

(2) (c) being apparently less strict than that laid down in Article 2 (4).

It follows that the grant of either of the benefits envisaged by the two provisions in question is without prejudice to the grant of the other, either by automatically giving rise to entitlement or by excluding it.

3. Article 1 (2) (c) of Annex VII to the Staff Regulations confers circumscribed powers upon the appointing authority and the appointing authority is required to take a special reasoned decision granting the household allowance if it finds that the conditions laid down in that provision are fulfilled.

In Case 65/83

GABRIELLA ERDINI, an official in the Secretariat of the Council of the European Communities, represented by Jean-Noël Louis, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Nicolas Decker, Advocate, 16 Avenue Marie-Thérèse,

applicant,

v

COUNCIL OF THE EUROPEAN COMMUNITIES, represented by John Carbery, Adviser in the Legal Department of the General Secretariat of the Council, with an address for service in Luxembourg at the office of H. J. Pabbruwe, Director of the Legal Affairs Department of the European Investment Bank, 100 Boulevard Konrad-Adenauer,

defendant,

APPLICATION for the grant of a household allowance,

THE COURT (Third Chamber)

composed of: Y. Galmot, President of Chamber, U. Everling and C. Kakouris, Judges,

Advocate General: G. F. Mancini
Registrar: H. Jung, Legal Secretary

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Summary of the facts

1. Pursuant to Article 67 (1) of the Staff Regulations, family allowances include a household allowance equal to 5 % of the basic salary, which may not be less than BFR 3 568 per month, and a dependent child allowance of BFR 4 881.

With regard to the dependent child allowance Article 2 (4) of Annex VII to the Staff Regulations provides that

“Any person whom the official has a legal responsibility to maintain and whose maintenance involves heavy expenditure may, exceptionally, be treated as if he were a dependent child by special reasoned decision of the appointing authority, based on supporting documents.”

According to Article 1 (2) of Annex VII,

“The household allowance shall be granted to:

- (a) a married official;
- (b) an official who is widowed, divorced, legally separated or unmarried and has one or more dependent children within the meaning of Article 2 (2) and (3) below;

(c) by special reasoned decision of the appointing authority based on supporting documents, an official who, while not fulfilling the conditions laid down in (a) and (b), nevertheless actually assumes family responsibilities.”

2. The applicant, who is unmarried and comes from Italy, has been an official in Grade C 1 in the General Secretariat of the Council since 1 August 1972.

In 1978 the applicant's mother, who lived in Italy, found that her personal income of less than BFR 10 000 per month was insufficient to provide for her accommodation and upkeep. She therefore went to live in Brussels with the applicant who thenceforth contributed substantially to the costs of supporting her mother. According to a medical certificate dated 6 June 1983, the state of health of the applicant's mother makes it necessary for her to live with her daughter.

In those circumstances, the applicant asked for her mother to be treated as if she were a dependent child within the meaning of Article 2 (4) of Annex VII to the Staff Regulations. The appointing authority acceded to that request with effect from 1 November 1978.

3. On 23 July 1981 the applicant applied to the Director of Administration of the General Secretariat of the Council for the grant of a household allowance under Article 1 (2) (c) of Annex VII on

the ground that the fact that her mother lived under her roof and was maintained by her placed her in the position of a "head of household", and she also referred to the documents on the basis of which her mother had been treated as if she were a dependent child.

By memorandum of 25 September 1981, the Director of Administration informed the applicant that her application could not be granted since the fact that a person was treated as a dependent child did not give rise to any right to the household allowance and the documents to which the applicant had referred did not justify the adoption of two decisions on an exceptional basis in respect of the same person.

On 12 November 1981 the applicant sent a memorandum to the Director of Administration in which she put forward legal arguments in support of her opinion that she satisfied the conditions laid down in Article 1 (2) (c) without the need for a decision to be adopted on an exceptional basis. She therefore asked the Director of Administration to review his decision.

On 5 July 1982, the Director of Administration informed the applicant that he could not depart from the view which he had already expressed orally, since the provision in question had been adopted in order to cover circumstances different from those of the applicant, and consistent administrative practice common to all the institutions precluded the application of that provision at the same time as that of the provision whereby a person was treated as a dependent child.

