JUDGMENT OF THE COURT (Fifth Chamber)
29 May 1997 *

In Case C-153/96 P,

Jan Robert de Rijk, an official of the European Communities, residing in Prague (Czech Republic), represented by Nicolas Lhoëst, of the Brussels Bar, with an address for service in Luxembourg at Fiduciaire Myson SARL, 1 Rue Glesener,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Fifth Chamber) of 7 March 1996 in Case T-362/94 *De Rijk* v *Commission* [1996] ECR-SC II-365 (English abstract at p. 117), seeking to have that judgment set aside,

the other party to the proceedings being:

Commission of the European Communities, represented by Julian Currall, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

THE COURT (Fifth Chamber),

composed of: J. C. Moitinho de Almeida (Rapporteur), President of the Chamber, C. Gulmann, D. A. O. Edward, J.-P. Puissochet and M. Wathelet, Judges,

* Language of the case: French.

Advocate General: P. Léger,
Registrar: H. A. Rühl, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 5 December 1996,

after hearing the Opinion of the Advocate General at the sitting on 23 January 1997,

gives the following

Judgment

1 By application lodged at the Registry of the Court of Justice on 7 May 1996, Mr De Rijk brought an appeal pursuant to Article 49 of the EC Statute and the corresponding provisions of the ECSC and Euratom Statutes of the Court of Justice against the judgment of the Court of First Instance (Fifth Chamber) of 7 March 1996 in Case T-362/94 *De Rijk* v *Commission* [1996] ECR-SC II-365, English abstract at p. 117 ('the contested judgment'), in so far as the Court of First Instance rejected his claims (i) for the annulment of the Commission's decision of 18 January 1994 reimbursing him the sum of BFR 4 412 in supplementary sickness insurance, and in so far as necessary the Commission's decision of 15 July 1994 rejecting his complaint, (ii) for the Commission to be ordered to pay the difference in full between the costs actually incurred and the benefits available under the joint sickness insurance scheme, that is to say BFR 4 950, and (iii) for a declaration that the General provisions for implementing the first and second paragraphs of Article 24 of Annex X to the Staff Regulations of Officials of the European Communities ('the Staff Regulations') are unlawful and consequently their annulment.

2 The Court of First Instance made the following findings in the contested judgment:

'...

Law

1. The provision at issue in this dispute is to be found in the first paragraph of Article 24 of Annex X to the Staff Regulations of Officials of the European Communities ("Annex X" and "the Staff Regulations"). The annex was inserted into the Staff Regulations by Council Regulation (Euratom, ECSC, EEC) No 3019/87 of 5 October 1987 laying down special and exceptional provisions applicable to officials of the European Communities serving in a third country (OJ 1987 L 286, p. 3). The first paragraph of Article 24 of Annex X reads as follows:

"The official, his spouse, his children and other persons dependent on him shall be covered by supplementary sickness insurance for the difference between expenditure actually incurred and payments from the scheme provided for in Article 72 of the Staff Regulations; no reimbursement shall be made under Article 72(3)."

2. General provisions for implementing that article have been adopted and were published in *Informations administratives* No 642 of 17 September 1990 (p. 21); Article 2 thereof provides as follows:

"The following shall be covered by the supplementary sickness insurance:

(1) an official whose place of employment is outside the Community;

(2) persons covered by the insurance of the official referred to in point (1), where he is a member of the scheme, pursuant to Article 72 of the Staff Regulations as determined by the Rules on sickness insurance for officials of the European Communities (hereinafter referred to as 'the Rules'), if they are permanently resident at the place of employment of the official covered under point (1).

However, where they reside elsewhere, they shall be covered during the time they spend at the place of employment of the official and, after the Medical Officer has been consulted, if the medical expenses originate solely by reason of the fact of the member's place of employment;

(3) an official on leave for personal reasons pursuant to the fourth subparagraph of Article 40(2) of the Staff Regulations, where he is permanently resident at the place of employment of his spouse who is covered under point (1).

At the request of the official, the cover provided for under points (2) and (3) shall continue throughout an official period of retraining as provided for in Article 3 of Annex X to the Staff Regulations, provided that those concerned are still resident at the official place of employment outside the Community."

Facts

3. The appellant is an official in Grade B2 assigned to the Commission's delegation in Finland.

4. In the summer of 1993 he incurred expenses for medical care for dependants, including his son who resides habitually in Belgium. On 18 August 1993 he applied to the Commission institution for reimbursement amounting to BFR 26 631.

5. On 6 October 1993 the Joint Sickness Insurance Fund of the European Community institutions sent him a statement of account showing that it would reimburse BFR 21 681, of the total BFR 26 631, and indicating that the remaining BFR 4 950 could perhaps be recovered on the basis of Article 24 of Annex X.

