Reports of Cases

JUDGMENT OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL (Full Court)

1 July 2010 *

(Civil service — Officials — Pension for surviving spouse — Article 79 of the Staff Regulations — Article 18 of Annex VIII to the Staff Regulations — Surviving spouse — Recognition of two persons as having the status of surviving spouse — Reduction to 50% — Legitimate expectation — Rule of correspondence between complaint and action)

In Case F-45/07,

ACTION under Articles 236 EC and 152 EA,

Wolfgang Mandt, residing in Kreuztal (Germany), represented by B. Kolb, lawyer,

applicant,

v

European Parliament, represented initially by K. Zejdová, J.F. de Wachter and U. Rösslein, acting as Agents, and subsequently by J.F. de Wachter, K. Zejdová and S. Seyr, acting as Agents,

defendant,

supported by

Kurt-Wolfgang Braun-Neumann, deceased on 9 October 2009, having left as his sole heir **Shirley Meyer**, residing in Bedburg-Hau (Germany), who assumes the form of order sought by Mr Braun-Neumann and is represented by P. Ames, lawyer,

intervener,

THE CIVIL SERVICE TRIBUNAL (Full Court),

composed of P. Mahoney, President, S. Gervasoni, President of Chamber, H. Kreppel, H. Tagaras (Rapporteur) and S. Van Raepenbusch, Judges,

Registrar: W. Hakenberg,

having regard to the written procedure and further to the hearing on 9 June 2009,

gives the following

* Language of the case: German.

Judgment

1 By application received at the Registry of the Tribunal on 16 May 2007 by fax (the original having been lodged on 21 May 2007), Mr Mandt requests in substance annulment of the decision of the appointing authority of the European Parliament of 8 February 2007 rejecting the complaint which he had lodged against the decision of 8 September 2006 whereby the Parliament decided to reduce to 50%, as from 1 April 2006, the survivor's pension which he received as the surviving spouse of the late Mrs Mandt, née Neumann ('the late Ms Neumann'), a former official of the Parliament. The reason for the reduction was that, by decision of the same date, 8 September 2006, the Parliament, in response to a request from the late Mr Braun-Neumann for the grant of a survivor's pension, also as a surviving spouse of the late Ms Neumann, had decided to pay Mr Braun-Neumann, as from 1 April 2006, 50% of such a pension.

Legal context

2 Article 79 of the Staff Regulations of Officials of the European Union ('the Staff Regulations') states:

'The surviving spouse of an official or of a former official shall be entitled, in the manner provided for in Chapter 4 of Annex VIII, to a survivor's pension equal to 60% of the retirement pension or invalidity allowance which was paid to the deceased, or which, irrespective of length of service or of age, would have been payable to him if he had qualified for it at the time of death.

…'

3 Article 18 of Annex VIII to the Staff Regulations provides:

'Where a former official was in receipt of retirement pension the surviving spouse shall be entitled, provided that the couple were already married before the official left the service of an institution and that the marriage had lasted at least one year, and subject to the provisions of Article 22, to a survivor's pension equal to 60% of the retirement pension which he was receiving at the time of his death. The minimum survivor's pension shall be 35% of the last basic salary; the amount of the survivor's pension shall in no case, however, exceed the amount of the retirement pension which the spouse was receiving at the time of death.

…'

4 Article 22 of Annex VIII to the Staff Regulations provides:

'Where an official leaves a surviving spouse and also orphans of a previous marriage or other persons entitled under him, the total pension, calculated as if for a surviving spouse having all these persons dependent on him, shall be apportioned among the various persons concerned in proportion to the pensions which would have been payable to each category of them if treated separately.

…'

5 Article 27 of Annex VIII states:

'The divorced spouse of an official or a former official shall be entitled to a survivor's pension, as defined in this Chapter, provided that, on the death of the former spouse, he/she can justify entitlement on his/her own account to receive maintenance from him by virtue of a court order or as a result of an officially registered settlement in force between himself/herself and his/her former spouse.

The survivor's pension may not, however, exceed the amount of maintenance paid at the time of death of the former spouse, the amount having been adjusted in accordance with the procedure laid down in Article 82 of the Staff Regulations.

The divorced spouse's entitlement shall cease if he or she remarries before the former spouse dies. Article 26 shall apply in the event of remarriage after the death of the former spouse.'

6 In the words of Article 28 of Annex VIII to the Staff Regulations:

'Where the deceased official leaves more than one divorced spouse entitled to survivor's pension or one or more divorced spouses and a surviving spouse entitled to a survivor's pension, that pension shall be divided in proportion to the respective duration of the marriages. The provisions of the second and third paragraphs of Article 27 shall apply.

…'

Facts of the case

7 The late Ms Neumann, at the material time an official of the Parliament, and the late Mr Braun-Neumann, German nationals, were married in Straubing (Germany) on 3 May 1993 and settled in Andenne (Belgium). According to the applicant, the late Mr Braun-Neumann committed criminal acts following which he was imprisoned and then placed in a psychiatric hospital.

8 The late Mr Braun-Neumann and his spouse lived together for only short periods during the year following their marriage, which was dissolved by a divorce judgment of the Court of First Instance of Namur (Belgium), delivered in default on 6 September 1995, which subsequently became final in that country.

9 The late Ms Neumann sought to have that divorce judgment of the Namur Court of First Instance recognised in Germany; her application to that effect was finally dismissed, by order of 11 October 1999, by the Bayerisches Oberstes Landesgericht (Bavarian Supreme Court, Germany). The principal ground for refusing to recognise the judgment was failure to respect the late Mr Braun-Neumann's rights of defence in the proceedings leading to the adoption of the divorce judgment, owing to the belated communication of the summons to the late Mr Braun-Neumann, who was in prison in Germany.

10 On 25 April 2000 the applicant entered into a marriage with the late Ms Neumann in New York (United States).

11 In 2001 the late Ms Neumann retired and received a retirement pension. She subsequently settled in Germany, according to the applicant, as from April 2002. However, an 'historical certificate of residence' issued by the town of Andenne and submitted by the applicant after the hearing (see paragraph 33 of this judgment) mentions only addresses in Belgium.

12 In 2003 the late Mr Braun-Neumann initiated divorce proceedings in Germany, seeking the dissolution of his marriage to the late Ms Neumann.

13 The late Ms Neumann died in Germany on 25 July 2004.

14 On 11 August 2004 the applicant applied for a survivor's pension; his application was granted by the Parliament on 23 September, with effect from 1 November 2004.

15 By decision of 25 August 2004 the Amtsgericht-Familiengericht-Merzig (Local and Family Court, Merzig, Germany) granted the late Mr Braun-Neumann's application for divorce, although that court subsequently, by order of 21 January 2005, struck the divorce proceedings from the list, as the marriage of the late Ms Neumann and the late Mr Braun-Neumann had been dissolved by the former's death on 25 July 2004.

