

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber,
Extended Composition)
30 January 2003

Case T-307/00

C

v

Commission of the European Communities

(Officials – Orphan's pension – Fourth paragraph of Article 80 of the Staff
Regulations – Parents' marital status – Equal treatment)

Full text in French II - 221

Application for: annulment of the Commission's decision of 25 November 1999 refusing to award an orphan's pension to the applicant's child.

Held: Annuls the Commission's decision of 25 November 1999 refusing to award an orphan's pension to the applicant's child. Orders the Commission to pay the costs, except those incurred by the Council of the European Union and those incurred by the applicant as a consequence of the Council's intervention. Orders the Council to bear its own costs.

Summary

Officials – Pensions – Survivors' pension – Orphan's pension awarded to an official's child in the event of the death of a spouse who was not employed by the Communities – Pension refused because the deceased parent was not a spouse, despite established filiation and involvement in the child's maintenance – Breach of the principle of equal treatment – Unlawful (Staff Regulations, Art. 80, fourth para.)

The principle of equal treatment is one of the fundamental principles of Community law and is breached where two classes of persons, whose factual or legal situations are not essentially different, are treated differently. That principle therefore requires that comparable situations should not be treated differently unless such differentiation is objectively justified. To be permissible, differentiation must be justified on the basis of objective and reasonable criteria and must be proportionate to the aim pursued.

Since the purpose of the fourth paragraph of Article 80 of the Staff Regulations, relating to the award of an orphan's pension, is to compensate for the additional child maintenance cost incurred by an official as a result of the death of a person deemed to contribute, while alive, to that maintenance, the situation of an unmarried official whose child has lost his other parent, who was neither an official nor a member of the temporary staff and who actually contributed to the child's maintenance on the basis of a statutory obligation arising from acknowledgement of filiation, is comparable to those falling within the scope of that article.

As regards possible justification for excluding unmarried officials from the scope of the fourth paragraph of Article 80 of the Staff Regulations, it should be pointed out that, in requiring the deceased person to have been, at the time of death, the official's 'spouse', the article is pursuing a legitimate aim in so far as it provides for the benefit in question to apply to situations generally corresponding to the loss, by the official and his child, of a material contribution to the latter's maintenance. However, to the extent that the application of that requirement excludes enjoyment of the entitlement in question where a material contribution to the maintenance of an unmarried official's child was actually provided by the deceased person in accordance with a statutory obligation arising from that person's acknowledgement of the child, the requirement is not reasonable. As the situation in society now stands, that requirement is not appropriate for identifying the actual additional cost that is deemed to be borne by the official in the maintenance of his child. If the fourth paragraph of Article 80 of the Staff Regulations assumes that the official is deemed to bear an additional cost in the event of the death of his spouse, it should assume that that additional cost would also arise in the event of the death of the other parent who was not the official's spouse, but who had recognised the child and was therefore legally obliged to maintain it. To the extent that it does not cover such a situation, the requirement adopted by the fourth paragraph of Article 80 of the Staff Regulations is not proportionate to the aim pursued, which is to limit the award of the benefit to situations generally corresponding to the loss, for the official, of a contribution to the maintenance of his child.

In applying an unjustified differentiation and breaching the principle of equal treatment, the fourth paragraph of Article 80 of the Staff Regulations may not be taken as a basis for refusing to award an orphan's pension to an official's child in the event of the death of the other parent who, while not the official's spouse, nevertheless contributed to the child's maintenance on the basis of a statutory obligation arising from recognition of filiation.

(see paras 48, 49, 53-56)

See: 117/76 and 16/77 Ruckdeschel and Others [1977] ECR 1753, para. 7; C-479/93 *Francovich* [1995] ECR I-3843, para. 23; T-8/93 *Iluet v Court of Auditors* [1994] ECR

II-103, para. 45; T-146/96 *De Abreu v Court of Justice* [1998] ECR-SC I-A-109 and II-281, para. 53, and the case-law cited