JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
29 January 1993 *

In Case T-86/91,

Robert Wery, an official of the European Parliament, residing at Arlon (Belgium), represented by Jean-Noël Louis, of the Brussels Bar, with an address for service in Luxembourg at the office of Fiduciaire Myson SARL, 1 Rue Glesener,

applicant,

v

European Parliament, represented by Jorge Campinos, Jurisconsult, assisted by Kieran Bradley, of the Legal Service, acting as Agents, with an address for service at the Secretariat of the European Parliament, Kirchberg,

defendant,

APPLICATION for the annulment of the decision to withdraw, as from 1 April 1990, the education allowance for the applicant's child and the decision to deduct the corresponding amounts from his salary and, so far as necessary, the general implementing provisions relating to the grant of the education allowance inasmuch as they require educational training which comprises a minimum number of hours of theoretical instruction,

THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES (Fifth Chamber),

composed of: D. P. M. Barrington, President, R. Schintgen and K. Lenaerts, Judges,

Registrar: B. Pastor, Administrator,

* Language of the case: French.

having regard to the written procedure and further to the hearing on 10 November 1992,

gives the following

Judgment

The facts of the case

1 On 28 September 1990 the applicant submitted an application for an education allowance for his three children for 1990/91, using the standard form provided for that purpose by the administration. With regard to his son Laurent, who had been under a recognized contract of apprenticeship as a floriculturist at Arlon since 14 March 1990 and was to remain under the contract until 31 July 1992, he attached to his application a certificate issued by the competent Belgian authorities and a copy of his contract of apprenticeship.

2 By memorandum of 4 February 1991 the European Parliament (hereinafter referred to as 'the Parliament') informed the applicant that in respect of his son Laurent the education allowance and the dependent child allowance, which had both originally been granted, would be withdrawn with effect from April 1990 and that amounts equivalent to the sums already paid would be deducted from his salary.

3 The applicant maintains, and the Parliament accepts, that in answer to his requests for an explanation the administrator of the competent service informed him, firstly, that an education allowance is not generally granted for an official's child who is serving an apprenticeship and, secondly, that even if it were possible to treat part of his son's training under the contract of apprenticeship as educational training the education allowance could still not be granted as in his case the number of hours of theoretical instruction was less than the requisite minimum of 16 hours per week.

4 However, the Parliament decided to resume the dependent child allowance, which the decision of 4 February 1991 had also withdrawn, and to refund the amounts which had already been deducted in that connection. The withdrawal of the education allowance was none the less upheld.

5 On 3 May 1991 the applicant submitted a complaint under Article 90(2) of the Staff Regulations of Officials of the European Communities (hereinafter 'the Staff Regulations') concerning the decision of 4 February 1991. He challenged the grounds relied on by the administrator of the competent service, namely that an apprenticeship did not qualify for an education allowance and that, in any case, the number of hours of theoretical instruction was less than the requisite minimum.

6 The Parliament recognized that the complaint raised the question of whether vocational training under a national apprenticeship programme could be treated as regular full-time attendance at an educational establishment within the meaning of Article 3 of Annex VII to the Staff Regulations and, while still not accepting that it should be so treated but not excluding the possibility of reviewing its previous practice, it decided to submit the question for examination by the Committee of Heads of Administration, particularly in the light of the judgment of the Court of First Instance in Joined Cases T-34/89 and T-67/89 *Costacurta* v *Commission* [1990] ECR II-93. However, at the meeting on 19 February 1992 of the committee responsible for the preparations for the session of the abovementioned Committee it emerged that most of the other institutions shared the Parliament's view and consequently it was decided not to refer the question to the Committee.

7 On 26 August 1991 the Secretary General of the Parliament rejected the complaint of 3 May 1991 in the following terms:

'I have examined your complaint of 3 May 1991.

I regret to inform you that I am unable to give you a favourable reply.

In so far as it concerns the dependent child allowance for your son Laurent, the complaint is devoid of purpose. It is common ground that the administration reversed its decision to withdraw this allowance before you submitted your complaint and refunded the amounts withheld in that respect in April 1991.

In so far as it concerns the withdrawal of the education allowance for Laurent, the complaint is unfounded. Without prejudice to the question which you have raised whether your son's training course entitles you to an education allowance, I would remind you that it is for the official to show that he has incurred "actual education costs" within the meaning of Article 3 of Annex VII to the Staff Regulations. Such proof is even more necessary in the present case, since your son himself receives a monthly allowance in excess of the amount fixed for the education allowance.

