ORDER OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
15 July 1993 *

In Case T-115/92,

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 its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of the General Secretariat of the European Parliament, Kirchberg,

defendant,

APPLICATION for annulment of the European Parliament's decision refusing the applicant, in respect of each of her parents, the allowance for a person treated as a dependent child and for an order that the Parliament pay her the allowance in question from 1 April 1992 or alternatively from 1 May 1992,

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: H. Jung,

makes the following

* Language of the case: Italian

Order

Facts and procedure

1 The applicant, Anne Hogan, has been an official in Grade C 1 at the European Parliament ('the Parliament') since 30 June 1974.

2 By decision of the Head of the Personnel Division of 16 May 1990, the Parliament granted the applicant the allowance provided for in Article 2(4) of Annex VII to the Staff Regulations of Officials of the European Communities ('the Staff Regulations') for a person treated as a dependent child in respect of each of her parents for the period from 1 April 1990 to 31 March 1991.

3 By decision of 9 October 1991 the allowance was extended for the period from 1 April 1991 to 31 March 1992.

4 The applicant's request, submitted on 16 March 1992, for a further extension from 1 April 1992 was refused by the Personnel Division of the Parliament by letter of 22 April 1992 on the ground that the applicant did not fulfil all the conditions laid down by the general implementing provisions relating to Article 2(4) of Annex VII to the Staff Regulations, as the maintenance expenses taken into account in her case by the administration, namely BFR 8 312, were less than 20% of her taxable salary, namely BFR 10 295, and were not therefore 'heavy expenditure' within the meaning of the Staff Regulations.

5 On 12 May 1992 the applicant sent the appointing authority a memorandum headed 'Complaint pursuant to Article 90 of the Staff Regulations concerning Decision No 12869 of the Personnel Division of the Parliament of 22 April 1992', in which she challenged the decision refusing the allowance, in respect of each of her parents, for a person treated as a dependent child and asked for the immediate

resumption of payment of the allowance as from 1 April 1992, subject to the possible recovery of overpayments at a later date. In the alternative, she requested more precise particulars concerning the calculations on which the decision in question had been based.

6 By letter of 13 August 1992, the Secretary-General of the Parliament informed the applicant that her objections to the decision of 22 April 1992 refusing her the said allowance were unjustified because, under the Luxembourg law applicable to the maintenance obligations in question, her husband was jointly liable to pay maintenance to her parents and that, in accordance with the general implementing provisions, his invalidity pension had to be taken into account in calculating disposable income. The Secretary-General of the Parliament added that the applicant's request for the immediate resumption of payment of the allowance could not be granted because the decision granting the allowance had expired and had not been renewed. The Secretary-General considered, on the other hand, that the applicant's request for more precise particulars concerning the calculation of the 'maintenance expenses' and 'taxable salary' to which the decision of 22 April 1992 referred was justified and asked her to contact the administration on this point.

7 On 19 August 1992 the applicant received a document headed 'Treatment as a dependent child', drawn up on 7 April 1992 and setting out the details of the calculations made by the Parliament.

8 On 27 August 1992 the applicant sent the appointing authority a memorandum headed 'Reply to the Secretary-General's memorandum of 13 August 1992 confirming his decision of 22 April 1992', in which she challenged, firstly, the legal basis on which the administration had made its calculations, that is to say by applying Luxembourg law to her case and on that basis taking into account her husband's income and, secondly, the refusal to order the payment of the allowance in question on a provisional basis, subject to any recovery of overpayments.

9 On 7 December 1992 the Secretary-General of the Parliament, reply to the applicant's memorandum of 27 August 1992, stated that he could only confirm the

decision because his letter of 13 August 1992 had given a reasoned reply to the objections raised in the memorandum.

10 These were the circumstances in which the applicant brought the present action by application lodged at the Court Registry on 31 December 1992.

11 By separate document, lodged at the Registry on 2 February 1993, the Parliament raised an objection of inadmissibility under Article 114(1) of the Rules of Procedure.

