JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
18 December 1992 *

In Case T-43/90,

José Miguel Díaz García, an official of the European Parliament, residing in Brussels, represented by Jean-Noel Louis, of the Brussels Bar, with an address for service in Luxembourg at the office of Fiduciaire Myson SARL, 1 Rue Glesener,

applicant,

v

European Parliament, represented by Jorge Campinos, Jurisconsult, assisted by Manfred Peter and Christian Pennera, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the General Secretariat of the European Parliament, Kirchberg,

defendant,

APPLICATION for a declaration that the decision of the European Parliament of 29 March 1977 adopting general provisions for the implementation of Article 2(4) of Annex VII to the Staff Regulations is illegal, and for annulment of the decision of the Parliament of 8 March 1990 refusing the applicant's application for the children of his unmarried consort to be treated as dependent children under Article 2(4) of Annex VII to the Regulations and, in so far as is necessary, of the decision of 3 July 1990 rejecting the applicant's complaint,

THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES (Fourth Chamber),

composed of: R. García-Valdecasas, President, R. Schintgen and C. W. Bellamy, Judges,

Registrar: B. Pastor, Administrator,

* Language of the case: French.

having regard to the written procedure and further to the hearing on 7 July 1992,

gives the following

Judgment

The facts

1 The applicant, José Miguel Díaz García, a Spanish national, is an official of the European Parliament (hereinafter 'the Parliament'), and is employed in Brussels. Before his engagement by the Parliament he was resident in Spain. He lived apart from his wife and the child of their marriage, who was a minor. A decree of judicial separation, a preparatory step to bringing divorce proceedings, was pronounced in July 1983. Since July 1987, he had been cohabiting with Visitación González Reillo and her two children, both minors. Mrs González Reillo was also separated from her husband, and custody of the children had been granted to her by judicial separation order.

2 On 12 September 1988, after taking part in an open competition, the applicant was offered a post as clerical assistant at the Parliament. On 18 December 1988 he sent to the Parliament two certificates of residence and cohabitation with Mrs González Reillo, issued on 27 January and 16 December 1988 by the commune of Alicante (Spain).

3 From the time of his entry into service at the Parliament on 15 February 1989, the household allowance and the dependent child allowance for the child of his marriage were paid to his wife.

4 In March 1989 Mrs González Reillo brought divorce proceedings in the court of Alicante. The applicant had already begun similar proceedings in the same court in January 1989.

5 On 4 April 1989 the applicant wrote to the Parliament requesting to be granted, pursuant to Articles 1(2)(c) and 2(4) of Annex VII to the Staff Regulations applicable to officials of the European Communities (hereinafter 'the Staff Regulations'), the family allowances referred to in these provisions. On 6 June 1989 the Parliament informed the applicant that it could not accede to his request.

6 In June 1989 at the end of the school year in Spain, Mrs González Reillo and her children went to live with the applicant at Schaerbeek, Brussels. Permission to reside there was granted by the Belgian authorities only until 18 December 1989.

7 On 7 November 1989 the applicant submitted a request under Article 90(1) of the Staff Regulations for a decision recognizing that he had family responsibilities within the meaning of Articles 1(2)(c) and 2(4) of Annex VII to the Staff Regulations.

8 In order to obtain permission for his *de facto* family to live with him in Belgium, on 20 December 1989 the applicant signed an 'Engagement de prise en charge', in which he undertook:

'With respect to the Belgian State and his cohabitant, Visitación González Reillo (...) to take responsibility for the health care, living expenses and repatriation of the abovenamed.

(...)

This assumption of responsibility shall extend to the spouse of the alien and to their dependent minors (...)'.

9 The applicant and Mrs González Reillo had a child of their own on 29 January 1990.

10 In decrees given respectively on 20 December 1989 and 1 March 1990, the Alicante court dissolved the marriages of Mrs González Reillo and the applicant. Mrs González Reillo's divorce decree ordered her former husband to pay her a sum of 20 000 PTA each month, index-linked to the cost of living, for the maintenance of the children of their marriage.