In these circumstances, I can only uphold the decision to withdraw as from 1 April 1990 the education allowance which you previously received for your son Laurent.'

8 By memorandum of 10 September 1991 to the Secretary General of the Parliament, the applicant claimed that the administration had never asked him to produce evidence of the actual education costs which he incurred and that the fact that such an obligation was imposed on him and not on other officials constituted an infringement of the principle of equal treatment. By letter of 3 December 1991 the Secretary General of the Parliament confirmed his decision of 26 August 1991.

9 Following the rejection of his complaint, and in reply to a further application for the education allowance for 1991/92, the administration sent the applicant a letter dated 13 November 1991 asking him to produce 'the invoices proving the actual education costs connected with your son Laurent's apprenticeship'. During the procedure before the Court the applicant stated that he did not learn of this letter until 26 November 1991, that is the very day when he lodged his application at the Registry of the Court.

10 In his reply, which was undated, the applicant firstly pointed out that the request in the said letter for proof of the actual education costs that he had incurred was the very first request of that type which the administration had sent him. He then detailed the costs of his son Laurent's apprenticeship.

Procedure and forms of order sought by the parties

11 Consequently the applicant brought the present action on 26 November 1991. The written procedure followed the normal course.

12 Upon hearing the report of the Judge-Rapporteur, the Court decided to open the oral procedure without any preparatory inquiry.

13 However, the Court requested the parties to give written answers to questions concerning, first, the documents relating to the apprenticeship being served by the official's son which had been attached to the application for the education allowance in issue; secondly, the actual education costs of the apprenticeship; thirdly, the right of a person in a situation comparable to the applicant's to receive, under Belgian law, family allowances and/or social benefits in connection with school attendance and also whether a person in a situation comparable to that of the applicant's son might be able to obtain a grant under Belgian law.

14 The hearing took place on 10 November 1992. The parties' representatives made their submissions to the Court and gave their replies to the Court's questions.

15 The applicant claims that the Court should:

1. annul the decision to withdraw the education allowance in respect of his son as from 1 April 1990;

2. annul the decision to make deductions from his salary pursuant to the memorandum of 4 February 1991;

3. order the European Parliament to repay the sums deducted, with interest at 8% per annum from the date of each deduction until the date of repayment;

4. order the defendant to pay the costs;

5. to the extent necessary, declare illegal the general implementing decision adopted by the defendant relating to the grant of the education allowance, in so far as it requires a minimum number of hours of theoretical instruction for students taking a vocational training course officially recognized by a Member State.

16 The Parliament claims that the Court should:

— declare the application inadmissible;

— for the remainder, declare that it is unfounded;

— make an order for costs in accordance with the law.

Admissibility

Arguments of the parties

17 The Parliament disputes the admissibility of the application on the ground that the applicant's complaint of 3 May 1991 was rejected because he failed to produce proof of the education costs actually incurred by him for his son Laurent. As he failed to produce such proof, the applicant, according to the Parliament, had no right of action and therefore his complaint was inadmissible.

18 The Parliament adds that while the administrator of the service did not mention the absence of proof of actual education costs at the interviews with the applicant following the decision of 4 February 1991, the reason was that this was quite incidental by comparison with the principal ground for rejecting the application for the education allowance, namely the fact that the training pursued by the applicant's son could not be treated as equivalent to educational training, which alone gave the right to the education allowance.

19 Alternatively, the Parliament claims that the submissions relied on in the application are not consistent with those relied on in the complaint and that they must therefore be dismissed (see judgment of the Court of First Instance in Case T-57/89 *Alexandrakis* v *Commission* [1990] ECR II-143, paragraph 8).

20 The applicant replies, firstly, that the Parliament's observations show that it accepts that the decision to withdraw the education allowance for his son Laurent and the rejection of his complaint were based on the nature of the training and not on the alleged absence of supporting documents.

21 Secondly, he points out that it was not until the memorandum of 13 November 1991 from the Staff Regulations and Personnel Administration Department that the Parliament asked him for the invoices proving the actual education costs of his son's apprenticeship and that, as a result of the memorandum, he sent a statement of the costs to the Parliament on 3 December 1991.

22 With regard to consistency between the complaint and the application, the applicant points out that originally the Parliament had clearly indicated that the refusal of the education allowance was due entirely to the vocational nature of his son's training. Therefore this was the only ground against which he was able to direct his complaint. It was only at the stage of the decision rejecting the complaint that the Parliament first raised the absence of proof of the actual education costs.

23 The applicant concludes that it is admissible for him to answer, in his application to the Court, the argument of which he did not become aware until the decision rejecting his complaint.