4. On 22 September 1982 the applicant lodged with the Secretary-General of the Council a complaint under Article 90 (2)

of the Staff Regulations, seeking the grant of a household allowance.

By memorandum of 17 February 1983, the Secretary-General of the Council rejected that complaint on the ground that consideration of the applicant's file had shown on the one hand that her mother had certain resources at her disposal and, on the other, that he had already taken a decision that the applicant's mother would be treated as a dependent child. He considered therefore that he was unable to adopt a special reasoned decision granting the applicant a household allowance and also reiterated that his negative decision was consistent with fair and non-discriminatory practice with respect to the applicant and officials in situations comparable to hers.

II — Written procedure and conclusions

1. By this action, brought by an application lodged at the Court Registry on 22 April 1983, the applicant is pursuing her application for the grant of a household allowance. She claims that the Court should:

1. Primarily

Declare null and void the decision taken on 5 July 1982 by the Director of Administration that the applicant should not be granted the household allowance under Article 1 (2) (c) of Annex VII to the Staff Regulations;

Declare that the applicant, by actually assuming family responsibilities, fulfils the requirements laid down by Article 1 (2) (c) of Annex VII to the Staff Regulations;

And therefore, declare that the applicant is entitled to the household

allowance from the date on which she made her application, namely 23 July 1981;

2. So far as necessary

Declare null and void the decision taken on 17 February 1983 by the Secretary-General of the Council of the European Communities in his capacity as the appointing authority expressly rejecting the applicant's complaint;

3. Order the Council to pay the costs.

2. The Council contends that the Court should:

Dismiss the applicant's claims as unfounded; and

Order the applicant to pay the costs to the extent to which they are not payable by the defendant pursuant to Articles 70 and 95 (2) of the Rules of Procedure.

3. The written procedure followed the normal course.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court (Third Chamber) decided to open the oral procedure without any preparatory inquiry.

III — Submissions and arguments of the parties submitted during the written procedure

1. As regards *admissibility*, the *Council* considers that since actions may be brought only against decisions of the appointing authority the applicant's principal claim for the annulment of a decision by the Director of Administration is inadmissible. On the other hand, the application is admissible in so far as it is directed against the

decision of the appointing authority of 17 February 1983.

The *applicant* considers that her application is admissible since it is directed against a decision purporting to be a measure adopted by the competent body, which is intended to produce legal effects and constitutes the final phase of the internal procedure followed by that body.

2. As regards the *substance*, the *applicant* claims that both Belgian and Italian law impose upon her a duty to assist her mother. In view of her mother's state of health, she could discharge that duty only by arranging for her mother to live with her in Brussels. She is thereby subject to considerable financial burdens in the form of higher accommodation charges, medical expenses, travel costs for a person who is almost an invalid, and so forth. Her present remuneration does not enable her to meet all those charges.

The first submission upon which the applicant bases her application relates to infringement of Article 1 (2) (c) of Annex VII to the Staff Regulations. That provision accords a degree of discretion to the appointing authority only with regard to assessment of the responsibilities actually borne by an official. By adopting the decision to treat the applicant's mother as if she were a dependent child, the appointing authority recognized that the applicant actually assumed those responsibilities. On the other hand, no discretionary power exists regarding the application of that provision once the family responsibilities have been recognized and there is no provision by virtue of which an official may be denied entitlement to a household allowance on the ground that he has benefited from a decision under Article 2 (4) of Annex VII. By contrast with the position under the latter provision, the appointing authority has no discretion under Article 1 (2) (c)

as to whether or not it is appropriate to adopt the decision in question. The legislature intended that every official who actually assumes family responsibilities in respect of any persons who actually form part of his family should be entitled to a household allowance.

