

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
23 March 1994

Case T-8/93

Michelle Huet

v

Court of Auditors of the European Communities

(Officials – Death of spouse – Orphan’s pension granted under Article 80, fourth paragraph, of the Staff Regulations and Article 37, fifth paragraph, of the Conditions of Employment of Other Servants – Death of spouse occurring before the official enters the service of the Communities)

Full text in French II - 365

Application for: Annulment of the decision of the Court of Auditors refusing to grant orphans’ pensions for the applicant’s children.

Decision: Application dismissed.

Abstract of the Judgment

The applicant is a member of the temporary staff and has two dependent children, whose father died before the applicant entered the service of the Communities.

The applicant complains that the Court of Auditors considered that the fifth paragraph of Article 37 of the Conditions of Employment of Other Servants in conjunction with the fourth paragraph of Article 80 of the Staff Regulations do not permit the award of an orphan's pension where the spouse, not being an official or member of the temporary staff, dies before the surviving parent enters the service of the Communities.

Substance

First plea in law: infringement of the fourth paragraph of Article 80 of the Staff Regulations and the fifth paragraph of Article 37 of the Conditions of Employment of Other Servants

The Court of First Instance considers that the applicant's argument that the pension in question can be granted even if the death of the spouse has occurred before the surviving parent enters the service of the Communities is based on the mistaken premise that that pension is really an allowance of the same type as a dependent child allowance and not a pension (paragraphs 22 and 29).

The fourth paragraph of Article 80 of the Staff Regulations does not create any link between payment of the dependent child allowance and payment of the orphan's pension, but merely defines the amount of that pension by reference to twice the amount of the dependent child allowance (paragraph 26).

The orphan's pension in question is not calculated by reference to Article 21 of Annex VIII of the Staff Regulations, which deals with other survivors' pensions, because it is payable to the orphan by virtue of the death not of the official, but of

the official's spouse, which cannot give rise to payment of a survivor's pension under the Community rules (paragraph 27).

The Court considers that the orphan's pension in question is a real pension, because of the inclusion of the two articles in question within the provisions relating to pensions covering members against risks under the Community pension scheme (paragraphs 29, 30 and 37).

Moreover, it follows from the wording of the two articles in question that the person entitled to the orphan's pension at issue is the orphan himself, not the surviving parent, as would have been the case if the benefit concerned had been an additional dependent child allowance, which in accordance with Article 62 of the Staff Regulations forms part of the official's remuneration (paragraph 31).

Since the nature of the Community pension scheme is that in return for contributions it covers the risks of death and invalidity arising during the period of membership, the orphan's pension at issue can be paid only if the death of the spouse occurs after the surviving parent's entry into the service of the Communities (paragraphs 33 and 34).

That interpretation is supported by most of the language versions of the two provisions in question, while the other language versions cannot support the contrary argument (paragraph 35).

It follows that the applicant's children cannot receive orphans' pensions, since their mother was not yet a member of the Community pension scheme at the date of the death of her spouse (paragraph 40).

Second plea in law: breach of the principle of non-discrimination

The Court considers firstly that the applicant cannot rely, in support of her claim that she is the victim of discrimination, on the fact that other officials benefit from an illegality in that their dependent children receive the orphan's pension in question even though the spouses of those officials died before they entered the service of the Communities (paragraphs 43 and 44).

Secondly, the applicant cannot claim to be the victim of discrimination in comparison with staff members whose spouses died after they entered the service of the Communities. The different treatment in that respect is objective, since it is based on the date of the spouse's death and the date when the staff member enters the service of the Communities, it is reasonable, since it is based on the fact that the orphan's benefit in question is a pension, and it is proportionate to the legitimate aim pursued, since the risks covered by the Community pension scheme are in principle balanced by contributions to that scheme (paragraphs 45 and 46).

Operative part:

The application is dismissed.