12 The applicant lodged observations, registered at the Court Registry on 19 February 1993, seeking the dismissal of the objection of inadmissibility.

13 By separate document lodged at the Registry on 19 February 1993, the applicant made an application for interim measures seeking the reinstatement, subject to possible recovery of overpayments, of the 'maintenance allowance for her parents', as from April 1992, alternatively May 1992, or in the further alternative August 1992.

14 By order of the President of the Court of First Instance of 23 March 1993 in Case T-115/92 R *Hogan* v *Parliament* [1993] ECR II-339, the application for interim measures was dismissed on the ground that the conditions in law for granting the measures were not fulfilled because the additional financial burden which the applicant would have to bear, until the Court delivered judgment in the main action, as a result of the dismissal of her application for an allowance, could not cause her serious and irreparable damage, regardless of whether her husband's income was taken into account.

Forms of order sought

15 In her application the applicant claims that the Court should:

1. declare the action admissible and well founded;

2. annul the Parliament's decision of 13 August 1992 and all the other acts on which it is based or which are connected with it, and those which flow from it or form the basis for it inasmuch as they are vitiated on the grounds of illegality, *ultra vires* and failure to state reasons; in that respect, rule that;

   — the hypothesis of a joint maintenance obligation adopted by the appointing authority of the Parliament is not applicable in the present case;

   — the reduction of the maintenance expenses from BFR 23 089 to BFR 8 312 is therefore arbitrary;

   — in any event, the applicant is entitled to the benefit of Article 2(4) of Annex VII to the Staff Regulations in respect of her parents, since the lower threshold of BFR 15 442 is less than the actual maintenance expenses;

3. order the Parliament to pay her the contested allowance together with interest, in particular bank interest, taking account of the depreciation of the currency for the period from April 1992 to December 1992 and, alternatively, for the period from May 1992 to December 1992;

4. order the defendant to pay a fair preparation allowance and the costs of this action, and order the payment of those amounts to the applicant or her counsel at the address indicated;

in the alternative, rule that by making the grant of the benefit in question subject to possession of a particular nationality or place of residence, and by excluding such benefit in the case of officials having a different nationality (or place of residence) constitutes a breach of the principles of equal treatment, application of the most favourable treatment and the prohibition of all discrimination on grounds of nationality, as provided by the Staff Regulations.

16 The Parliament contends that the Court should:

1. declare the action in Case T-115/92 to be inadmissible;

2. make an order as to costs in accordance with Articles 87(2) and 88 of the Rules of Procedure.

17 In her observations concerning the objection of inadmissibility, the applicant claims that the Court should:

1. dismiss the objection of inadmissibility lodged by the appointing authority on 2 February 1993 in so far as it relates to the claim for an allowance from April 1992;

2. in the alternative, dismiss the objection of inadmissibility in so far as it relates to the claim for an allowance from May 1992;

3. in the further alternative, dismiss the objection of inadmissibility in so far as it relates to the claim for an allowance from August 1992.

Admissibility

18 Where a party applies to the Court of First Instance for a decision on admissibility not going to the substance of the case, Article 114 of the Rules of Procedure provides that, unless the Court of First Instance otherwise decides, the remainder of the proceedings is to be oral. In the present case the Court considers that sufficient information is provided by the documents in the file and decides that further steps in the procedure are unnecessary.

Arguments of the parties

19 In support of the objection of inadmissibility, the defendant argues that the action was brought out of time. It maintains, firstly, that under Article 91(3) of the Staff Regulations proceedings against the rejection of a complaint must be initiated within three months of the date of notification of the decision taken in response to the complaint and that, according to the settled case-law of the Court of First Instance and the Court of Justice, the time-limits laid down by Articles 90 and 91 of the Staff Regulations for submitting a complaint and initiating proceedings are a matter of public policy and not subject to the discretion of the parties.

20 The defendant observes that the fact that on 27 August 1992 the applicant sent a 'letter in reply' to the rejection of her complaint shows that she must have received notice of such rejection before that date. Consequently, the action was brought more than three months after 27 August 1992 and must be dismissed as being out of time.