11 By a decision of 8 March 1990, the General Secretary of the Parliament refused the applicant's request of 7 November 1989. He stated in particular that:

'... your personal situation being as it is at present, the household allowance and dependent child allowance is rightly being paid to your wife, who is not divorced and who has the custody of your legitimate child.

(...)

As regards the children of your partner, a dependent child allowance cannot be granted to you either, since the conditions for applying Article 2(4) of the said Annex are not satisfied (...)'.

12 On 3 April 1990 the applicant replied to the Parliament in a letter in which he requested it to amend its decision or to refute the arguments adduced in support of his claim.

13 The applicant and Mrs González Reillo were married in April 1990.

14 On 13 July 1990, the Secretary-General of the Parliament answered the applicant's letter of 3 April 1990. He explained that no factor allowed him to reverse the reasoned decision given in his letter of 8 March 1990, as applicable to the situation at the time.

Procedure

15 It was in those circumstances that, by application lodged at the Registry of the Court of First Instance on 5 October 1990, José Miguel Díaz García brought this action for a declaration that the decision of the Parliament of 29 March 1977 adopting general provisions for the implementation of Article 2(4) of Annex VII to the Staff Regulations is illegal, and for annulment of the decision of 8 March 1990 and, so far as is necessary, of the decision of 3 July 1990 rejecting his complaint.

16 By a document lodged on 10 December 1990, the Parliament raised an objection of inadmissibility. By a document lodged on 15 January 1991, the applicant asked the Court of First Instance to dismiss this objection. In an order made by the Court of First Instance on 22 January 1991, the objection of inadmissibility was reserved until final judgment.

17 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance decided to open the oral procedure without any preparatory inquiry. At the request of the Court, the parties lodged the letter sent by the applicant to the Parliament on 4 April 1989 and the latter's reply of 6 June 1989.

18 The oral procedure took place on 7 July 1992. The representatives of the parties were heard in their arguments and in their replies to questions asked by the Court of First Instance.

19 At the hearing, the defendant declared that it was withdrawing its plea of inadmissibility, explaining that it did not wish to deprive the Court of First Instance of the opportunity to give judgment on the substance. The applicant produced a copy of a judgment given by the Magistrate's Court of the second canton of Schaerbeek on 1 April 1992 (see below, paragraph 26).

Forms of order sought

20 The applicant claims that the Court of First Instance should:

— declare the action admissible and well founded;

— in consequence, declare that the decision of the Parliament adopting general provisions for the implementation of Article 2(4) of the Annex VII to the Staff Regulations is illegal; annul the decision of 8 March 1990, refusing him the dependent children's allowance under Article 2(4) of Annex VII to the Staff Regulations, and so far as is necessary, annul the decision of 3 July 1990 rejecting his complaint;

— order the defendant to pay the costs.

21 Having withdrawn its pleadings relating to the admissibility of the action, the defendant contends that the Court of First Instance should:

— declare the action unfounded;

— make an order as to costs in accordance with the applicable provisions.

Substance

22 The applicant raises three pleas in law, the first alleging breach of Article 2(4) of Annex VII to the Staff Regulations, the second alleging that the decision taken by the Parliament on 29 March 1977 adopting general provisions for implementing Article 2(4) of Annex VII to the Staff Regulations is illegal and the third alleging breach of Article 25 of the Staff Regulations.

The plea alleging breach of Article 2(4) of Annex VII to the Staff Regulations

23 Article 2(4) of Annex VII to the Staff Regulations provides that: 'Any person whom the official has a legal responsibility to maintain and whose maintenance involves heavy expenditure may, exceptionally, be treated as if he were a dependent child by special reasoned decision of the appointing authority, based on supporting documents'.

Arguments of the parties

24 The applicant claims that the appointing authority is bound to grant him the dependent children's allowance since it has established that the children in question are dependent children within the meaning of Article 2(2) of Annex VII to the Staff Regulations and meet the age conditions provided for in paragraph (3) of that article. In this respect he relies on the judgment given by the Court of Justice in Case 65/83 *Erdini* v *Council* [1984] ECR 211.

