Case T-41/89

Georg Schwedler

v

European Parliament

(Official — Tax abatement — Dependent child)

Summary of the Judgment

1. *Officials — Remuneration — Taxation — Abatement for a dependent child — Conditions for grant — Actual maintenance of the child by the official — Concept — Children performing their military service — Excluded*
   (Staff Regulations of Officials, Annex VII, Art. 2(2); Council Regulation No 260/68, Art. 3(4), second subparagraph)

2. *Officials — Remuneration — Family allowances — Dependent child allowance — Conditions for grant — Children performing their military service — Excluded*
   (Staff Regulations of Officials, Annex VII, Art. 2)

3. *Community law — Interpretation — Principles — Independent and uniform interpretation*

4. *Officials — Remuneration — Taxation — Abatement for a dependent child — Independent system*
   (Staff Regulations of Officials, Annex VII, Art. 2(2); Council Regulation No 260/68, Art. 3(4), second subparagraph)

5. *Procedure — Application to the Court — Determining the subject-matter of the claim — New claim made in the reply — Inadmissible*
   (Rules of Procedure, Arts 38(1) and 42(2))

1. The system of tax abatements for dependent children of officials is justified only if they are granted for social reasons connected with the existence of the child and the cost of actually maintaining him, that is to say the cost to the person who assumes actual responsibility for all the child's basic needs.

   It follows that a child cannot be considered to be actually maintained within the meaning of Article 2(2) of Annex VII to the Staff Regulations by a number of different persons or organizations at the same time and that he cannot therefore be regarded as being simultaneously dependent on all of them.

   Since it has been shown that the army provides for all the basic needs of young people called on to do military service, an official cannot claim that he, simultaneously, actually maintained his son for the period during which he was serving, and there is no need to examine on a case-by-case basis the particular conditions under which each young man is required to do his military service.

2. Even though the provisions of the Staff Regulations which define the conditions for the grant of the dependent child allowance, in particular Article 2(3)(b) and (4) of Annex VII, provide that children between 18 and 26 who are receiving educational or vocational training are special cases and that persons whom the official has a legal responsibility to maintain and whose maintenance involves heavy expenditure may, exceptionally, be treated as if they were dependent children, those provisions do not include any special scheme for children doing military service, establishing a right to receive the dependent child allowance in respect of such children. Community legal measures which create a right to financial benefits must be given a strict interpretation.

3. The terms of a provision of Community law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an independent and uniform interpretation which must take into account the context of the provision and the purpose of the relevant legislation.

4. The system of tax abatements for dependent children of Community officials is an independent system which is applied irrespective of the national systems.

   The Parliament was thus right not to refer to national legislation in order to interpret the concept of a dependent child for the purposes of Article 3(4), second subparagraph, of Regulation No 260/68 of the Council and Article 2 of Annex VII to the Staff Regulations.

5. The subject-matter of a claim must be set out in the application, and a claim which is put forward for the first time in the reply modifies the original subject-matter of the application and must be regarded as a new claim and, therefore, as inadmissible.