16 However, on 19 January 2005 a note was placed in the Braun-Neumanns' family record book, maintained by the competent German authorities, stating that the wife 'was also married' to the applicant; that note also mentioned the place and date of the marriage. In addition, a similar note, referring to the late Ms Neumann's first marriage, was placed in the Mandt-Neumanns' family record book on 6 April 2006.

17 By order of 25 January 2006 the Amtsgericht Siegen (Local Court, Siegen, Germany), upon application by the Landrat des Kreises Siegen-Wittgenstein Standesamtsaufsicht (Director of the Borough of Siegen-Wittgenstein, the authority responsible for monitoring civil status, Germany) found, in addition, that the late Ms Neumann's death certificate should be amended to show, as her husband, not only Mr Mandt but also the late Mr Braun-Neumann. The duly amended death certificate was issued on 23 March 2006.

18 According to the Parliament, the late Mr Braun-Neumann applied for a survivor's pension on 29 March 2006, as the surviving spouse of the late Ms Neumann; in the context of his application, the late Mr Braun-Neumann sent the Parliament the order of 25 January 2006 of the Amtsgericht Siegen and also the death certificate as amended following that order.

19 By letter of 8 September 2006 the appointing authority informed the late Mr Braun-Neumann of the decision to pay him 50% of the late Ms Neumann's survivor's pension, with effect from 1 April 2006. By letter of the same date, the appointing authority informed the applicant that the survivor's pension which he received, at 100%, would be reduced with effect from 1 April 2006 to 50%, while the remaining 50% would be paid, as from that date, to the late Mr Braun-Neumann, in his capacity as surviving spouse of the late Ms Neumann; by the same letter, the Parliament informed the applicant that, in accordance with the late Ms Neumann's marital status record, at the time of her death she was married to both the applicant and the late Mr Braun-Neumann, and further noted that it had also examined the divorce judgment of the Namur Court of First Instance and the judgment of the Bayerisches Oberstes Landesgericht. Subsequently, on 18 October 2006, the Parliament established the late Mr Braun-Neumann's rights and granted him 50% of the survivor's pension in right of the late Ms Neumann with effect from 1 April 2006.

20 The applicant challenged the decision of 8 September 2006 taken against him, by means of a complaint, which his representative lodged by letter of 13 September 2006, supplemented by letter of 5 October 2006; the applicant also informed the Parliament of his arguments, in detail, by letters of 30 September and 4 October 2006. By decision of 8 February 2006 the appointing authority, referring to those four letters, rejected the applicant's complaint.

21 After his claim for retroactive payment, for the period from 1 August 2004 to 31 March 2006, of half the survivor's pension was upheld in part, the late Mr Braun-Neumann brought an action before the Tribunal seeking, in substance, payment, with retroactive effect to 1 August 2004, of the other half of that pension. By order of 23 May 2008 in Case F-79/07 *Braun-Neumann* v *Parliament* [2008] ECR-SC I-A-1-181 and II-A-1-957, the Tribunal dismissed the action as inadmissible; the appeal lodged against that order by the late Mr Braun-Neumann was dismissed by order of the Court of First Instance (now the General Court) of 15 January 2009 in Case T-306/08 P *Braun-Neumann* v *Parliament* [2009] ECR-SC I-B-1-1 and II-B-1-1.

Forms of order sought by the parties and procedure

22 The applicant claims that the Tribunal should:

— annul the appointing authority's decision of 8 February 2007;

— order the Parliament to pay him, with effect from 1 April 2006, an additional 50% of the survivor's pension payable in right of his spouse, the late Ms Neumann, and to continue to pay that amount every month.

23 The applicant also claims that the Tribunal should:

— authorise German to be used as the language of the case, in accordance with Article 35(2)(c) of the Rules of Procedure of the General Court.

24 Although, at the beginning of his application, the applicant also sought legal aid, he none the less finally indicated, still in the body of the application, that his application to that effect would only be made at a later stage. In fact, no application for legal aid was submitted by the applicant.

25 The Parliament contends that the Tribunal should:

— declare the action inadmissible in part;

— dismiss the action as unfounded for the remainder;

— make an appropriate order as to costs.

26 By letters of 30 November 2007 and 30 April 2008 the Tribunal, in accordance with Articles 55 and 56 of the Rules of Procedure, invited the parties to make written or oral submissions on certain aspects of the proceedings. The parties complied with those measures of organisation of procedure within the prescribed periods.

27 By letters of 24 October 2008 the Tribunal informed the parties that it proposed, in accordance with Article 111(1) of the Rules of Procedure, to invite the late Mr Braun-Neumann to intervene in the proceedings and requested them to submit their comments in that regard. The applicant informed the Tribunal that he would not be submitting any comments on the matter; and the Parliament indicated within the prescribed period that it had no objections in principle to such an invitation.

28 By letter of 21 November 2008 the Tribunal invited the late Mr Braun-Neumann to express his views on the invitation to intervene. In reply, the late Mr Braun-Neumann stated that he wished to intervene in support of the form of order sought by the Parliament.

29 By letters of 16 December 2008 the Tribunal asked the parties whether they wished certain documents in the case-file which they considered to be secret or confidential not to be communicated to the late Mr Braun-Neumann. The Parliament informed the Tribunal, within the prescribed period, that that was not the case; the applicant did not respond to the Court's request.

30 By order of the President of the Tribunal of 3 March 2009, which was notified to the parties on 4 March 2009, the late Mr Braun-Neumann was granted leave to intervene in the present case in support of the form of order sought by the Parliament.

31 In his statement in intervention, which was lodged on 20 April 2009, the late Mr Braun-Neumann submitted that the Tribunal should dismiss the action. By letters of 30 April 2009 the Tribunal informed the main parties that they could respond to the statement in intervention in the oral procedure.

32 At the hearing the main parties and the intervener requested leave to lodge new documents and evidence in the context of the proceedings. At the close of the hearing the President of the Tribunal announced that the oral procedure should not be closed.

33 By letters of 17 June 2009 the Tribunal informed the parties that they could, within a specific period, lodge the documents to which they had referred at the hearing. The applicant and the late Mr Braun-Neumann lodged various documents by post. The documents lodged by the late Mr Braun-Neumann included, first, a letter which the applicant had sent him on 22 September 1997 requiring that the late Mr Braun-Neumann cease harassing 'his wife' ('meine Frau'); second, a decision of the Amtsgericht Nürnberg (Local Court, Nuremberg, Germany) of 10 December 1999 ordering the late Ms Neumann to make a monthly payment of German marks (DEM) 400 by way of maintenance between spouses; third, a decision by default of the Landgericht Koblenz (Regional Court, Koblenz, Germany) of 27 November 2007 ordering the late Ms Neumann's son to pay the applicant EUR 150 000 by way of reserved portion; and, fourth, a letter from the Staatsanwaltschaft Siegen (Attorney General's Office, Siegen, Germany) of 16 February 2006, addressed to the late Mr Braun-Neumann and informing him that no further action would be taken on the complaint of bigamy which he had lodged against the applicant on 17 March 2005, on the ground that it was time-barred.