25 As regards the existence of a 'legal responsibility to maintain' as mentioned in paragraph (4) of that article, the applicant asserts that, according to Belgian law, he owes to his partner's children a natural obligation to maintain, which became an obligation at civil law. He argues that liability to maintain can arise out of a natural obligation based on the ties of affection between cohabitants, on the one hand, and between a cohabitant and the children of his or her partner, on the other. This natural obligation to maintain may be transformed into a civil law obligation through recognition of it by the person providing maintenance, by voluntary performance, or through both.

26 In support of this analysis, the applicant referred, in his written pleadings, to a number of arguments based on Belgian case-law. At the hearing he also quoted the judgment, cited above, given by the Magistrate's Court of the second canton of Schaerbeek on 1 April 1992 in an action brought against him on 21 February 1992 by Mrs González Reillo on behalf of her children. In that judgment, the Magistrate's Court set at 20 000 BFR a month for each child the amount that Mr Díaz García must contribute towards the cost of maintaining and bringing up Mrs González Reillo's children and ordered him from then on to make those

contributions, in the event that the voluntary payments should cease. In the grounds of the judgment, the Magistrate's Court states that: 'The natural obligation to maintain which Mr Díaz García acknowledges that he owes to the applicant's children has, by reason of more than four years' voluntary performance, become a civil law obligation enforceable by the court if the voluntary payments should cease'.

27 In order to determine which law was applicable, the Schaerbeek Magistrate's Court based its decision on Article 1 of the Hague Convention of 24 October 1956 on the Law applicable to Maintenance Obligations towards Children, to which both Belgium and Spain have acceded and which provides that: 'The law of the place of habitual residence of the child shall determine whether, to what extent, and from whom the child may claim maintenance'. Noting that the children in question had been habitually resident in Belgium since December 1989, the Magistrate's Court therefore applied Belgian law.

28 The applicant points out, moreover, that on 20 December 1989 he gave an undertaking to the Belgian State that he would assume financial responsibility for the children concerned. Consequently, it is beyond question that legal responsibility for maintaining the children of Mrs González Reillo has been created by his voluntary commitment.

29 The Parliament contends that under Article 2(4) of Annex VII to the Staff Regulations, the grant of an allowance for a person treated as a dependent child is to be subject to the prior condition that the official should have 'a legal responsibility to maintain' the person in question. The burden of proof falls on the official, who must supply the 'supporting documents'.

30 The Parliament considers that the applicant has not adduced evidence that he was subject, as regards the children of the person with whom he was cohabiting, to any legal responsibility to maintain. During the period for which the applicant requested the allowance in question, he was himself married to the mother of his

legitimate child, while his cohabitant was married to the father of her two children. Neither in Spanish law nor in the law common to the legal systems of the Member States is there any legal responsibility to maintain the children of a cohabitant.

31 As for the undertaking to assume financial responsibility into which the applicant entered on 20 December 1989, this was a decision freely taken by him. The Parliament refuses to regard it as the source of any legal responsibility to maintain, that is to say one arising under the law in force and not from an act done of one's own free will.

32 The Parliament pointed out at the hearing that the judgment of the Schaerbeek Magistrate's Court was given when the applicant and Mrs González Reillo were already married, that is to say at a time almost two years after the period in question in this case. The proceedings therefore concerned spouses and not persons living together. Besides, as it was an action *ad futurum* brought by Mrs González Reillo against Mr Díaz García to obtain performance of an obligation which he was already performing, judgment was given on the basis of hypothetical facts and in the absence of any real argument. The plaintiff had and has no real interest. It is the person allegedly owing an obligation who tried to obtain a formal declaration that he has a legal responsibility to maintain, even though his right voluntarily to perform what he considers to be a moral obligation is not challenged.

Findings of the Court

33 Under Article 2(4) of Annex VII to the Staff Regulations, any person whom an official has a legal responsibility to maintain and whose maintenance involves heavy expenditure may, exceptionally, by special decision, be treated as a dependent child for the purposes of the dependent child allowance.

