

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE
23 March 1993 *

In Case T-115/92 R,

Anne Hogan, an official of the European Parliament, residing in Senningerberg (Luxembourg), represented by Stefano Giorgi of the Rome Bar, with an address for service in Luxembourg at 5 Rue des Bains,

applicant,

v

European Parliament, represented by Jorge Campinos, jurisconsult, assisted by Ezio Perillo and Els Vandenbosch, of the Legal Service, acting as Agents, with an address for service in Luxembourg at the Secretariat of the European Parliament, Kirchberg,

defendant,

APPLICATION for interim measures seeking the resumption of payment to the applicant of the allowance for a person treated as a dependent child in respect of each of her parents,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES

makes the following

* Language of the case: Italian.

Order

Facts

- 1 By application lodged at the Registry of the Court of First Instance on 31 December 1992 the applicant filed an appeal, pursuant to Article 91 of the Staff Regulations of officials of the European Communities, seeking the annulment of the act adopted by the appointing authority on 13 August 1992, dismissing her complaint concerning the decision of 22 April 1992 by which the appointing authority had refused to treat each of her parents as a dependent child conferring entitlement to the allowance provided for in Article 2 of Annex VII of the Staff Regulations, and the annulment of the related acts which are the basis or the consequence thereof, particularly the express decision of 7 December 1992 rejecting her 'reply' of 27 August 1992.
- 2 By separate document lodged at the Court Registry on 2 February 1993, the European Parliament raised the objection that the applicant's appeal was inadmissible on the ground that it had not been filed within the three-month time-limit prescribed by Article 91(3) of the Staff Regulations, beginning on the date of notification of the decision taken in response to the complaint.
- 3 By separate document lodged at the Court Registry on 19 February 1993, the applicant made an application for interim measures seeking the reinstatement, subject to possible recovery, of the 'maintenance allowance for her parents', as from April 1992, alternatively May 1992, or in the further alternative August 1992.
- 4 The Parliament submitted written observations regarding the present application for interim measures on 9 March 1993.

- 5 Before examining the merits of this application for interim relief, it is necessary to set out the background of the case and, in particular, the main facts of the dispute as they appear from the pleadings filed by the parties.
- 6 By letter of 16 March 1992 the applicant requested that each of her parents continue to be treated as a dependent child. She had in fact received an allowance on that basis for the periods from 1 April 1990 to 31 March 1991 and 1 April 1991 to 31 March 1992.
- 7 By letter of 22 April 1992 from the Personnel Division of the Parliament, the applicant was informed that she did not fulfil all the conditions laid down by the general implementing provisions relating to Article 2(4) of Annexe VII of the Staff Regulations, on the ground that it appeared from the documents before the Court that the 'maintenance expenses' taken into account were less than 20% of her taxable salary and were not therefore 'heavy expenditure' within the meaning of the Staff Regulations.
- 8 On 12 May 1992 the applicant submitted a complaint to the appointing authority under Article 90 of the Staff Regulations concerning the decision relating to her. By letter of 13 August 1992 from the Secretary-General of the Parliament, the appointing authority rejected the complaint, while considering that there was justification for the request for explicit information concerning the calculation of the 'maintenance expenses' and the 'taxable salary' referred to by the decision of 22 April 1992.
- 9 After receiving this information, on 27 August 1992 the applicant sent the appointing authority a 'reply' which, in essence, disputed the factors taken into account for calculating the 'maintenance expenses' and the 'taxable salary', and requested the immediate resumption of the payments. By letter of 7 December 1992 the Secretary-General of the Parliament replied to the applicant that he could only confirm the decision which had been taken because the objections raised in the letter of 27 August 1992 had been answered explicitly in his letter of 13 August 1992.

Law

10 Pursuant to Article 185 in conjunction with Article 186 of the EEC Treaty and Article 4 of the Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities, the Court may, if it considers that circumstances so require, order that application of a contested act be suspended or prescribe any necessary interim measures.