34 In addition, on 10 July 2009 the Tribunal adopted further measures of organisation of procedure, which were complied with within the prescribed periods.

35 On 11 September 2009 the Tribunal set 25 September 2009 as the deadline for any comments that the parties might wish to make on the lodging and content of the documents described at paragraph 33 of the present judgment. Only the applicant submitted such comments, in which he stated, in particular, that he had no recollection of the letter of 22 September 1997 referred to above and claimed that the decision of the Landgericht Koblenz of 27 November 2007 was the consequence of incorrect information supplied by the late Mr Braun-Neumann.

36 The representative of the intervener informed the Tribunal that Mr Braun-Neumann had died on 9 October 2009 and forwarded a copy of the death certificate.

37 On 12 November 2009 the Tribunal set 26 November 2009 as the deadline for the main parties to submit any comments which they might wish to make on the impact of the death of Mr Braun-Neumann on the present case and also for Mr Braun-Neumann's representative to inform the Tribunal whether the proceedings would be continued by his beneficiaries.

38 By letter lodged at the Registry of the Tribunal on 12 November 2009 the Parliament informed the Tribunal that, following Mr Braun-Neumann's death, by decision of 11 November 2009 it adjusted the amount of Mr Mandt's survivor's pension, so that he would receive, from 1 November 2009, the full survivor's pension in right of the late Ms Neumann.

39 By letter received at the Registry of the Tribunal on 25 November 2009 the applicant submitted his comments on the impact of Mr Braun-Neumann's death on the present case. He maintains, in particular, that Mr Braun-Neumann's death does not entail a different assessment of the legal situation at issue. However, the fact that the full survivor's pension will henceforth be paid to the applicant should be regarded as a factor supporting his claims; in effect, the Parliament is again recognising the existence of the divorce between the late Ms Neumann and the late Mr Braun-Neumann, and also the legality of the marriage between the late Ms Neumann and

Mr Mandt. The applicant infers that his right to payment of 100% of the survivor's pension also existed in the past during the period between the late Ms Neumann's death and the initiation of the action, and in any event between 1 August 2004 and 1 April 2006.

40 On 26 November 2009 the Parliament submitted its comments on the impact of Mr Braun-Neumann's death on the present case; it stated, in particular, that in its view the question whether Mr Mandt is to be treated as the sole surviving spouse or whether the survivor's pension had to be apportioned between Mr Mandt and the late Mr Braun-Neumann remains open even after the latter's death.

41 By letter received at the Registry of the Tribunal on 26 November 2009 the representative of the intervener informed the Tribunal, first, that the late Mr Braun-Neumann's will established that Mrs Shirley Meyer was his sole heir and, second, that in that capacity she wished to succeed Mr Braun-Neumann as intervener in the present case. The letter from the intervener's representative was accompanied by copies of the will of 7 January 2008 and of the record of the Amtsgericht Merzig — the court competent in succession matters — of 3 November 2009. In the same letter the representative of the intervener undertook to forward his new authority to act at a later date, which he did on 9 December 2009.

42 On 5 January 2010 the oral procedure was closed and the deliberations commenced.

Subject-matter of the dispute

43 In support of his claims, the applicant seeks annulment of the appointing authority's decision of 8 February 2007 rejecting his complaint. In that regard, it must be borne in mind that claims for annulment formally directed against the rejection of a complaint have the effect, where that complaint lacks any independent content, of bringing before the Tribunal the decision against which the complaint was submitted (Case 293/87 *Vainker* v *Parliament* [1989] ECR 23, paragraph 8; Case T-33/91 *Williams* v *Court of Auditors* [1992] ECR II-2499, paragraph 23; Case T-309/03 *Camós Grau* v *Commission* [2006] ECR II-1173, paragraph 43; and Case F-11/08 *Mölling* v *Europol* [2009] ECR-SC I-A-1-159 and II-A-1-899, paragraph 27). In the present case, the applicant's complaint, which was rejected by the appointing authority on 8 February 2007, was directed against the decision of 8 September 2006 reducing to 50%, with effect from 1 April 2006, the survivor's pension in right of the late Ms Neumann. As the decision of 8 February 2007 lacks any independent content, in so far as it merely confirms the decision of 8 September 2006 and — in addition — in doing so employs reasoning which reiterates in substance, but more fully, the reasoning set out in that decision, it must be held, in consequence, that the action is directed solely against the decision of 8 September 2006 adopted against the applicant ('the contested decision').

44 As regards the applicant's request that German be authorised as the language of the case, under Article 35(1) and (2) of the Rules of Procedure of the General Court, which were applicable on the date on which the application was lodged, the language of the case is to be chosen — from among the 23 official languages of the European Union — by the applicant, subject to the provisions of Article 35(2)(a) to (c) of those Rules, which have no application in the present case. In any event, under Article 29 of the Rules of Procedure of the Tribunal, which have been applicable since 1 November 2007, the provisions governing language arrangements which apply before the Tribunal are those of the Rules of Procedure of the General Court, namely the abovementioned provisions of Article 35(1) and (2) of those Rules. In the present case it is thus unnecessary for the Tribunal to adjudicate on the applicant's request that German be authorised as the language of the case, as he is entitled to choose German as the language of the case and, moreover, has done so.

45 It should further be observed that Mr Braun-Neumann's death on 9 October 2009 does not deprive the proceedings before the Tribunal of their purpose, except in the case of the claims against the Parliament in so far as they relate to the period after 31 October 2009; in effect, the applicant has

since that date received the full survivor's pension in right of the late Ms Neumann (see paragraph 38 of the present judgment). Thus, and in so far as they refer to that period, the applicant's claims against the Parliament have become devoid of purpose. On the other hand, they fully retain their purpose so far as the period up to the date of the late Mr Braun-Neumann's death is concerned.

The claims for annulment

Arguments of the parties

46 In support of his claims for annulment, the applicant alleges that the contested decision infringes Union law. He formulates nine complaints in the context of his arguments.