Findings of the Court

24 The Court finds that the Parliament accepts that, before the decision rejecting the complaint, it had never raised any grounds other than the type of training pursued by the applicant's son for refusing the education allowance. Therefore the Parliament led the applicant to believe that the sole ground for rejecting his application was the type of educational training being undertaken by his son.

25 It follows that the Parliament is not justified in contesting the admissibility of the present application by claiming that it is based on new submissions in comparison with the substance of the complaint, such as those relating to the applicant's denial that he has an obligation to prove his son's actual education costs.

26 As regards the question whether the applicant has a right of action since he did not submit proof of the actual education costs that he had to incur, this cannot be separated from the question whether he had to prove those costs or whether he could take advantage of the standard-rate arrangement laid down by the general implementing provisions relating to the grant of the education allowance adopted by the Parliament (hereinafter 'the general provisions'). This is a question of substance. For that reason the question of the applicant's right of action is inseparable from an examination of the substance of the case.

27 The application must therefore be declared admissible.

Substance

28 In support of his application, the applicant relies on two submissions, one alleging infringement of Articles 2 and 3 of Annex VII to the Staff Regulations and the second alleging infringement of Article 25 of the Staff Regulations. Furthermore, and to the extent necessary, he contends that the general provisions are unlawful in so far as they require educational training consisting of a minimum number of hours of theoretical instruction.

29 The first paragraph of Article 3 of Annex VII provides that an education allowance is to be granted 'for each dependent child, within the meaning of Article 2(2) [of Annex VII to the Staff Regulations], who is in regular full-time attendance at an educational establishment'. Pursuant to Article 2(3)(b) of Annex VII to the Staff Regulations, the dependent child allowance is to be granted 'for children between eighteen and twenty-six who are receiving educational or vocational training'.

Alleged infringement of Articles 2 and 3 of Annex VII to the Staff Regulations

Arguments of the parties

30 The applicant observes that the Parliament has resumed payment of the dependent child allowance. It has therefore accepted that his son is receiving educational or vocational training. That is in fact the case because, according to the applicant, his son is under a contract of apprenticeship in floriculture recognized by the competent Belgian authorities and is therefore following a regular full-time course of vocational training including, in addition to practical training, general and scientific theoretical instruction.

31 In so far as it refers to 'an educational establishment', the first paragraph of Article 3 of Annex VII makes no distinction between educational establishments providing educational training and those providing vocational training.

32 The applicant therefore considers that, as his son is taking vocational training at an educational establishment, he is entitled to the education allowance provided for in the first paragraph of Article 3 of Annex VII.

33 The applicant relies on the judgment of the Court of Justice in Case C-149/90 *Costacurta* v *Commission* [1991] ECR I-5463 in contending that the only condition laid down in Article 3 of Annex VII to the Staff Regulations is that the child for whom the education allowance is claimed is in 'regular and full-time attendance at an educational establishment', even if part of the training takes place outside that establishment.

34 He also submits that the Parliament cannot object that he did not produce proof of the education costs actually incurred with his application for the education allowance. In this connection he points out that the Parliament waited until the reply to the complaint before raising this question and that it waited until 13 November 1991 that is after the end of the academic year in question, before asking him to produce proof. He adds that the Parliament agreed that, in the interviews with him in February, it had not raised the question of proof. Furthermore, he has produced proof of the costs which he has actually incurred for his son.

35 The applicant finally states that he had no obligation to produce such proof as he was entitled to receive the standard rate laid down in the general provisions and the Parliament could not refuse this on the ground that his son was receiving vocational training.

36 The Parliament replies that it is clear from the wording of the contract of apprenticeship and from the relevant legislative provisions that the applicant's son is receiving full-time vocational training, consisting of a practical part (of approximately 31 hours per week) and a theoretical part (of 8 hours 45 minutes per week). The Parliament refuses to accept that the provision of theoretical instruction can convert vocational training into educational training.

37 The Parliament considers that the vocational nature of the training received by the applicant's son prevents the grant of an educational allowance to the applicant. The first paragraph of Article 3 of Annex VII should in fact be interpreted in the light of the distinction in Article 2(3)(b) between educational training and vocational training. The 'educational' allowance (*allocation 'scolaire'*) is payable only in respect of 'educational' training (*formation 'scolaire'*) within the meaning of Article 2(3)(b) received on a regular, full-time basis at an educational establishment (*établissement d'enseignement*) which is necessarily 'educational' (*'scolaire'*).