34 Since the treatment of another person as a dependent child is an exceptional step, as the Staff Regulations themselves emphasize, the condition that the official must have a legal responsibility to maintain another person must be interpreted strictly

(see the judgment of the Court of Justice in Case 6/74 *Moulijn* v *Commission* [1974] ECR 1287).

35 The concept of a 'legal responsibility to maintain' used in the Staff Regulations is derived from the legal systems of the Member States, which, under their laws, impose a mutual responsibility to provide maintenance on relatives by blood and/or marriage of a greater or lesser degree of proximity. By employing the concept of legal responsibility to maintain in Article 2(4) of Annex VII, the Staff Regulations are referring exclusively to an obligation to maintain imposed on an official by a source of law independent of the will of the parties. Maintenance obligations of a contractual, moral or compensatory nature are therefore excluded.

36 As the Court of Justice has consistently held (see, *inter alia*, the judgment in Case 327/82 *Ekro* v *Produktschap voor Vee en Vlees* [1984] ECR 107), 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 interpretation, which must take into account the context of the provision and the purpose of the relevant regulations. The Court considers, however, that, in the absence of an express reference, the application of Community law may sometimes necessitate a reference to the laws of the Member States where the Community court cannot identify in Community law or in the general principles of Community law criteria enabling it to define the meaning and scope of such a provision by way of independent interpretation.

37 Neither Community law nor the Staff Regulations provide the Community court with any guide as to how it should define, by way of independent interpretation, the meaning and scope of the concept of a legal responsibility to maintain, whose existence enables an official to receive a dependent child allowance under Article 2(4) of Annex VII to the Staff Regulations. Therefore, it is necessary to determine the national legal system to which the applicant is subject and to ascertain whether

that system imposes on him a legal responsibility to maintain, within the meaning of the Staff Regulations, in relation to the children of his partner.

38 In investigating that point, the Court considers it necessary to identify the court which might have jurisdiction and also the law which it would apply pursuant to its own rules on the conflict of laws.

39 In this particular case, the common nationality of the persons concerned is Spanish. During the period in question, starting from the applicant's taking up his duties with the Parliament (in February 1989) until his marriage to Mrs González Reillo (in April 1990), the children at first lived with their mother in Spain, from February 1989 to the end of the 1988/1989 school year. They then lived with the applicant and their mother in Belgium. In the beginning they stayed in Belgium under a temporary residence permit. As from 20 December 1989 they were authorized to continue to stay in Belgium on the basis of the applicant's undertaking to assume financial responsibility.

40 In view of such factual circumstances, it appears that, depending on the time when an action was introduced, the Spanish or the Belgian courts could have had jurisdiction, and the applicable law could have been Spanish or Belgian.

41 However, it is common ground in this case that neither in Belgian law nor Spanish law does there exist any legal responsibility to maintain, in the sense defined above, deriving from a source of law independent of the will of the person providing maintenance towards his or her cohabitant's own children. Consequently, the Court considers that, without its being necessary to establish whether the abovementioned Hague Convention was applicable to the relationship in question or whether that relationship was governed by Belgian law or Spanish law, the applicant had no legal responsibility, as required by the Staff Regulations, to maintain the children of Mrs González Reillo during the period in question.

42 In particular, the Court considers that the applicant's argument that a natural obligation when converted into a civil obligation constitutes a legal responsibility to maintain for the purposes of the Staff Regulations cannot be entertained. Even if it may be made enforceable by a court, such a civil obligation, owing to the fact that it originates from a voluntary act, is not an obligation imposed by a source of law independent of the will of the parties and cannot therefore be treated as a legal responsibility to maintain, within the meaning of the Staff Regulations.

43 Notwithstanding changes in morals which may have occurred since the Staff Regulations were drawn up in 1962, the Court may not in any event widen the legal interpretation of Article 2(4) of Annex VII to the Staff Regulations so as to include obligations of the kind relied on by the applicant.

44 As far as the Schaerbeek Magistrate Court's judgment of 1 April 1992 is concerned, it is sufficient to note that it relates to a period subsequent to the applicant's marriage to Mrs González Reillo. That judgment is therefore irrelevant as far as the period in question in this case is concerned.