11 Article 104(2) of the Rules of Procedure of the Court provides that applications concerning the interim measures referred to by Articles 185 and 186 of the EEC Treaty must state the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim measures applied for. The measures requested must be of an interim nature in that they must not prejudge the decision as to the substance of the case (see, most recently, the order of the President of the Court of First Instance of 15 December 1992 in Case T-96/92 R *Comité Central d'Entreprise de la Société Générale des Grandes Sources and Others v Commission* [1992] ECR II-2579).

Arguments of the parties

12 In her application for interim measures, the applicant merely contends that the allowance for a person treated as a dependent child is in the nature of urgent expenditure which cannot be postponed, having regard to the maintenance character of such an allowance. She observes that it has been shown prima facie that there is a risk in delay and a risk of other serious, irreparable damage, and adds that the appointing authority can, on the basis of Article 85 of the Staff Regulations, easily obtain recovery of any unjustified payment if her claims are dismissed in the main action.

13 The Parliament considers, firstly, that having regard to the very advanced state of the proceedings concerning the plea of inadmissibility in the main action, it is necessary to avoid the situation where, by means of an application for interim measures lodged following a plea of inadmissibility, the applicant may compel the court hearing the application for interim relief to examine, albeit prima facie, a matter which the plea of inadmissibility requests the court not to examine.

- 14 Secondly, the Parliament denies that the allowance for a person treated as a dependent child is of the nature of maintenance and contends that it is a family allowance provided for by Article 67 of the Staff Regulations, which is normally paid exclusively to the official in question and which can only have the purpose of making it easier, in financial terms, for the official to meet his or her legal obligations for the maintenance of third parties.
- 15 The Parliament considers, finally, that the applicant has in no way proved in what way the damage which she alleges she has suffered or is suffering is serious and irreparable, and adds that the applicant and her husband have income which is amply sufficient to enable them to meet their legal obligations of maintenance.

Findings of the President of the Court of First Instance

- 16 Firstly, it must be observed that the urgent nature of an application for interim measures, as set out in Article 104(2) of the Rules of Procedure, must be assessed by reference to the need to give an interim ruling in order to avoid serious and irreparable damage to the party seeking the interim measure.
- 17 In this connection it has been consistently held (see, in particular, the order of the President of the Court of First Instance of 23 November 1990 in Case T-45/90 R *Speybrouck v Parliament* [1990] ECR II-705), that, in principle, purely pecuniary damage cannot be regarded as irreparable or even as difficult to repair since *ex hypothesi* it may be the subject of subsequent financial compensation. However, it is for the court hearing the application for interim measures to assess the factors which, in the particular circumstances of each case, are such as to establish whether, if the interim relief sought is not granted, the applicant is likely to be exposed to the risk of damage which cannot be repaired even if the contested measures are subsequently annulled in the main proceedings.
- 18 The documents in the file show that, before the adjustment of remuneration at the end of 1992, the applicant's net monthly salary was BFR 126 356 and her regular contribution for assisting her parents was BFR 37 000 per month.

19 Under Article 1(b), second indent, of Council Regulation (EEC, EURATOM, ECSC) No 3761/92 of 21 December 1992 adjusting, with effect from 1 July 1992, the remuneration and pensions of officials and other servants of the European Communities and the weightings applied thereto (OJ 1992 L 383, p. 1), the allowance for a dependent child was set at BFR 7 959 per month. It follows that the allowance which the applicant could claim, if each of her parents were treated as a dependent child, would be BFR 15 918 per month.

20 In view of the foregoing, and in the absence of any other information furnished by the applicant to establish urgency, the additional financial burden which the applicant will have to bear, until the Court delivers judgment in the main action, as a result of the dismissal of her application for an allowance, namely BFR 15 918 per month, cannot cause her serious and irreparable damage, regardless of whether her husband's income is taken into account.

21 It must therefore be held, without its being necessary to examine the prima facie merits of the application in the main proceedings, that the conditions in law for granting the interim measures sought are not fulfilled and that the present application must consequently be dismissed.

On those grounds,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

hereby orders:

1. The application for interim measures is dismissed.

2. The costs are reserved.

Luxembourg, 23 March 1993.

H. Jung

J. L. Cruz Vilaça

Registrar

President