

Opinion of Advocate General Capotorti (14 May 1981)

Caption: Opinion of Advocate General Capotorti, delivered on 14 May 1981. Excerpt from the section concerning failure to consult the Economic and Social Committee and the Court of Auditors in Cases 828/79 (Adam v Commission) and 1253/79 (Battaglia v Commission). According to a strict construction of Article 24 of the Merger Treaty, the Court of Auditors cannot be treated as a Community 'institution'.

Source: Reports of Cases before the Court. 1981. [s.l.].

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Opinion of Mr Advocate General Capotorti delivered on 14 May 19811

[...]

Mr President,
Members of the Court,

1. The various cases to which this opinion relates have one feature in common: they arise from applications submitted by Community officials and former officials in reaction to the unfavourable consequences for their respective salaries and pensions of Council Regulations Nos 3085/78, 3086/78 and 3087/78 of 21 December 1978. I shall deal with the contents of those three legislative measures at a later stage. For the time being I would merely mention that by adjusting monetary parities and weightings Regulations Nos 3085/78 and 3086/78 had an adverse effect on the level of pensions, on transfers abroad of part of officials' emoluments and on the allowance which replaced the abolished separation allowance, whilst in adjusting the weighting applicable to the remuneration and pensions of officials employed or having a home in Italy Regulation No 3087/78 granted the benefit of that adjustment only as from 1 January 1978, although in the period immediately preceding that date the lire had also been affected by a high rate of inflation.

I propose to begin by describing the procedural developments, dividing the cases involved into four groups according to whether they relate to (i) pensions, (ii) transfers of part of emoluments in foreign currencies, (iii) the allowance which replaced the separation allowance, or (iv) the weighting for Italy in force between 1 January 1978 and 31 March 1979. I shall then go on to express my opinion on the objections of inadmissibility which the defendant institutions have pleaded in several cases, and finally I shall give my views on the issues of substance discussed in the oral procedure which are ripe for examination in the cases concerning transfers abroad of part of officials' emoluments and also in the only case concerning the allowance which replaced the separation allowance. As far as the last case is concerned, questions of admissibility and substance will be examined together.

[...]

21. In Cases 828/79 and 1253/79 the applicants further complain that the Economic and Social Committee and the Court of Auditors were not consulted during the preparation of Regulation No 3085/78. Their argument is based on the notion that when Article 24 of the Merger Treaty, quoted above, speaks of the need to consult "other institutions concerned" before provisions of the Staff Regulations are adopted or amended, it also refers to the Court of Auditors and the Economic and Social Committee.

That argument cannot be endorsed. I am not persuaded that the word "institutions", which in the Treaties establishing the Community is used exclusively to refer to the Council, Commission, Parliament and Court of Justice, was in this case meant to indicate all the bodies which employ staff within the framework of the Communities. Such an interpretation would do violence to the letter of the provision and is justified neither by consideration of the scheme of the Treaties nor by reference to the objectives of the said Article 24. I think it reasonable that only the Community institutions *stricto sensu* should have been endowed with a specific and particularly important role in the adoption and amendment of the Staff Regulations.

The opinion which I have adopted is confirmed by the amendment recently made to Article 1 of the Staff Regulations by Council Regulation No 1376/77 of 21 June 1977 (Official Journal 1977, L 157, p. 1). That amendment consists in the addition of a second paragraph which provides that "save as otherwise provided for, the Economic and Social Committee and the Court of Auditors shall, *for the purpose of these Staff Regulations*, be treated as institutions of the Communities". That proves that when the Community legislature intended certain bodies to be *treated* as Community institutions it did so by recourse to express provisions and confined the effects of those provisions to a particular legislative context. It is proper to infer that, in the absence of specific provisions, when the primary or secondary sources of law speak of "institutions" they refer to the bodies treated as such by the Treaties. Consequently, the failure to consult the Economic and Social Committee and the Court of Auditors does not affect the validity of Regulation No 3085/78.

[...]

1- Translated from the Italian.