45 As regards the undertaking given by the applicant to assume financial responsibility for his partner's children, the Court finds that, even supposing that it could create an obligation to maintain, such an undertaking likewise cannot be treated as a legal responsibility to maintain within the meaning of the Staff Regulations, since it originates from the official's own will.

46 In the light of the foregoing, the first plea must be rejected.

The plea that the decision of the Parliament of 29 March 1977 adopting general provisions for the implementation of Article 2(4) of Annex VII to the Staff Regulations is illegal

47 Article 3 of the general implementing provisions relating to the treatment of a person as a dependent child, adopted by the Parliament on 29 March 1977, provides that:

'The person in respect of whom application is made must be:

— over 60 years of age, in the case of a man, and over 55 years of age in the case of a woman, or

— under 18 years of age, this age limit being extended to twenty-six if the person is receiving educational or vocational training, or

— prevented by illness or invalidity from earning a livelihood.'

Arguments of the parties

48 The applicant claims that, by adding conditions not provided for by the Community legislature to Article 2(4) of Annex VII to the Staff Regulations, the Parliament has manifestly committed a misuse of procedure and an abuse of its powers. The applicant points out that Article 3 of the decision automatically excludes a large number of people (and, among others, the children of the cohabitant of an official who has actually assumed family responsibilities for them), unless they are seriously ill or disabled.

49 In response to the applicant's arguments regarding Article 3 of the general implementing provisions, the Parliament acknowledges that an identical version of that article was declared illegal by the judgment of the Court of First Instance in Case T-75/89 *Brems* v *Council* [1990] ECR II-899, paragraph 29. It contends, however, that Article 3 cannot have been the basis of the individual decision challenged by the applicant since the children of his partner, being under 18 years of age, fall squarely within the scope of the said Article 3. It was therefore not pursuant to that provision that the applicant's application was rejected.

Findings of the Court

50 It is sufficient to observe that Article 3 of the general implementing provisions at issue contains no provision which could exclude Mrs González Reillo's children from benefitting under Article 2(4), since during the pre-litigation period they were under 18 years of age.

51 The second plea must therefore be rejected.

The plea of breach of Article 25 of the Staff Regulations

Arguments of the parties

52 The applicant claims that the reasons given for the express rejection of his application and complaint did not allow him to check whether the decisions were lawful. If the Parliament adopted general implementing conditions, it was because it considered either that the said subparagraph (4) was unclear or because it was necessary to specify criteria for the guidance of the administration in exercising its discretionary power. This being so, the Parliament could not claim, for the requirements of this case, that the text was clear enough to settle the matter by itself.

53 The Parliament considers that the reference made to the conditions for implementing Article 2(4), cited above, in the decision of 8 March 1990 constituted an adequate statement of reasons. Furthermore, it points out that the applicant had not argued this point in his complaint and that consequently it was not obliged to deal with this matter in its reply.

Findings of the Court

54 In view of the Court's assessment of the applicant's first plea, it is clear that he was not entitled to claim to have his partner's children treated as dependent children, since he had no legal responsibility to maintain them. Consequently, even if the contested decision were to be annulled on the grounds of insufficient reasoning, it could only be replaced by another decision identical in substance to the decision annulled. Having regard to the Court's case-law, according to which an applicant has no legitimate interest in the annulment of a decision for breach of procedure where the administration has no scope for the exercise of discretion but is bound to act as it has done (judgment in Case 117/81 *Geist* v *Commission* [1983] ECR 2191, paragraph 7; see also the judgment in Case 9/76 *Morello* v *Commission* [1976] ECR 1415, paragraph 11), it is not therefore necessary for the Court to consider this plea further.

55 In the light of all the foregoing, it must be declared that the action must be dismissed in its entirety.

Costs

56 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs. However, Article 88 of those Rules provides that in disputes between the Communities and their agents, the institutions are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. Dismisses the application;

2. Orders each party to bear its own costs.

García-Valdecasas, Schintgen, Bellamy

Delivered in open court in Luxembourg on 18 December 1992.

H. Jung — Registrar

R. García-Valdecasas — President