eurostat is to calculate the economic parities 'with reference to Belgium'. The new rules therefore contain no link to the

cost of living in Brussels. The implementation of the transitional arrangements is effected by implementing regulations adopted by the Council, which Eurostat merely applies. The appellant failed to challenge those implementing regulations, pleading only the illegality of Regulation No 723/2004.

(b) Findings of the Court

74 As pointed out at paragraphs 68 and 69 above and paragraph 136 of the judgment under appeal, the introduction under the transitional arrangements of a minimum correction coefficient of 100% does not constitute an infringement of the principle of equal treatment. Under those circumstances, the application, in fact or in law, of a correction coefficient of 100% to pensioners residing in Belgium clearly cannot constitute such an infringement.

75 Even if the cost of living in Belgium, calculated in accordance with the 'country method', was below that taken into account for the calculation of basic salary, with the result that, following the logic of the old pension scheme, a correction coefficient of less than 100% would have been applied, the fact that pensioners residing in Belgium, in the same way as all other pensioners residing in one of the 'less expensive' Member States as referred to at paragraph 69 above, receive only the basic full pension and, therefore, enjoy a purchasing power that is greater than that of the appellant does not constitute discrimination in the context of the transitional arrangements.

76 It follows from the foregoing that, even if the grounds of the judgment under appeal, in particular, those set out at paragraphs 124 and 125 thereof, were vitiated by an error of law, as the appellant claims, a finding that there was such an error would not lead to the setting-aside of the judgment, since the appellant's argument alleging discrimination by comparison with pensioners living in Belgium must, in any event, be rejected on the grounds set out at paragraphs 74 and 75 above, which were also set out by the Court of First Instance in the judgment under appeal.

77 Accordingly, that part of the sole plea, alleging infringement of the principles of equal treatment and the equality of the parties before the Community judicature, the rights of the defence and the obligation to state reasons, which is binding on the Community judicature and the institutions, must be rejected.

78 Since no part of the sole plea in law relied on by the appellant is well founded, Mr Campoli's appeal must be dismissed.

V — Costs

79 In accordance with the first paragraph of Article 122 of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court is to make a decision as to costs.

80 Under Article 69(2) of those rules, which apply to the procedure on appeal by virtue of Article 118, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. In accordance with Article 69(3) of those rules, where each party succeeds on some and fails on other heads, or where the circumstances are exceptional, the Court may order that the costs be shared or that the parties bear their own costs. Since each party has been partly unsuccessful, each party must be ordered to bear its own costs.

81 In accordance with Article 69(4) of the Rules of Procedure of the Court of Justice, which is also applicable by virtue of Article 118, the institutions which have intervened in the proceedings are to bear their own costs. The Council must therefore be ordered to bear its own costs.

On those grounds, the Court (Second Chamber) hereby:

1. Dismisses the principal appeal and the cross-appeal;

2. Orders the parties to bear their own costs.

[Signatures]