The applicant's second submission relates to breach of the principles of equality and non-discrimination. In that connection, the applicant states in the first place that an official who is widowed, divorced, legally separated or unmarried and has one or more dependent children and in addition one or more persons treated as if they were dependent children, is entitled to the household allowance and to the dependent child allowance and also to the payment provided for in Article 8 of Annex VII to the Staff Regulations for persons treated as if they were dependent children. On the other hand, an official who has no children but assumes the same family responsibilities in respect of a person treated as if he were a dependent child is not entitled, even though he must incur the same expenses of upkeep and accommodation, to the household allowance and to the payment provided for in Article 8 of Annex VII. In the second place, an unmarried official who actually assumes family responsibilities in respect of a person treated as if he were a dependent child is in an incomparably less comfortable financial situation than a married official whose spouse works and who has also had the benefit of a decision treating a person as if he were a dependent child, since such an official also receives the household allowance

and the payment provided for in Article 8 of Annex VII to the Staff Regulations.

The *Council* emphasizes in the first place that it has not been established that in 1978 the applicant's mother could live only with the applicant in Brussels or that there is no other way in which the applicant could discharge her obligations to maintain her mother, for example by finding a rest home or other home where she could be cared for in Italy. The monthly remuneration of nearly BFR 100 000, including the dependent child allowance, received by the applicant is in any case adequate to enable two persons to live.

As regards the applicant's first submission, the *Council* contends that a decision to treat a person as if he were a dependent child does not entail an acknowledgement that the official concerned actually assumes family responsibilities. There is no provision to the effect that an official who assumes the upkeep of a person treated as a dependent child is to be granted a household allowance. The *ratio legis* of Article 1 (2) is to ease the situation of a married official or an official with one or more dependent children. By making provision in Article 1 (2) (c) for a special reasoned decision on the basis of supporting documents, the legislature conferred upon the appointing authority a discretionary power entitling it to decide whether the reasons relied upon by the person concerned and the reasons behind the provision in question were appropriate and legitimate. The application of both Article 1 (2) (c) and Article 2 (4) must be based on a restrictive interpre-

tation and a wide margin of discretion. Thus, at present only one official of the Council receives the household allowance on the basis of a special reasoned decision, namely a person responsible for looking after two minor brothers after the death of their parents. In the Council's opinion, it is inconceivable for two special decisions to be taken on the basis of the same supporting documents and in respect of the same person. Account has already been taken of the inadequacy of the applicant's resources in deciding to treat her mother as if she were a dependent child. To take the same circumstances into account on a second occasion for the household allowance would result in discrimination, for example with respect to officials who undertake their obligations of maintenance in respect of their parents residing in their countries of origin, who incur much higher expenses, or with respect to married officials without children who receive only the household allowance and not the dependent child allowance.

As regards the second submission, the Council denies that there is any discrimination. A childless official is not in the same position as an official with children.

The difference in treatment in those cases is, moreover, provided for in the very wording of the Staff Regulations. Receipt of the allowances provided for in Article 8 of Annex VII is merely one particular consequence of the right to a household allowance to which an unmarried person without any dependent children is not entitled. In the majority of cases, officials with obligations to maintain other persons discharge those obligations by transferring money. Of course, an official is free to choose the most appropriate way of discharging his obligations but it does not follow that the fact that an official has opted to maintain a parent under his roof must necessarily entail entitlement to the household allowance.

IV — Oral procedure

At the sitting on 24 November 1983, oral argument was presented by the applicant, represented by J.-N. Louis, and the Council, represented by J. Carbery.

The Advocate General delivered his opinion at the sitting on 15 December 1983.

Decision

- 1 By application lodged at the Court Registry on 22 April 1983, Miss Gabriella Erdini, an official in the General Secretariat of the Council of the European Communities, brought an action for annulment of the decision refusing her the household allowance provided for in Article 67 of the Staff Regulations of Officials and Article 1 of Annex VII thereto and for a finding that she is entitled to that allowance.

- 2 The applicant is unmarried and has no children. In 1978, having until that time lived in Italy, the applicant's mother, whose personal income was insufficient to provide for her accommodation and upkeep and whose state of health no longer allowed her to live alone, moved to Brussels to live with the applicant who defrays most of the cost of her upkeep. The applicant's mother was treated, at least until 1983, as if she were a dependent child, by virtue of a decision adopted by the appointing authority pursuant to Article 2 (4) of Annex VII to the Staff Regulations, entitling the applicant to a dependent child allowance.
- 3 The applicant also applied for a household allowance under Article 1 (2) (c) of Annex VII to the Staff Regulations. The Director of Administration of the General Secretariat of the Council refused to grant that application.
- 4 Having received a complaint from the applicant against that decision under Article 90 (2) of the Staff Regulations, the Secretary-General of the Council, as appointing authority, confirmed the refusal.