47 The first complaint may be divided into two parts. First, as no action could be brought, in particular, before the Bayerischer Verfassungsgerichtshof (Bavarian Constitutional Court) against the order of the Bayerisches Oberstes Landesgericht of 11 October 1999 (see paragraph 9 of the present judgment), the rights of the late Ms Neumann and those of the applicant were limited. Second, the order of the Bayerisches Oberstes Landesgericht is based on incorrect premisses and, moreover, is not consistent with the law in force at the time when it was made, in particular Union law. First of all, in the applicant's submission, the order does not state whether the Bayerisches Oberstes Landesgericht verified the assertions made by the late Mr Braun-Neumann concerning the divorce proceedings before the Namur Court of First Instance; in addition, the summons to appear before the Namur Court of First Instance was communicated to the late Mr Braun-Neumann in accordance with the rules of international law in force and the late Mr Braun-Neumann therefore had sufficient time between receiving that summons on 4 August 1995 and the divorce judgment of the Namur Court of First Instance of 6 September 1995 to lodge pleadings before that court; furthermore, and contrary to his assertion, the late Mr Braun-Neumann did not lodge an appeal against that divorce judgment.

48 By the second complaint, the applicant, first, relying on Article 27 of the Convention between the Federal German Republic and the Kingdom of Belgium on the Mutual Recognition and Enforcement of Judgments, Arbitration Awards and Authentic Instruments in Civil and Commercial Matters signed at Bonn on 30 June 1958, which was in force at the time when the divorce judgment of the Namur Court of First Instance was delivered and, second, referring to the explanations provided in the context of his first complaint, maintains that the late Mr Braun-Neumann did not fail to enter an appearance in the proceedings before the Namur Court of First Instance and that even if that had been the case he would still have been able to defend his interests.

49 In the context of the third complaint, the applicant claims that the contested decision infringes Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1), since there are no grounds of non-recognition, within the meaning of Article 22 of Regulation No 2201/2003, of the divorce judgment of the Court of First Instance, Namur.

50 By his fourth complaint, the applicant defends the validity of the divorce judgment of the Namur Court of First Instance since Belgium was the last place in which the late Ms Neumann and the late Mr Braun-Neumann cohabited, notwithstanding the incorrect information about that place which the late Mr Braun-Neumann communicated, in bad faith, in the context of the proceedings before the Bayerisches Oberstes Landesgericht which culminated in the order of 11 October 1999.

51 The fifth complaint is raised against the contested decision in so far as it referred to the order of the Amtsgericht Siegen of 25 January 2006, whereas that order is not relevant to the question of the recognition of the divorce judgment of the Namur Court of First Instance and, furthermore, could not be valid in the European Union, where multiple marriage is not permitted.

52 By his sixth complaint, the applicant claims that the marriage between the late Ms Neumann and the late Mr Braun-Neumann lasted less than one year and that, in the light of the provisions of Article 18 of Annex VIII to the Staff Regulations, the late Mr Braun-Neumann cannot claim to be entitled to a survivor's pension.

53 As for the seventh complaint, it is based on the fact, first, that the decision of 8 February 2007 rejecting the applicant's complaint refers to certain provisions of German law, namely Articles 23 and 29 of the Ehegesetz (Law on Marriage), which were no longer in force at the time of the adoption of the contested decision, and, second, that a ground of the nullity of the marriage between the late Mr Braun-Neumann and the late Ms Neumann existed owing to the latter's ignorance at the time of the marriage of her husband's personality and of his criminal convictions, although the applicant acknowledges that he does not have standing to challenge the marriage in question.

54 In the context of his eighth complaint, the applicant observes that the Parliament took the view that the late Ms Neumann was divorced, within the meaning of the Staff Regulations, when the divorce judgment of the Namur Court of First Instance became final, with all the financial consequences which that entailed. Following her marriage to the applicant, the late Ms Neumann was again regarded by the institution as a married woman, 'with all the corresponding increments in income and pensions provided for by law'. In such circumstances, the Parliament created a legitimate expectation on the part of the late Ms Neumann and the applicant as to their status as a married couple.

55 By his ninth complaint, the applicant, arguing that, under Article 18 of Annex VIII to the Staff Regulations, the status of surviving spouse alone is sufficient for him to be granted 100% of the survivor's pension, submits that he can rely on that capacity and is thus entitled to the full pension. The order of the Amtsgericht Siegen of 25 January 2006 does not call into question the fact that the applicant validly married the late Ms Neumann in New York.

56 In response to the various complaints raised by the applicant, the Parliament contends, in substance, that the Courts of the European Union do not have jurisdiction to review decisions of the national courts or acts of the national authorites. The Parliament thus maintains that any errors on the part of the German national courts cannot be relied on by the applicant before the Tribunal and that the appointing authority was required to take note of the death certificate, as amended by the competent authority, and to amend the determination of the applicant's pension rights accordingly. The Parliament also observes that Regulation No 2201/2003 was not applicable on 6 September 1995, the date of the divorce judgment of the Court of First Instance, Namur. The Parliament further submits that, although the provisions of Articles 23 and 29 of the Ehegesetz were repealed, they were in any event replaced by Article 1313 of the Bürgerliches Gesetzbuch (German Civil Code; 'the BGB'), the content of which is identical. Furthermore, as regards the duration of the marriage between the late Ms Neumann and the late Mr Braun-Neumann, the Parliament claims that, even on the assumption that that marriage must be considered to have been dissolved by the divorce judgment of the Namur Court of First Instance the fact none the less remains that, as the late Ms Neumann and the late Mr Braun-Neumann were married on 3 May 1993, the marriage lasted two years. Last, the Parliament asserts that, regard being had to the principle of correspondence between the complaint and action, the applicant cannot rely for the first time in his application on the principle of legitimate expectations.

57 In his statement in intervention, the late Mr Braun-Neumann essentially reiterates the Parliament's arguments, but adds, in particular, two points. First, and in the alternative, he maintains that the mere fact that the Parliament paid the full survivor's pension to the applicant cannot be regarded as an

assurance on the part of the administration, since mere payment cannot give rise to any legitimate expectation on the part of the beneficiary as to the legality of a benefit. Second, and since for each official there can be only one right to a retirement pension, the Parliament was correct to share the survivor's pension in right of the late Ms Neumann between the two surviving spouses.

Findings of the Tribunal

58 By the first five complaints put forward, and also by the seventh, the applicant is in fact challenging the late Mr Braun-Neumann's status as surviving spouse. By his sixth complaint, the applicant proceeds on the assumption that the late Mr Braun-Neumann had the status of surviving spouse, but takes issue with the Parliament for infringing Article 18 of Annex VIII to the Staff Regulations, in that the late Mr Braun-Neumann did not have the status of spouse of the late Ms Neumann for the minimum period of one year required by that article. The eighth complaint alleges breach of the principle of legitimate expectations. Last, in the ninth complaint, the applicant alleges incorrect application of Article 18 of Annex VIII to the Staff Regulations, in so far as the Parliament, having recognised that the applicant has the status of surviving spouse, was required to award him the full survivor's pension, in spite of having recognised that the late Mr Braun-Neumann also had that status.