38 The Parliament justifies this interpretation by observing that educational training is characterized by attendance at an educational establishment (*établissement d'enseignement*) of an educational type (*type scolaire*) and does not normally give rise to payment from the State for the benefit of the child's family. Otherwise it is necessary to apply Article 67(2) of the Staff Regulations, which provides that officials in receipt of family allowances are to declare allowances of like nature paid from other sources and that such latter allowances are to be deducted from those paid under Articles 1, 2 and 3 of Annex VII (see judgment of the Court of First Instance in Case T-117/89 *Sens* v *Commission* [1990] ECR II-185). An apprenticeship, on the other hand, is characterized by more or less regular attendance at a place of work, possibly supplemented by part-time attendance at an educational establishment of a vocational type, and generally gives rise to remuneration.

39 The Parliament adds that, as the applicant did not produce proof of the actual education costs incurred in respect of his son, he cannot claim the education allowance. The Parliament states that the applicant cannot take advantage of the standard-rate arrangement laid down in the general provisions because this is only for children receiving educational training and not for those receiving vocational training.

40 Lastly, the Parliament states that if it did not mention this point during the administrative procedure, the reason is that it was quite incidental to the principal ground for rejecting the application for the education allowance, namely the vocational nature of the training.

Findings of the Court

41 The Court notes at the outset that the Parliament accepts that Laurent Wery is dependent on his father, to whom the dependent child allowance has been granted. It is therefore necessary to examine whether in this case the applicant is also entitled to the education allowance.

42 The Court finds that the Parliament's arguments rest on the strict distinction between educational training and vocational training in Article 2(3)(b) of Annex VII. The Parliament considers that the two are mutually exclusive and that vocational training cannot therefore give rise to payment of an education allowance.

43 On this point it must be observed that the Court of Justice, in defining 'vocational training' within the meaning of Article 128 of the EEC Treaty, considered not only that vocational training and educational training are not mutually exclusive, but also that to a large extent they are the same if the training is provided in an educational establishment. The Court of Justice has held that 'any form of education which prepares for a qualification for a particular profession, trade or employment or which provides the necessary training and skills for such a profession, trade or employment is vocational training, whatever the age and the level of training of the pupils or students, and even if the training programme includes an element of general education' (Case 293/83 *Gravier* v *City of Liège* [1985] ECR 593, paragraph 30, and Case 24/86 *Blaizot* v *University of Liège* [1988] ECR 379, paragraph 24). The Court concluded in the first case that 'vocational training' includes courses in strip cartoon art provided by an institute of higher art education' and in the second case that it includes, *inter alia*, 'university studies in veterinary medicine'.

44 The Parliament cannot claim that this interpretation renders the distinction in Article 2(3)(b) of Annex VII meaningless. The distinction remains relevant in the sense that it allows payment of the education allowance to be withheld in respect of children for whom the dependent child allowance is paid when they are receiving vocational training not connected with an educational establishment.

45 Therefore, to determine whether in the present case the applicant is entitled to payment of the education allowance in respect of his son's training, it is necessary to examine whether the training in question in floriculture — which both parties agree must be described as vocational — is provided by an educational establishment.

46 On this point it must be observed that the training in floriculture is in three parts comprising general knowledge, theoretical vocational knowledge and practice. Lessons in the first two take eight hours forty-five minutes per week, while the third takes the form of a contract of apprenticeship under which, in this case, the head of the enterprise has undertaken to train the applicant's son in the trade of floriculturist for a period from 14 March 1990 to 31 July 1992, in accordance with a specific programme approved by the French Community in Belgium.

47 In the first place the Court observes that the first two — theoretical — parts of the course of training are provided by the *Institut Francophone de Formation Permanente des Classes Moyennes* and, secondly, that the contract of apprenticeship was concluded under the auspices of that institution and the supervision of the administration for training of the Ministry for the French Community, and is signed by the Minister's representative. Article 6 of the contract provides that 'the working time shall not exceed 40 hours per week, including hours of instruction'.

48 In addition, for certain students of the institution who are younger than the applicant's son, the training they receive there enables them to satisfy the compulsory schooling requirements to which they are subject under Belgian law.

49 It follows from the foregoing that the *Institut Francophone de Formation Permanente des Classes Moyennes*, an establishment recognized by the French Community of Belgium — which, under the Belgian Constitution, is competent in matters of education —, is an educational establishment within the meaning of the first paragraph of Article 3 of Annex VII and that the applicant's son is receiving educational training there.

50 Under that provision, in order to receive an education allowance, the child in respect of whom it is claimed must not only take a course in an educational establishment but must also be in regular full-time attendance at that establishment. It is therefore necessary to ascertain whether the applicant's son is in regular full-time attendance at the establishment.