21 As for the document headed 'Treatment as a dependent child', sent to the applicant on 19 August 1992, the defendant contends that it is a purely preparatory document which cannot directly affect the applicant's legal position and is not in the nature of a decision. As the applicant admits, moreover, this calculation was used as the basis for the negative decision of 22 April 1992 which was the subject of a complaint. The decision of 22 April 1992 also requested the applicant to contact the relevant department in order to obtain additional information, such as the document headed 'Treatment as a dependent child'.

22 Finally, the defendant argues that the letter of 7 December 1992 from the Secretary-General of the Parliament is only a decision confirming the rejection of the applicant's complaint and cannot therefore have the effect of reopening the time-limit for bringing an action against the rejection of the complaint of 13 August 1992.

23 In her observations concerning the objection of inadmissibility, the applicant claims, firstly, that her letter of 12 May 1992 is in reality a request under Article 90(1) of the Staff Regulations and not a complaint. In support of her assertion she refers to the order in Case T-64/91 *Marcato* v *Commission* [1992] ECR II-243, in which the Court stated that it 'is not bound by the wishes of the parties when it comes to classifying a document submitted by an applicant as a "request" or "complaint"'. According to the applicant, the classification of the letter as a 'request' is confirmed by a letter of 21 July 1992 in which the Parliament informed her that her complaint under Article 90 of the Staff Regulations had been sent to the Legal Service and that, under Article 90(1), the administration had four months within which to notify her of its decision, from which it follows that the administration considered her letter of 12 May 1992 as a request.

24 The applicant adds that her memorandum of 12 May 1992 contains three clear requests, namely, for reinstatement of the allowance as from May 1992, for a reasoned decision and, in the alternative, for precise information concerning the calculations made by the appointing authority.

25 Secondly, the applicant claims that the letter of 13 August 1992 from the Secretary-General of the Parliament does not, as the defendant contends, amount to a reply rejecting her complaint, but is a reply to the requests in her letter of 12 May 1992, and she concludes that it therefore constitutes the decision adversely affecting her.

26 Thirdly, the applicant denies that her letter of 27 August 1992 is a mere 'reply' which is devoid of any procedural significance. On the contrary, it is a complaint within the meaning of Article 90(2) of the Staff Regulations concerning new matters arising from the reasoned decision of 13 August 1992 and concerning the document headed 'Treatment as a dependent child', sent to her on 19 August 1992. Furthermore, her letter contains a further request for an allowance, in respect of each of her parents, for a person treated as a dependent child as from August 1992.

27 The applicant considers that the Secretary-General's letter of 7 December 1992 constitutes the sole decision rejecting her complaint within the meaning of Article 90(2) of the Staff Regulations, so that the three-month period provided for in Article 91 started to run only from that date.

28 The applicant goes on to state that the matters prejudicial to her were notified to her in three stages, the first being the letter of 22 April 1992 informing her that she did not satisfy all the conditions of Article 2(4) of Annex VII to the Staff Regulations, the second being the letter of 13 August 1992 containing a more detailed statement of reasons, and the third the document headed 'Treatment as a dependent child'. She adds that it was the existence over a period of time of various acts adversely affecting her which prompted her to challenge not only the decision of 13 August 1992, but also all the other 'related acts on which it is based or which flow from it'.

29 In particular, she does not accept that the document headed 'Treatment as a dependent child' is merely a detailed statement of account which cannot affect her legal position directly and is not in the nature of a decision. On the contrary, according to the applicant, it contains subjective interpretations and assessments concerning the principle of most favourable treatment, the choice of the national law applying to her case, the existence of a joint debtor in respect of the maintenance of her parents, and an estimate of that person's income, and also fixes the maintenance expenses for which she is responsible on the basis of those assessments.

30 Finally, she observes that, should the Court find her action to be inadmissible as being out of time, her requests for the allowance in question as from May and August 1992 nevertheless remain admissible.