59 It follows from what is set out in the preceding paragraphs that the applicant's arguments consist essentially of two pleas.

60 The first plea alleges breach of Article 18 of Annex VIII to the Staff Regulations and consists of three parts. By the first part, which corresponds to the first five complaints raised by the applicant, and also to the seventh, the applicant challenges the late Mr Braun-Neumann's very status of surviving spouse. The second part of this plea relates to the sixth complaint and concerns, with respect to the marriage of the late Ms Neumann and the late Mr Braun-Neumann, the condition, laid down in that article, that the marriage must have lasted a minimum period of one year. The third part, which is based on the ninth complaint, relates to the amount of the survivor's pension payable to a surviving spouse of a deceased official where another person is also recognised as having the same status.

61 The second plea, corresponding to the eighth complaint, alleges breach of the principle of legitimate expectations.

First plea: infringement of Article 18 Article 18 of Annex VIII to the Staff Regulations

– First part of the first plea, disputing the actual status of surviving spouse of the late Mr Braun-Neumann

62 According to the case-law, the need for uniform application of Union law and the principle of equality require that where a provision of Union law contains no express reference back to the law of the Member States for the purpose of determining its meaning and scope, it must normally be given an autonomous and uniform interpretation throughout the Union, which must be sought in the light of the context of the provision and the objective pursued by the rules in question (see, to that effect, Case 327/82 *Ekro* [1984] ECR 107, paragraph 11; Case T-43/90 *Díaz García* v *Parliament* [1992] ECR II-2619, paragraph 36; Case T-342/04 *Adam* v *Commission* [2006] ECR-SC I-A-2-23 and II-A-2-107, paragraph 32). However, the case-law in question also accepts that, even in the absence of an express reference back, the application of Union law may, where appropriate, involve making a reference to the laws of the Member States, in particular where the courts of the European Union cannot identify in Union law or in the general principles of Union law the elements which would allow it to define the content and scope of Union law by an autonomous interpretation.

63 That is the case, in particular, in relation to personal status and family law (see, to that effect, Case 59/85 *Reed* [1986] ECR 1283, paragraph 15, and, in particular, Joined Cases C-122/99 P and C-125/99 P *D and Sweden* v *Council* [2001] ECR I-4319, paragraphs 34 to 38), as the legal order of the Union has no written rules on such matters. In that regard, it has been held in particular that the formal validity of a maintenance agreement, as a condition of the grant of a survivor's pension to the divorced spouse under Article 27 of Annex VIII to the Staff Regulations, is governed by national law (Case T-172/01 *M* v *Court of Justice* [2004] ECR II-1075, paragraphs 72 and 73).

64 It remains to be determined, however, how the reference back to national laws must be understood where a pecuniary benefit provided for in the Staff Regulations is in issue and where, first, the grant of that benefit depends on the official's marital status and, second, that status has been decided in contradictory ways by two national legal orders.

65 In particular, in the present case the question arises as to whether it is by reasoning based on private international law and, accordingly, on the basis of the national legal order designated by means of such reasoning, that the competent Union authority is to decide whether a person may be treated as a 'surviving spouse'. In fact, not only clear requirements of administrative management but also, and primarily, legal considerations preclude recourse to reasoning based on private international law.

66 In the first place, while the Union legal order has a number of instruments of private international law of relevance to the question of personal status, notably Regulation No 2201/2003, that regulation can be seen to be of very limited assistance for the purpose of determining the relevant national legal order where the marital situation of an official has been decided in contradictory ways by two national legal orders. To begin with, Regulation No 2201/2003 provides for automatic recognition of decisions dissolving the conjugal link and there are no judgments applying that regulation, namely judgments recognising the dissolution of the conjugal link (judgments on which the competent Union authority could rely when exercising the power referred to at paragraph 64 of this judgment), other than in cases where there is a dispute over the recognition of a particular dissolution and another party initiates proceedings before the court with jurisdiction in the dispute over recognition. Next, still as regards decisions dissolving the conjugal link, it must be observed that recognition proceedings may lead to diverging national judgments, depending on the Member State before whose court the proceedings were initiated. Last, the abovementioned regulation is not applicable to decisions delivered in non-member States and can be relied on only before the Member States, with the exception of Denmark, in relation to decisions delivered within those States.

67 In the second place, while the instruments of Union law referred to in the preceding paragraph may concern the question of personal status, the fact none the less remains that they contain essentially rules on the conflict of jurisdiction. On the other hand, as the applicable law now stands, the Union legal order in itself does not contain any rules on the conflict of laws in relation to personal status. It is common ground that the rules of national law are not convergent on the matter: while all the national systems of conflict of laws seek to make personal status subject to the law with which the person concerned is most closely linked, some consider that the appropriate connecting factor for that purpose is nationality, others consider it to be residence and yet others adopt intermediate solutions.

68 Thus, having regard, first, to the absence of a complete set of rules of private international law within Union law and, second, to the divergences of the national systems of private international law, the identification by an administrative authority of the Union, for the purposes of the application of a provision of secondary law, such as Article 79 of the Staff Regulations or Article 18 of Annex VIII thereto, of the national legal order which would alone be 'competent' to determine a person's marital status would be a particularly complex and extremely uncertain task in legal terms, without even taking account of the administrative requirements and constraints (see, to that effect, Opinion of Advocate General Warner in Case 40/79 *P* v *Commission* [1981] ECR 382 et seq.). Furthermore, the courts of the European Union should also refrain from undertaking such an exercise, which, in particular, would amount to judicial legislation (Opinion of Advocate General Warner, p. 383).

69 In the present case, in order to determine whether the late Mr Braun-Neumann should be recognised as having the status of surviving spouse, the Parliament, without expressly supporting its position by reasoning based on private international law, relied mainly on considerations derived from the positive law and the legal order of one country, namely Germany, which clearly had very close links with both the situation of the late Mr Braun-Neumann and the dispute taken as a whole.

70 The late Mr Braun-Neumann had German nationality and lived in Germany. Furthermore, not only did his marriage to the late Ms Neumann take place in that country, but the late Ms Neumann, the person whose surviving spouse he claimed to be, was also of German nationality and, although resident in Belgium during her working life, she seems to have transferred her residence to Germany after taking retirement; and although the applicant, after the hearing, produced a Belgian residence certificate relating to the late Ms Neumann and mentioning, up to the date of her death, addresses in Belgium, it must be noted, first, that it was the applicant himself who, in his response of 9 June 2008 to measures of organisation of procedure adopted by the Tribunal, acknowledged that the late Ms Neumann had settled in Germany in April 2002 and, second, that residence certificates, in so far as the issuing authorities do not check the actual residence (see, to that effect, Case F-134/06 *Bordini* v *Commission* [2008] ECR-SC I-A-1-87 and II-A-1-435, paragraph 76), are of limited probative value. In addition, the other person who claimed the status of surviving spouse of the late Ms Neumann, namely the applicant, was also of German nationality and resident in that country.