51 In this connection it is clear from the case-law of the Court of Justice and the Court of First Instance that the assimilation of training completed outside an educational establishment to regular full-time attendance at the establishment may be justified, having regard to the purpose of the first paragraph of Article 3 of Annex VII, if it is regarded as an integral part of the programme of instruction laid down by the educational establishment (see the judgment of the Court of First Instance in Joined Cases T-34/89 and T-67/89 *Costacurta* v *Commission*, cited above, upheld on appeal by the judgment of the Court of Justice in Case C-149/90, cited above, paragraph 8).

52 In the present case the Court finds that the applicant's son is in regular full-time attendance at the training course provided by the *Institution Francophone de Formation Permanente des Classes Moyennes*.

53 Furthermore, in the case of university education leading to a profession, towards the end of the course the essential part of the training is frequently provided, not in the educational institution where the course is being taken, but outside it and under its supervision with professional practitioners. In such cases entitlement to the education allowance is not disputed.

54 Consequently it would be socially unfair to accept that the parents of a university student spending the greater part of his time on in-service training qualify for the education allowance, while those of a student receiving manual training and also

spending the greater part of his time in apprenticeship under a training programme provided by an educational establishment do not so qualify.

55 On the question whether the Parliament may base its decision to refuse the education allowance on the ground that the applicant has not produced proof of the actual costs of his son's education, the Court observes, like the applicant, that the Parliament did not put forward that ground until the stage of rejecting the complaint, when the academic year had ended, and that it was even later, on 13 November 1991, when the Parliament asked the applicant to produce proof of the actual education costs, which the applicant did without delay. Furthermore, the Parliament accepted that this reason for refusing to pay the allowance was secondary compared with the matter of the nature of the training and, at the hearing, the Parliament expressed the wish that 'the Court [would] resolve the question of principle' (that is the interpretation of Article 3 of Annex VII), and stated that 'the administration of the European Parliament has not had the opportunity to judge the matter' (that is whether the proof produced by the applicant was adequate and appropriate), that 'the general provisions cited by the applicant are not appropriate' and that 'quite simply, the general provisions could not be applied'.

56 It follows that the question of proof of the actual education costs incurred by the applicant for his son must be examined by the Parliament, which will, if necessary, have to decide in the light of the present judgment on how to apply the general provisions in issue to training such as that received by the applicant's son.

57 On the question whether the monthly allowance paid to the applicant's son by the head of the enterprise pursuant to Article 3 of the contract of apprenticeship is an allowance 'of like nature' to the education allowance within the meaning of Article 67(2) of the Staff Regulations, the Court considers that it should not make an assessment where the administration has not yet done so. This question must be determined by the administration in the light of the information available, subject to review by the Court if necessary.

58 There is all the more reason for that to be the case as neither the applicant nor the Parliament gave their views on that point during the procedure before the Court and also because the Parliament, in its letter of 26 August 1991, touched on the question without even hinting at an answer. The letter reads: 'I would remind you that it is for the official to prove that he has incurred 'actual education costs' within the meaning of Article 3 of Annex VII to the Staff Regulations. Such proof is all the more necessary in the present case as your son himself receives a monthly allowance in excess of the amount fixed for the education allowance'. In its defence (paragraph 8), the Parliament added that 'the administration considered that, where an apprenticeship or part thereof could be regarded as giving the right to an education allowance, it would have to decide whether the monthly allowance received by the applicant's son should be deducted from the said education allowance'.

59 It follows from all the foregoing, without there being any need to examine the applicant's other submissions, that the decision of 4 February 1991 to withdraw as from 1 April 1990 the education allowance in respect of the applicant's son Laurent and the decision to make deductions from the applicant's salary for the amounts already paid must be annulled. It will be for the Parliament to draw the appropriate conclusions from such annulment.

60 It follows that the claim for default interest at 8% per annum is premature.

Costs

61 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the defendant has failed in its submissions, it must be ordered to pay all the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby:

1. **Annuls the Parliament's decision of 4 February 1991 to withdraw, as from 1 April 1990, the education allowance which the applicant received in respect of his son Laurent;**

2. **Annuls the Parliament's decision to make deductions from the applicant's salary pursuant to the decision of 4 February 1991;**

3. **Dismisses the remainder of the application;**

4. **Orders the Parliament to pay all the costs.**

Barrington Schintgen Lenaerts

Delivered in open court in Luxembourg on 29 January 1993.

H. Jung

Registrar

D. P. M. Barrington

President