Findings of the Court

31 It should be noted, as a preliminary point, the Court of Justice and the Court of First Instance have consistently held (see the judgments of the Court of Justice in Case 227/83 *Moussis* v *Commission* [1984] ECR 3133, and of the Court of First Instance in Case T-54/90 *Lacroix* v *Commission* [1991] ECR II-749, and the order of the Court of First Instance in Case T-67/91 *Torre* v *Commission* [1992] ECR II-261) that the time-limits laid down for submitting complaints and initiating proceedings are a matter of public policy and, even where the administration has replied at the pre-litigation stage to the arguments put forward by the complainant on the substance of his claim, the Court is not exempted from the obligation to verify whether the action is admissible from the point of view of observance of the time-limits laid down by the Staff Regulations.

32 In this respect it seems appropriate to recall to mind the general structure of the pre-litigation procedure prescribed by Articles 90 and 91 of the Staff Regulations. Under these provisions, the admissibility of an action brought by an official against the institution to which he belongs is subject to the prior administrative procedure taking its proper course. Where a decision adopted by the appointing authority constitutes an act adversely affecting an official, a request within the meaning of Article 90(1) of the Staff Regulations is pointless and the official must use the complaints procedure provided for in Article 90(2) if he or she seeks the annulment, amendment or withdrawal of the decision adversely affecting him. The option of requesting the administration to take a decision relating to him pursuant to Article 90(1) does not allow the official to disregard the time-limits in Articles 90 and 91 for submitting a complaint and bringing an action.

33 In the present case there is no doubt that the appointing authority's initial decision of 22 April 1992 constitutes an act adversely affecting the applicant in so far as it directly and immediately affects her legal situation (see the Court's judgments in Case T-45/91 *McAvoy* v *Parliament* [1993] ECR II-83, and in Joined Cases T-33/89 and T-74/89 *Blackman* v *Parliament* [1993] ECR II-249). The decision, which constitutes the reply to the applicant's request of 16 March 1992 for the renewal of the allowance, shows beyond doubt that the administration intended to refuse her, in

respect of each of her parents, the allowance for a person treated as a dependent child. That refusal was given effect by the discontinuance of the allowance as from 1 April 1992. Furthermore, the decision clearly refers to the provision on the basis of which the maintenance expenses taken into account in the applicant's case were not regarded as constituting heavy expenditure for her, namely Article 2(4) of Annex VII to the Staff Regulations (see the order in *Torre* v *Commission*, cited above, and the Court's judgment in Case T-87/91 *Boessen* v *ESC* [1993] ECR II-235).

34 The Court further considers that the document headed 'Treatment as a dependent child', containing the appointing authority's calculations for ascertaining the maintenance expenses for which the applicant is responsible and her taxable income constitutes the mathematical explanation of the decision and cannot be regarded as a new decision, since it contains no new factor in relation to the factual and legal situation by reference to which the decision of 22 April 1992 was taken. It cannot therefore deprive that decision of its inherent nature as an act adversely affecting the applicant and cannot enable the periods prescribed for taking steps to be reopened (see the judgments of the Court of Justice in Case 24/69 *Nebe* v *Commission* [1970] ECR 145, Case 33/72 *Gunnella* v *Commission* [1973] ECR 475, Case 23/80 *Grasselli* v *Commission* [1980] ECR 3709, and the judgment of the Court of First Instance in Case T-4/90 *Lestelle* v *Commission* [1990] ECR II-689).

35 It follows from the foregoing that the applicant was entitled directly to submit a complaint, as provided for by Article 90(2) of the Staff Regulations, concerning the decision of 22 April 1992. However, although on 12 May 1992 she did in fact send the administration a memorandum described as 'Complaint under Article 90 of the Staff Regulations concerning the decision of 22 April 1992', she stated in her observations on the objection of inadmissibility that this memorandum constituted a request under Article 90(1).