71 In view of the close links with Germany, and without there being any need to establish whether, comparatively, Germany was the country most closely linked to the late Mr Braun-Neumann or to the dispute as a whole, which, moreover, appears highly likely, the Parliament was entitled to refer to German positive law and the German legal order in order to answer the question whether the late Mr Braun-Neumann should be recognised as having the status of surviving spouse.

72 Nor can it be disputed that in the great majority of the national legal orders, too, the marital status of the late Mr Braun-Neumann would be determined by application of German positive law and would be the status he was recognised to have in the legal order of that Member State.

73 There can be no reasonable doubt that, by reference to German positive law and the German legal order, the late Mr Braun-Neumann had, from the late Ms Neumann's death until his own death, the status of her surviving spouse.

74 First of all, it is not disputed that the late Mr Braun-Neumann was married to the late Ms Neumann on 3 May 1993, in Germany, and from that date acquired the status of her spouse.

75 It is common ground, moreover, that following the proceedings initiated in Germany by the late Ms Neumann to secure recognition of the divorce judgment of the Namur Court of First Instance the Bayerisches Oberstes Landesgericht refused to recognise that judgment in the German legal order.

76 It is also common ground that, by order of 21 January 2005, the Amtsgericht-Familiengericht-Merzig declared that the divorce proceedings initiated before it by the late Mr Braun-Neumann against the late Ms Neumann, which had culminated, on 25 August 2004, in the pronouncement of the divorce, had become devoid of purpose, as the marriage had been dissolved by the late Ms Neumann's death on 25 July 2004.

77 In addition, the order of the Amtsgericht Siegen of 25 January 2006 ordered that the late Ms Neumann's death certificate be amended to show as her spouse, in addition to the applicant, who was already mentioned, the late Mr Braun-Neumann as well. The amended death certificate, mentioning both the applicant and the late Mr Braun-Neumann as spouses of the late Ms Neumann, was issued on 23 March 2006.

78 In addition, the competent German authorities not only maintained in force the family registration book of the couple consisting of the late Mr Braun-Neumann and the late Ms Neumann after the latter's marriage to the applicant in 2000, but also placed in the latter couple's family registration book a note to the effect that the late Ms Neumann 'was also married' to the late Mr Braun-Neumann.

79 It follows from what is set out in the preceding paragraphs that, for the purposes of German positive law and the German legal order, the marriage between the late Ms Neumann and the late Mr Braun-Neumann existed until the late Ms Neumann's death on 25 July 2004 and that, at least under that positive law and that legal order, the late Ms Neumann and the late Mr Braun-Neumann must be regarded as having been spouses until that date, so that the late Mr Braun-Neumann could also rely, from 25 July 2004, on his status of surviving spouse, within the meaning of Article 79 of the Staff Regulations, of the late Ms Neumann.

80 The arguments relied on by the applicant to refute the late Mr Braun-Neumann's status as surviving spouse are not such as to invalidate that conclusion.

81 That applies in particular to the applicant's allegations relating to the grounds of the nullity of the marriage between the late Ms Neumann and the late Mr Braun-Neumann which, he maintains, exist in respect of the late Mr Braun-Neumann. It is to be noted that that marriage was never challenged before a court.

82 In addition, the fact that the decision of 8 February 2007 rejecting the applicant's complaint refers to provisions of German law which were no longer in force at the time of its adoption cannot affect the late Mr Braun-Neumann's status as surviving spouse or render that decision invalid. First, as the Parliament has stated, without being contradicted on that point by the applicant, although Articles 23 and 29 of the Ehegesetz, to which the contested decision refers, were repealed, they were in any event replaced by Article 1313 BGB, the content of which is substantially the same; and, second, it follows from a reading of that decision that the provisions in question, far from constituting the ground on which the appointing authority relied in order to reject the complaint, are mentioned solely by way of national provisions of reference as regards the disputing of the validity of a marriage in the German legal order.

83 As regards the question relating to the validity of the divorce judgment of the Namur Court of First Instance while it is true that its validity in the Belgian legal order is not disputed, it is sufficient to state that its validity in Belgium is without prejudice to its validity in other national legal orders, in particular in Germany, where, as already observed, its recognition was refused.

84 The Tribunal must also reject the applicant's criticisms relating, first, to the refusal to recognise the divorce judgment of the Namur Court of First Instance in the German legal order and, second, to the order of the Amtsgericht Siegen of 25 January 2006 (see, respectively, paragraphs 49 and 51 of the present judgment). It is not the place of the Courts of the European Union or the Union institutions, when they apply the Staff Regulations, to review the merits of the decisions delivered by the national courts, in particular in circumstances such as those of the present case. Last, the divorce judgment of the Court of First Instance, Namur does not fall within the scope *ratione temporis* of Regulations No 1347/2000 and No 2201/2003, which the applicant relies on.

85 The arguments whereby the applicant seeks to deny that the late Mr Braun-Neumann has the status of surviving spouse thus being rejected, it must further be observed that the fact that the Parliament recognised that the late Mr Braun-Neumann had that status is not inconsistent with its recognition that the applicant had that status; neither is it incompatible with the public policy of the Union.

86 In the first place, it must be held that the German legal order expressly, and in numerous ways (see, in particular, paragraphs 77 and 78 of the present judgment), recognised that both the applicant and the late Mr Braun-Neumann had the status of spouse of the late Ms Neumann. It is also necessary to bear in mind in that regard the Parliament's position that in German law a marriage, even when it is entered into in breach of the legal prohibitions in force, remains legal provided it has not been annulled by a decision of a court.

87 In the second place, and in any event, the fact that, in the light of the foregoing considerations, a Union institution recognises that two persons have the status of surviving spouse of one and the same deceased former official, for the purposes of granting a pecuniary benefit, does not in any way constitute even implicit acceptance at Union level of multiple marriage, an acceptance that might raise a question of compatibility with higher principles and rules of law, in particular if each of the persons concerned was in receipt of the entire pecuniary benefit provided for 'the surviving spouse' (see, on that question, paragraphs 99 to 102 of the present judgment). In any event, in the present case the institution concerned merely determined the implications of the application of national family law.