Admissibility

- 5 The Council has observed in the first place that actions may be brought only against decisions of the appointing authority and therefore that an action cannot be brought against a decision of the Director of Administration but only against the decision of the Secretary-General rejecting the applicant's complaint.
- 6 In that regard, it should be borne in mind that the remedy provided for in Article 91 (1) of the Staff Regulations relates to the legality of a measure adopted by the appointing authority adversely affecting an official. The procedure provided for in Article 90 (2) of the Staff Regulations for a complaint through official channels is a pre-condition for that remedy and does not constitute its purpose.
- 7 Even if the Director of Administration was not the authority prescribed by the defendant institution under Article 2 of the Staff Regulations to take decisions such as that now in dispute, the applicant cannot be criticized, in view of the status of the authority which notified the refusal to her, for

regarding that refusal as a decision of the competent authority. Moreover, the Secretary-General, who is himself the appointing authority, confirmed the previous decision of the Director of Administration by giving his decision under Article 90 (2) of the Staff Regulations on the applicant's complaint.

- 8 The objection raised by the Council must therefore be dismissed.

Substance

- 9 The applicant claims that she is entitled to a household allowance under Article 1 (2) (c) of Annex VII to the Staff Regulations since she actually assumes family responsibilities with respect to her mother, a fact which the Council recognized by treating her mother as if she were a dependent child. No margin of discretion therefore remains regarding the application of that provision. Moreover, a refusal to grant the household allowance would lead to discrimination either with respect to widowed, divorced, legally separated or unmarried officials with one or more dependent children and in addition one or more persons treated as dependent children, or with respect to married officials whose spouses work and with respect to whom a decision has been adopted treating a relative as if he were a dependent child.
- 10 The Council objects that account has already been taken of the inadequacy of the applicant's financial resources in deciding to treat her mother as if she were a dependent child and that she is not entitled, in respect of the same person and on the basis of the same circumstances and supporting documents, to two decisions adopted on an exceptional basis, namely that provided for in Article 2 (4) and that provided for in Article 1 (2) (c) of Annex VII to the Staff Regulations. Because of differences in the needs and the composition of families comprising on the one hand an official and children and, on the other, an official and dependent adults, it is not appropriate to grant a household allowance in the latter case. No discrimination thereby arises since, in the cases to which the applicant refers, the situations are different and different treatment is expressly prescribed in the Staff Regulations.

- 11 Article 1 (2) (c) and Article 2 (4) of Annex VII to the Staff Regulations provide for two distinct, special and reasoned decisions, adopted on the basis of supporting documents, for the purpose of granting on the one hand the household allowance and, on the other, the dependent child allowance to officials who do not satisfy the conditions for entitlement to those allowances in the normal way. Neither of those provisions makes reference to the other. Whilst Article 1 (2) (c) requires that the official “actually assumes family responsibilities” he must, in the case with which Article 2 (4) is concerned, have “a legal responsibility” to maintain a person “whose maintenance involves heavy expenditure”, the condition laid down in Article 1 (2) (c) being apparently less strict than that laid down in Article 2 (4).
- 12 It follows that the grant of either of the benefits envisaged by the two provisions in question is without prejudice to grant of the other, either by automatically giving rise to entitlement or by excluding it.
- 13 That is moreover confirmed by Article 8 (1) of Annex VII which grants an official a flat-rate payment in respect of travel expenses from his place of employment to his place of origin “for himself and, if he is entitled to the household allowance, for his spouse and dependants within the meaning of Article 2”. The wording of that provision therefore expressly covers the case of an official who is entitled to the household allowance and is entitled to the said payment only for one dependant under Article 2 (4).
- 14 Since the appointing authority had received an application under Article 1 (2) (c) and documents had been produced to it showing, according to the applicant, that she was actually assuming family responsibilities, the appointing authority was under an obligation to base its decision on that provision alone and not to prejudge that decision as a result of the earlier decision to treat the applicant’s mother as if she were a dependent child.