6. By letter of 18 January 1994 the Commission informed the appellant that it would reimburse under Article 24 of Annex X only BFR 4 412 instead of the BFR 4 950 claimed, the remaining BFR 538 not being reimbursable because the expenditure incurred for his son, living habitually in Belgium, could only be reimbursed under Article 72 of the Staff Regulations.

7. On 18 April 1994 the appellant lodged a complaint against that decision under Article 90(2) of the Staff Regulations.

8. By decision of 15 July 1994, notified to the appellant on 4 August 1994, the Commission rejected the complaint. In the decision it explained that Mr De Rijk's son was permanently resident in Belgium and that the medical expenses he had incurred, unlike those incurred in Helsinki, could not be reimbursed under Article 24 of Annex X. It explained its decision by stating, first, that the supplementary insurance provided for in that article was designed to cover the risks attributable to the special living conditions of officials posted to countries outside the Community and second that in the absence of a link between the expenditure incurred and the fact of being outside the Community, Article 24 of Annex X was not applicable. Any other approach, it added, would quite clearly discriminate against officials assigned to countries within the Community.'

3 By application lodged at the Registry of the Court of First Instance on 3 November 1994, Mr De Rijk brought an action seeking the annulment of the Commission's decisions of 18 January and 15 July 1994 and a declaration that the General provisions for implementing the first and second paragraphs of Article 24 of Annex X were unlawful and should therefore be annulled.

4 He relied on two pleas in support of his application: breach of Article 24 of Annex X and the unlawfulness of the General implementing provisions, which formed the basis for the decision challenged.

5 The Court of First Instance dismissed the action.

6 As regards the two pleas relied on, the Court noted first, in paragraph 30 of its judgment, that they related essentially to the question whether full reimbursement of medical expenses incurred for a dependent child of an official posted outside the Community was subject solely to the requirement that the official be posted outside the Community, or whether it was also subject to the requirement that the child be permanently resident in the country to which the official was posted.

7 The Court found, in paragraphs 31 to 33, that an interpretation of Article 24 of Annex X was necessary, and considered for that purpose, referring to the case-law of the Court of Justice, the context and purpose of the rules of which that provision forms part. On that basis it found, first, that according to the preamble to Regulation No 3019/87 it was the special living conditions of officials serving outside the Community which inspired the adoption of the special rules contained in Annex X and, secondly, that point 22 of the statement of reasons for the proposal for a regulation which led to the adoption of Regulation No 3019/87 indicated that supplementary insurance was necessary to cover the very high health charges in certain countries and the additional risks to which the officials and their families were exposed.

8 The Court of First Instance went on to find, in paragraph 34, that since the purpose of Article 24 of Annex X was to compensate for those disadvantages, the supplementary reimbursement provided for therein could only apply to officials serving outside the Community and to persons dependent on them residing in those countries. The general rules set out in Article 72 of the Staff Regulations, by

contrast, applied to medical costs incurred by an official serving in such a country for a person dependent on him and habitually resident in the Community, since, in that case, the disadvantages which the legislature had sought to compensate for did not exist.

9 Furthermore, the Court of First Instance rejected, in paragraph 35, the appellant's argument that the special rules in Annex X applied even in the case of non-member countries in which medical costs or health risks were not greater than in the Community. It stated that the legislature's choice of a system assuming that medical costs or health risks were always greater in non-member countries was guided by the concern for good management, and added that the same concern to avoid complications underlay the decision not to preclude the application of the scheme laid down in Article 24 of Annex X where the medical costs had been incurred by officials serving in a non-member country or by persons dependent on them during temporary stays in the Community. That choice was not capable, however, of altering the purpose of the article as described above.

10 The Court of First Instance also held, in paragraph 36, that any other interpretation of Article 24 of Annex X would be incompatible with the principle of equal treatment. The situation of an official serving outside the Community differed from that of any other official only if the person receiving the medical care suffered disadvantages connected with the posting of the official through whom he was insured, that is to say, if he habitually resided in the country to which the official had been posted. Where that was not so, the official's situation was identical to that of an official serving in the Community.

11 Finally, as regards the argument that officials serving outside the Community, unlike other officials, pay special contributions to the sickness insurance scheme, the Court of First Instance found, in paragraph 37, that the purpose of that contribution was to contribute towards the financing of cover for the risks to which they and persons dependent on them were exposed as a result of their being in the country to which the official had been posted, and those risks resulted from the fact that medical costs and health risks were generally higher outside the Community.