36 It is settled case-law that the precise legal categorization of a letter or memorandum is a matter for the Court alone and not for the parties (see the orders of the Court of 7 June 1991 in Case T-14/91 *Weyrich* v *Commission* [1991] ECR II-235, of 1 October 1991 in Case T-38/91 *Coussios* v *Commission* [1991] ECR II-763, and

in *Torre* v *Commission*, and *Marcato* v *Commission*, cited above, and the judgment in Case T-1/90 *Pérez-Mínguez Casariego* v *Commission* [1991] ECR II-143). Thus a letter from an official which does not expressly request the withdrawal of the decision in question but is clearly intended to achieve an amicable settlement of his complaints has been categorized as a 'complaint', as has a letter which clearly manifests the applicant's intention to challenge the decision which adversely affects him (see the judgments of the Court of Justice in Case 30/68 *Lacroix* v *Commission* [1970] ECR 301, Case 19/72 *Thomik* v *Commission* [1972] ECR 1155, Joined Cases 23/87 and 24/87 *Aldinger and Virgili* v *Parliament* [1988] ECR 4395, and the orders in *Weyrich* and *Torre*, cited above).

37 In the present case the Court finds, first, that the very wording of the memorandum of 12 May 1992 shows that the applicant disputes the decision of 22 April 1992 and that she wishes to obtain satisfaction on her complaints. On the one hand, the request for resumption of payment of the allowance in issue as from April 1992 clearly shows that she wishes to obtain satisfaction on her complaints concerning the administration's refusal to treat each of her parents as a dependent child, and cannot be regarded as a new and separate request. On the other hand, the request seeking reasons for the negative decision of 22 April 1992 can be regarded at most as the expression of an allegation that no reasons were given for the decision.

38 The Court further considers that the request for precise information concerning the calculations used as a basis for the negative decision of 22 April 1992 cannot be regarded as constituting a separate request for the purposes of Article 90(1) of the Staff Regulations, but forms one of the complaints formulated against that decision, even though, its reply of 13 August 1992, the administration acknowledged that the request was justified and asked the applicant to contact the competent authority. It should be pointed out in this respect that in the decision of 22 May 1992 the applicant had already been asked to contact the relevant department for additional information.

39 It follows that the memorandum of 12 May 1992 constitutes a complaint within the meaning of Article 90(2) of the Staff Regulations and not a request within the meaning of Article 90(1), as the applicant maintains.

40 It should be added that the terms of the letter of 13 August 1992 from the Secretary-General cannot be construed as disclosing facts which, in relation to the decision of 22 April 1992, are new and, as such, enable a new pre-litigation procedure to be opened. On the contrary, the letter in question constitutes a reasoned rejection of the applicant's complaint following the Parliament's decision not to treat each of her parents as a dependent child whose maintenance involves her in heavy expenditure.

41 Consequently, the applicant's letter of 27 August 1992 headed 'Reply' and that of the Secretary-General of 7 December 1992 must be regarded as merely reiterating the complaint of 12 May 1992 and its rejection on 13 August 1992 and cannot have the effect of opening a fresh period for initiating proceedings.

42 It follows that the action brought more than three months after the express decision rejecting the complaint must be dismissed as inadmissible on the ground that it is out of time.

43 Finally, the Court finds that the requests for the resumption of payment of the contested allowance as from 1 May 1992 or 1 August 1992, formulated in the complaint of 12 May 1992 and the 'reply' of 27 August 1992, are in fact indistinguishable from the very subject of the complaint of 12 May 1992. It follows that, since the action brought against the decision rejecting the complaint of 12 May 1992 is inadmissible, the applicant's alternative claim for an order that the Parliament pay the allowance for the period from 1 May to 31 December 1992 must also be dismissed as inadmissible.

Costs

44 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. However, Article 88 of those Rules provides that in proceedings between

the Communities and their servants the institutions are to bear their own costs. Since the applicant has been unsuccessful the parties must be ordered to bear their own costs both in these proceedings and the proceedings for interim measures in Case T-115/92 R.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby orders:

1. The application is dismissed as inadmissible;

2. The parties shall bear their own costs, including those relating to the proceedings for interim measures in Case T-115/92 R.

Luxembourg, 15 July 1993.

H. Jung — Registrar

D. P. M. Barrington — President