88 It should further be observed, independently of the foregoing considerations, that the recognition in favour of the late Mr Braun-Neumann of the status of surviving spouse for the purposes of the application of Article 79 of the Staff Regulations and Article 18 of Annex VIII thereto is consistent with the purpose of those Articles, which is to compensate, for the benefit of the surviving spouse, for the loss of income flowing from the death of the official or former official, as the survivor's pension constitutes, in the light of such purpose, a replacement income (see Case F-74/08 *Ramaekers-Jørgensen* v *Commission* [2009] ECR-SC I-A-1-411 and II-A-1-2229, paragraphs 53 and 70). In the instant case the late Mr Braun-Neumann was awarded, by decision of the Amtsgericht Nürnberg of 10 December 1999, monthly maintenance of DEM 400, which he could no longer claim after the death of the late Ms Neumann. Thus, the survivor's pension, in accordance with its purpose, made it possible to compensate for the disappearance of that income.

89 It follows that the first part of the first plea, disputing the late Mr Braun-Neumann's very status as surviving spouse, must be rejected.

– The second part of the first plea, relating to the requirement of a minimum period of one year of marriage provided for in Article 18 of Annex VIII to the Staff Regulations

90 The applicant claims that the marriage between the late Ms Neumann and the late Mr Braun-Neumann lasted less than one year and that the latter cannot thus claim the survivor's pension, since the condition referred to in Article 18 of Annex VIII to the Staff Regulations is not satisfied.

91 In that regard, the provisions of Article 18 of Annex VIII to the Staff Regulations are clear and precise and leave no room for doubt as to their interpretation. In providing that the surviving spouse of a former official entitled to a retirement pension, 'provided that … the marriage had lasted at least one year', is entitled to a survivor's pension, that Article establishes in a certain and unequivocal manner that the minimum period of one year relates to the existence of the marriage and not, as the applicant appears to imply, to cohabitation between the spouses.

92 Consequently, and even on the assumption that the late Mr Braun-Neumann, who married the late Ms Neumann on 3 May 1993 and settled with her in Andenne, left the marital home, as the applicant maintained without being contradicted, in July 1993, the fact none the less remains that, within the Belgian legal order, their divorce was not pronounced until 6 September 1995, that is to say, after

more than two years of marriage. In addition, as explained in connection with the first part of the first plea, their marriage could be considered to be dissolved, within the German legal order, only after the late Ms Neumann's death on 25 July 2004.

93 Accordingly, and in any event, the minimum requirement of one year of marriage provided for in Article 18 of Annex VIII to the Staff Regulations is satisfied so far as the marriage between the late Ms Neumann and the late Mr Braun-Neumann is concerned.

94 This part of the first plea must therefore also be rejected.

– The third part of the first plea, relating to the amount of the survivor's pension paid to a surviving spouse where another person is recognised as having the same status

95 The question raised by this third part of the first plea is whether the Parliament could validly reduce by 50% the amount of the survivor's pension granted to the applicant on the ground that the late Mr Braun-Neumann was also entitled to receive a survivor's pension under Article 79 of the Staff Regulations by virtue of his status as surviving spouse of the late Ms Neumann.

96 It is common ground that the drafters of the Staff Regulations did not envisage a situation such as the one arising in the present case, where two persons, in order to claim a survivor's pension, rely on the status of surviving spouse of the same former official in receipt of a retirement pension, each relying on marriage certificates and judicial decisions issued or delivered in different States (or, indeed, in the same State), so that, in the light of those documents, that status can in fact appear plausible for each of them. Article 79 of the Staff Regulations and Article 18 of Annex VIII thereto do not provide for such a situation and merely state that the surviving spouse of a former official is to receive a survivor's pension, without further explanation as to what the procedure might be for apportioning the survivor's pension in a case such as that described in this paragraph, that is to say, the present case.

97 In the absence of any rule in the Staff Regulations on the procedure for apportioning the survivor's pension in such a case, it was for the Parliament to determine a method in order to resolve the dispute before it, which it did by deciding to share the survivor's pension equally between the applicant and the late Mr Braun-Neumann.

98 The applicant challenges the Parliament's position, claiming that, in so far as he satisfies the requirements of Article 18 of Annex VIII to the Staff Regulations, he is entitled to the full survivor's pension and that his entitlement cannot be affected by the Parliament's decision to extend the benefit of Article 18 of Annex VIII à to another person who, in the Parliament's opinion, is also a surviving spouse of the late Ms Neumann.

99 The applicant's argument, which would have the consequence that the sums paid by way of survivor's pension on account of the death of one official or other servant would exceed 100% of the amount of that pension, as determined by Articles 79 of the Staff Regulations and 18 of Annex VIII, cannot be upheld.

100 In the first place, while the Staff Regulations make no provision for a case in which two persons rely on the status of surviving spouse, they none the less deal, in Article 28 of Annex VIII, with the frequently-encountered circumstance in which there exist a number of divorced spouses who are entitled to a survivor's pension or one or more divorced spouses and a surviving spouse who are entitled to a survivor's pension. In such a circumstance, the Staff Regulations expressly provide for the survivor's pension to be apportioned according to the respective duration of the marriages. Likewise, the apportionment of the survivor's pension is also expressly provided for in Article 22 of Annex VIII to the Staff Regulations, where there co-exist a surviving spouse and orphans of a previous marriage, or others entitled to claim. While it is true that, in theory, those provisions may also be interpreted *a*

contrario and not by analogy, the Tribunal considers that the rule laid down in the abovementioned provisions, namely that one and only one survivor's pension may be granted, must also be applied in the case of Article 79 of the Staff Regulations and Article 18 of Annex VIII. The fact that those provisions say nothing about the situation in which a number of persons claim the benefit concerned can be attributable only to the unusual nature of such a situation and not to a deliberate intention on the part of the drafters of the Staff Regulations to grant two, or indeed three, full survivor's pensions in right of one official or servant.

101 In the second place, since the official is entitled, upon retiring, to no more than a single Union pension (and since the same applies with respect to the survivor's pension when it must be shared among a number of beneficiaries, under Articles 22 and 28 of Annex VIII to the Staff Regulations), the same must also apply in the case of the implementation of Article 79 of the Staff Regulations and Article 18 of Annex VIII, where surviving spouses co-exist.

102 In the third place, and independently of the applicability in the present case of the case-law cited by the Parliament requiring that the provisions giving entitlement to financial benefits be given a strict interpretation, to accept that the status of surviving spouse directly confers the right to receive a full survivor's pension, so that, where there are a number of persons who may be recognised as having that status, the institution would be required to pay a double, or even a triple, survivor's pension, is hardly reconcilable with the obligations of sound financial management and control of the budgetary expenses of the institutions which must prevail within the Union.