12 In this appeal, the appellant relies on three pleas: breach of Article 24 of Annex X, breach of the principles of legal certainty and equal treatment and breach of the duty to state reasons laid down in Article 33 of the EC Statute of the Court of Justice. As regards breach of the principle of equal treatment, that principle was used by the Court of First Instance to support its interpretation of Article 24 of Annex X, so that the criticisms made by the appellant in that regard do not constitute a separate plea, independent of the first.

Admissibility

13 In its statement in defence the Commission states that the arguments relied upon by Mr De Rijk merely reproduce those set out before the Court of First Instance, and the appeal is therefore inadmissible.

14 It adds that Mr De Rijk's argument that Articles 10 and 20 of Annex X lay down restrictions connected with the place of residence of the children or living conditions, whereas Article 24 of Annex X does not mention any such restriction, indicating, moreover, that the Community legislature did not intend to impose a residence requirement for the application of that provision, is a new argument which was not submitted to the Court of First Instance and is therefore inadmissible.

15 The Court of Justice has consistently held that pursuant to Article 168a of the EC Treaty and Article 51 of the Statute of the Court of Justice an appeal may be based only on pleas in law relating to an infringement of rules of law, to the exclusion of any issue challenging the facts as established by the Court of First Instance, and must, in accordance with Article 112(1)(c) of the Rules of Procedure of the Court of Justice, specify the pleas in law and the legal arguments relied upon in support of it. It follows from those provisions that an appeal must indicate precisely which

elements of the contested judgment it challenges, and also the legal arguments which specifically support the appeal (see, *inter alia*, Case C-18/91 P *V v Parliament* [1992] ECR I-3997, paragraph 15, and the orders in Case C-338/93 P *De Hoe* v *Commission* [1994] ECR I-819, paragraphs 17 and 18, and Case C-26/94 P *X* v *Commission* [1994] ECR I-4379, paragraphs 11 and 12).

16 The pleas in law relied upon by the appellant meet those requirements, since his complaint is precisely that the Court of First Instance misinterpreted Article 24 of Annex X and failed to state the reasons for its judgment. The pleas are therefore admissible.

17 In the plea of breach of the principle of legal certainty, however, Mr De Rijk merely states the plea without bringing any argument in support of it. It must therefore be declared inadmissible.

18 The Court has also consistently held that under Articles 113(2) and 116(1) of the Rules of Procedure of the Court of Justice fresh submissions not contained in the original application cannot be raised in an appeal (*V* v *Parliament*, paragraph 21).

19 In this appeal Mr De Rijk's reference to the fact that Article 24, unlike Articles 10 and 20, of Annex X does not mention any restriction linked to the place of residence of the children or living conditions is not a fresh submission, but is an argument in support of a plea already examined by the Court of First Instance, namely that Article 24 of Annex X was misinterpreted.

20 It is therefore necessary to consider the pleas raised by Mr De Rijk, with the exception of that of breach of the principle of legal certainty.

Substance

Breach of Article 24 of Annex X

21 Mr De Rijk submits, first, that contrary to the findings of the Court of First Instance the terms of Article 24 of Annex X are clear and therefore the provision requires no interpretation. If, however, an interpretation is necessary, account must be taken not only of the preparatory work which preceded the adoption of the provision but also of the statement of reasons.

22 He maintains that the Commission wished to introduce a residence condition for the application of Article 24 of Annex X, so that that provision would apply to officials and those claiming under them living in the same household. The fact that that condition was removed during the negotiations prior to the adoption of the annex must be taken into consideration in interpreting Article 24, the supplementary insurance provided for therein being granted with no condition of residence for dependent persons.

23 He also argues that in the statement of reasons accompanying the proposal for a regulation which led to the adoption of Regulation No 3019/87, there was a statement in point 22 that supplementary insurance was necessary having regard to the very high health charges and the additional risks to which officials serving outside the Community and their families were exposed in certain countries. Despite that, the Community legislature adopted Article 24 of Annex X providing generally for full reimbursement of medical costs without reference to any residence condition whatsoever.

24 Mr De Rijk goes on to argue that Article 24, unlike Articles 10 and 20, of Annex X makes no mention of any restriction connected to the place of residence of the children or living conditions, and concludes that the Community legislature intended to have the supplementary insurance extended to all officials serving outside the Community regardless of where their children resided.

25 Finally, Mr De Rijk claims that the Court of First Instance erred in deciding that the interpretation he favoured was incompatible with the principle of equal treatment. In the first place, officials serving outside the Community pay a special contribution under Article 24 of Annex X, so that they and their families have financial obligations separate from those of other officials and they therefore constitute a special category of officials whose situation is different and justifies different treatment. He also observes that if the reasoning of the Court of First Instance is followed, an official serving outside the Community whose child resided permanently in the same country would be in the same situation as an official serving outside the Community whose child resided in another non-member country, yet the latter would be given different treatment because Article 24 of Annex X would not be applicable.

