

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
8 January 2003

Joined Cases T-94/01, T-152/01 and T-286/01

Astrid Hirsch and Others
v
European Central Bank

(Officials – Members of staff of the European Central Bank – Article 19 of the
Conditions of Employment – Education allowance – Refusal to grant it to
members of staff not entitled to the expatriation allowance under Article 17 of
those conditions – Principle of non-discrimination)

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Application for:

annulment, in Case T-94/01, of the decision of the European Central Bank of 25 September 2000 refusing to grant the applicant an education allowance to cover the costs of attendance by her son at the International School Frankfurt, in Case T-152/01, of the decision of the European Central Bank of 15 February 2001 refusing to grant the applicant an education allowance in respect of his two sons and, in Case T-286/01, of the decision of the European Central Bank of 6 June 2001 refusing to grant the applicant an education allowance in respect of his children.

Held:

Cases T-94/01, T-152/01 and T-286/01 are joined for the purposes of judgment. In Case T-94/01: the decision of the European Central Bank of 25 September 2000 is annulled; the remainder of the action is dismissed; the European Central Bank is ordered to pay the costs. In Case T-152/01: the decision of the European Central Bank of 15 February 2001 is annulled; the remainder of the action is dismissed; the European Central Bank is ordered to pay the costs. In Case T-286/01: the decision of the European Central Bank of 6 June 2001 is annulled; the remainder of the action is dismissed; the European Central Bank is ordered to pay the costs.

Summary

*1. Officials – Actions – Conditions for admissibility – Issue of public policy – Examination by the Court of its own motion
(Rules of Procedure of the Court of First Instance, Art. 113)*

*2. Plea of illegality – Measures in respect of which a plea of illegality may be raised – Article 19 of the Conditions of Employment for Staff of the European Central Bank
(Art. 241 EC)*

3. Community law – Principles – Equality of treatment – Discrimination – Discretionary power – Arbitrary or manifestly inappropriate differentiation

4. Officials – Members of staff of the European Central Bank – Pay – Dependent child allowance – Education allowance – Allowance reserved for members of staff entitled to the full expatriation allowance – Illegality

(Conditions of Employment for Staff of the European Central Bank, Arts. 9(c) and 19)

1. The conditions laid down for the admissibility of an action are matters of public policy which may be raised by the Court of its own motion pursuant to Article 113 of the Rules of Procedure. Its review is not confined to objections of inadmissibility raised by the parties.

(see para. 16)

See: T-130/89 B. v *Commission* [1990] ECR II-761, para. 13; T-173/99 *Elkaim and Mazuel v Commission* [2000] ECR-SC I-A-101 and II-433, para. 19

2. Article 19 of the Conditions of Employment for Staff of the European Central Bank, under which only members of staff entitled to a full expatriation allowance are entitled to an education allowance, is a general provision, and staff are subject to its effects without being able to apply for their annulment on the basis of Article 230 EC. In those circumstances, a plea of illegality against it is admissible.

(see paras 48-50)

See: 92/78 *Simmenthal v Commission* [1979] ECR 777, para. 39; T-6/92 and T-52/92 *Reinartz v Commission* [1993] ECR II-1047, para. 56; T-536/93 *Benzler v Commission* [1994] ECR-SC I-A-245 and II-777, para. 31; T-171/00 *Spruyt v Commission* [2001] ECR-SC I-A-187 and II-855, paras 53 and 62

3. The principle of non-discrimination or equality of treatment, which constitutes a fundamental principle of law, prohibits comparable situations from being treated differently or different situations from being treated in the same way, unless such difference in treatment is objectively justified. In a matter involving the exercise of discretion, that principle is disregarded where the institution concerned makes a differentiation which is arbitrary or manifestly inappropriate in relation to the objective of the rules.

(see para. 51)

See: 91/85 *Christ-Clemen and Others v Commission* [1986] ECR 2853, para. 10; C-174/89 *Hoche* [1990] ECR I-2681, para. 25 and the case-law cited; T-164/97 *Busacca and Others v Court of Auditors* [1998] ECR-SC I-A-565 and II-1699, para. 49

4. The object of the general scheme of education allowances awarded to officials and employees of the Communities, which the European Central Bank must take into account pursuant to Article 9(c) of the Conditions of Employment for its staff, is to ensure that every official or employee is able to provide for his children's upbringing and education.

In that respect, while it is lawful for the European Central Bank to take account of the fact that, in the absence of a European School, the school education of the child of an official receiving the full expatriation allowance is generally more expensive than that of the child of an employee not receiving that allowance, making the award of the education allowance conditional on receipt of the expatriation allowance infringes the principle of proportionality and may adversely affect the principle of equal treatment.

Since the education allowance is not a fixed sum, but depends on the actual education costs, the connection made between the expatriation allowance, whose amount already takes account of circumstances as to dependants, and the education allowance is an inappropriate criterion for the aim pursued, especially given that the cost paid for his children's education by an employee receiving the expatriation allowance is not automatically higher than that paid by an employee not receiving that allowance, since the possibility of successfully integrating an employee's child in the public education system free of charge or at little cost at the location of the Bank's headquarters is by no means necessarily linked to the status of that employee with regard to entitlement to the expatriation allowance.

Consequently, in reserving entitlement to an education allowance for employees receiving the full expatriation allowance, to the exclusion of employees not receiving that allowance, Article 19 of the Conditions of Employment for Staff of the European Central Bank infringes the principle of equal treatment and is therefore unlawful.

(see paras 53-72)

See: 152/81, 158/81, 162/81, 166/81, 170/81, 173/81, 175/81, 177/81-179/81, 182/81 and 186/81 *Ferrario and Others v Commission* [1983] ECR 2357, para. 10; Opinion of Advocate General Jacobs, 201/88 *Atala-Palmerini v Commission* [1989] ECR 3109, 3114, point 11