- 15 According to the Council, the appointing authority must in all cases enjoy in that respect, under Article 1 (2) (c), a discretionary power permitting it, if appropriate, to withhold a household allowance even if it is established that the official actually assumes family responsibilities.
- 16 There is no support however for that view in the wording of the provision in question. In fact it provides that “the household allowance shall be granted to” an official who fulfils the conditions which it lays down. Whilst that provision, like Article 2 (4), requires a “special reasoned decision of the appointing authority” to confer entitlement to the household allowance, it does not provide, by contrast with Article 2 (4), that the decision may be taken “exceptionally”.
- 17 The Council claims that if an official in the applicant’s position were entitled to a household allowance, that would constitute discrimination in his favour as against an official who fulfilled his legal obligation to maintain a relative by paying a sum of money and accommodating that relative in an appropriate establishment.
- 18 However, the purpose of making provision in the Staff Regulations for granting a household allowance to an official who “actually assumes family responsibilities” was to make it easier for officials to live with those members of their families, including those other than spouses or children, who were unable to meet their financial needs themselves. Cases in which an official meets heavy expenditure by reason of his legal responsibility to maintain a member of his family are, on the other hand, covered by Article 2 (4).
- 19 It is apparent from the foregoing that Article 1 (2) (c) confers circumscribed powers upon the appointing authority and that the appointing authority is required to take a special reasoned decision granting the household allowance if it finds that the conditions laid down in that provision are fulfilled.
- 20 In this case, it is apparent from the documents before the Court that, in the statement of the reasons on which its refusal of the applicant’s application

was based, the administration referred on the one hand to the prohibition which in its view existed against adopting in addition to a decision to treat a relative as if he were a dependent child a decision in respect of the same person pursuant to Article 1 (2) (c) and, on the other, to certain resources of the applicant's mother. As regards those resources, however, it has not been contested that they are insignificant and that the applicant bears the major part of the expenses of maintaining her mother.

- 21 It is apparent from the foregoing that the statement of reasons on which the contested decision is based is vitiated by an error of law and that consequently the decision must be annulled.
- 22 Article 176 of the Treaty requires the defendant institution to take the necessary measures to comply with the judgment of the Court and, taking into account the interpretation of Article 1 (2) (c) given above, to review the applicant's situation with regard to the conditions laid down by that provision, on the basis of the supporting documents produced by the applicant.

Costs

- 23 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Council has been unsuccessful in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT (Third Chamber)

hereby:

- 1. Annuls the decision not to grant the applicant a household allowance;**

2. Orders the Council to pay the costs.

Galmot

Everling

Kakouris

Delivered in open court in Luxembourg on 19 January 1984.

P. Heim

Y. Galmot

Registrar

President of the Third Chamber

OPINION OF MR ADVOCATE GENERAL MANCINI
DELIVERED ON 15 DECEMBER 1983¹

*Mr President,
Members of the Court,*

1. The parties to the case which the Court is called upon to decide are an official and the administration of a Community institution: the official claims payment of a household allowance and the institution denies any obligation to pay it to her. The dispute between them is in essence merely a problem of interpretation: the Court must determine whether an official who has been granted the allowance provided for in Article 2 (4) of Annex VII to the Staff Regulations in respect of a person "treated as if he were a dependent child" may, under Article 1 (2) (c) of the same annex, be granted the household allowance. The case is of particular interest because there are no exact precedents.

The facts are as follows: Gabriella Erdini, an official employed by the Council, submitted an application on 23 July 1981 to the Director of Administration of the Council for the household allowance provided for by Article 1 (2) (c) of Annex VII. In support of her application she stated that her mother — who was already treated as a dependent child for payment of the appropriate allowance as from 1 November 1978 — was not only financially dependent upon her but also lived under her roof; thus Miss Erdini had come to assume the role of head of household. By a memorandum of 21 September 1981, the Director of Administration notified her that her request could not be granted because

(a) the fact that a relative had been treated as a dependent child for the

¹ — Translated from the Italian.