26 None of the arguments relied upon by the appellant in support of this plea can be upheld.

27 As the Court of First Instance observed, the preamble to Regulation 3019/87 and the statement of reasons accompanying the proposal for a regulation which preceded it indicate that supplementary medical insurance is necessary having regard to the very high health charges in certain countries and the additional risks to which such officials and their families are exposed.

28 It would be contrary to the aim of the Community legislature to extend such insurance to dependants who reside in the Community and are therefore exposed to the same costs and risks as dependants of officials not serving outside the Community.

29 To do so would breach the principle of equal treatment, as the Court of First Instance rightly pointed out, inasmuch as officials serving in a non-member country would receive more favourable treatment than those serving in the Community, without any justification. The fact that the former have to pay a special contribution does not entitle them to be distinguished from the latter since that obligation is restricted to the special risks incurred by officials serving outside the Community.

30 In addition, Mr De Rijk's argument based on the different treatment which would result as between an official serving outside the Community with a child permanently resident in that country and an official serving outside the Community whose child resided in a different non-member country must be rejected.

31 It must be noted that the Court of First Instance ruled solely on the compatibility of the relevant General implementing provisions with Article 24 of Annex X in so far as they exclude the application of that provision where the dependent child of an official serving in a non-member country resides permanently in the Community. By contrast, the question whether Article 2 of the implementing provisions excludes full reimbursement of medical costs in the case mentioned by the appellant and, if appropriate, whether it is compatible with Article 24 of Annex X is a question which lies outside the ambit of this case.

32 In the light of those considerations the arguments based on, first, the difference in the wording of Articles 10 and 20, and Article 24, of Annex X, and, second, the negotiations which preceded the adoption of Regulation No 3019/87 cannot result in an interpretation of Article 24 of Annex X other than that which was adopted in the contested judgment.

33 Accordingly, the Court of First Instance was entitled to hold that the relevant provisions in Article 2 of the implementing provisions were compatible with Article 24 of Annex X of the Staff Regulations.

34 The first plea in the appeal must therefore be rejected.

Breach of the duty to state reasons laid down in Article 33 of the EC Statute of the Court of Justice

35 Mr De Rijk argues that the reason given by the Court of First Instance for reimbursement of medical expenses in the case of non-member countries where medical costs or health risks are not greater than in the Community, or where those costs have been incurred when officials or dependent persons are temporarily resident in the Community, that is to say, the principle of sound management, is insufficient and contradicts the reasoning of the Court of First Instance to the effect that Article 24 of Annex X can apply strictly only where the specific disadvantages which led to its adoption are present.

36 The Court of First Instance correctly held that it was disproportionate to seek to establish for each country the actual costs of medical services or the level of health risks in view of the work that would require, the small number of countries in which the costs or health risks are no greater than in the Community, the few officials serving in those countries and the difficulty of comparing medical practice

from one country to another. It therefore rightly held that the fact that the legislature chose to presume that medical costs or health risks are always greater in all non-member countries, and did not exclude the application of the scheme where medical costs are incurred by officials serving in a non-member country or by persons dependent on them when temporarily resident in the Community, thus opting for a scheme not unduly complex and therefore easily manageable, did not prejudice the aim of compensating for disadvantages which was the purpose of adopting the particular rules set out in Annex X.

37 The application of those rules, based on the principle of sound management, in the instances cited in paragraph 35 of the contested judgment does not therefore conflict with the reasoning of the Court of First Instance in paragraph 34 to the effect that Article 24 of Annex X is otiose unless and in so far as the specific disadvantages which inspired the introduction of the rules for exceptional reimbursement exist. Conversely, where the absence of those specific disadvantages is the rule rather than the exception, that is to say, where residence in the Community is permanent, there is no reason to apply the rules.

38 The second plea must therefore be rejected, as must the appeal in its entirety.

Costs

39 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Article 70 of the Rules provides that in proceedings between the institutions and their servants the institutions shall bear their own costs. Under Article 122, however, Article 70 does not apply to appeals brought by officials or other servants of the institutions. Since the appeal has been unsuccessful, the appellant must be ordered to pay the costs of these proceedings.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. Dismisses the appeal;

2. Orders the appellant to pay the costs.

Moitinho de Almeida Gulmann Edward

Puissochet Wathelet

Delivered in open court in Luxembourg on 29 May 1997.

R. Grass

Registrar

J. C. Moitinho de Almeida

President of the Fifth Chamber