103 As the total sums to be paid to the persons having the status of surviving spouse cannot therefore exceed 100% of the amount provided for in Article 79 of the Staff Regulations and also in Article 18 of Annex VIII to the Staff Regulations, the question arises as to how that amount is to be shared between those persons.

104 It is true that, apart from the method chosen by the Parliament, whereby the amount in question was shared equally between the applicant and the late Mr Braun-Neumann, other methods were conceivable. However, the Tribunal considers that the method decided upon in the present case is contrary neither to the letter, nor to the scheme, nor to the purpose of Article 79 of the Staff Regulations and Article 18 of Annex VIII, nor even to the letter, scheme and purpose of the entire chapter on survivors' pensions in that annex, especially since the criterion of the duration of the marriage, as laid down in Article 28 of Annex VIII to the Staff Regulations, would be difficult to apply by analogy to a case such as this and, moreover, would run counter to the purpose of Article 79 of the Staff Regulations.

105 The duration of the marriage between the late Ms Neumann and the late Mr Braun-Neumann is disputed and depends on identification of the national legal order to which reference must be made for the purpose of determining such duration, which, as stated at paragraph 68 of this judgment, would be a particularly complex and extremely uncertain operation.

106 In addition, and on the assumption that the criterion of the duration of the marriage might be applied by reference, for each surviving spouse, to the national legal order which is more favourable to that spouse for the purposes of applying that criterion, namely the Belgian legal order for the applicant and the German legal order for the late Mr Braun-Neumann, it seems that the applicant's marriage lasted four years and three months, while the late Mr Braun-Neumann's marriage lasted 11 years and a little over two months. An apportionment of the survivor's pension which would provide the late Mr Braun-Neumann with a higher percentage than that awarded to the applicant would clearly run counter to the purpose of Article 79 of the Staff Regulations, as described at paragraph 88 of the present judgment. Not only did the late Ms Neumann and the late Mr Braun-Neumann cohabit for scarcely a few months, but, in addition, that marriage was the subject of a number of divorce proceedings, first, those instituted by the late Ms Neumann before the Namur Court of First Instance which culminated in a divorce judgment in 1995, and, second, the proceedings instituted in 2003,

which became devoid of purpose owing to the late Ms Neumann's death (see paragraphs 15 and 76 of the present judgment), the latter proceedings having been instituted by the late Mr Braun-Neumann, who none the less claimed the full survivor's pension in an action brought before the Tribunal and dismissed by order of 23 May 2008 in *Braun-Neumann* v *Parliament*, cited above (see paragraph 21 of the present judgment).

107 For all those reasons, the criterion for apportioning the survivor's pension chosen by the Parliament cannot be found to be vitiated by illegality; and, accordingly, the applicant's complaint relating to the amount of the survivor's pension to be awarded to a surviving spouse where another person is recognised as having the same status must be rejected.

Second plea: breach of the principle of protection of legitimate expectations

108 The applicant maintains that the Parliament created a legitimate expectation on his part and on the part of the late Ms Neumann with respect to their status as spouses. The Parliament claims that this plea is inadmissible as it breaches the rule requiring correspondence between the administrative complaint and the legal action.

109 It is true that the rule of correspondence between administrative complaint and legal action, which the Parliament invokes and failure to comply with which would render inadmissible the plea alleging breach of the principle of protection of legitimate expectations, was established in a series of decisions dating from the 1970s, which require, in substance, that the relief sought and the cause of action should be the same in the application originating the legal proceedings and in the administrative complaint (see, in particular, Case 58/75 *Sergy* v *Commission* [1976] ECR 1139, paragraphs 31 to 33, and Joined Cases 75/82 and 117/82 *Razzouk and Beydoun* v *Commission* [1984] ECR 1509, paragraph 9). In the later case-law, the concept of 'cause of action' was linked with the concept of 'heads of claim' (see Case 52/85 *Rihoux and Others* v *Commission* [1986] ECR 1555, paragraphs 12 and 14, and Case C-316/97 P *Parliament* v *Gaspari* [1998] ECR I-7597, paragraphs 17 and 18), and a number of judgments, moreover, appear to rely mainly on the latter concept when examining the correspondence rule (see Case 133/88 *Del Amo Martinez* v *Parliament* [1989] ECR 689, paragraph 10, and Case T-284/02 *Dionyssopoulou* v *Council* [2005] ECR-SC. I-A-131 et II-597, paragraph 62).

110 According to the case-law set out in the preceding paragraph, the correspondence rule is justified by the very purpose of the pre-contentious procedure, which is to enable the administration to review its decision and thus to obtain a non-judicial resolution, described as an 'amicable settlement' in the words used in most judgments, of the disputes which have arisen between officials and the administration. In order for such a procedure to be capable of achieving its objective, it is necessary, according to the same case-law, for the appointing authority to be in a position to know in sufficient detail the criticisms which those concerned make of the contested decision.

111 However, since the pre-contentious procedure is informal in character and those concerned are able to act without the assistance of an advocate at that stage, it has consistently been held that the administration must not interpret the complaints restrictively, but must do so with an open mind (*Del Amo Martinez* v *Parliament*, paragraph 11, and Case T-353/03 *Nielsen* v *Council* [2005] ECR-SC I-A-95 and II-443, paragraph 23). It has thus been held, in particular, that while the claims submitted in the proceedings before the courts of the European Union may seek only the same relief as that sought in the complaint and may include only 'heads of claim' based on the same cause of action as that of the heads of claim in the complaint, those heads of claim may, however, be developed before the courts of the European Union by means of pleas and arguments which did not necessarily appear in the administrative complaint but are closely linked to it (Case 224/87 *Koutchoumoff* v *Commission* [1989] ECR 99, paragraph 10; Case T-496/93 *Allo* v *Commission* [1995] ECR-SC I-A-127 and II-405, paragraph 26; *Dionyssopoulou* v *Council*, paragraph 62; and Joined Cases F-138/06 and F-37/08 *Meister* v *OHIM* [2009] ECR-SC I-A-1-131 and II-A-1-727, paragraph 145).

112 Although, since the introduction of the correspondence rule, the courts of the European Union have not always applied that rule with the same flexibility (for examples of the strict application of that rule, owing perhaps to the link established between the concept of cause of action and the concept of heads of claim, see Case C-446/00 P *Cubero Vermurie* v *Commission* [2001] ECR I-10315, paragraphs 12, 13 and 16; Joined Cases T-78/96 and T-170/96 *W* v *Commission* [1998] ECR-SC I-A-239 and II-745, paragraphs 62 to 64; and order of 11 December 2007 in Case F-60/07 *Martin Bermejo* v *Commission* [2007] ECR-SC I-A-1-407 and II-A-1-2259, paragraphs 36 to 39), the flexible interpretation of the rule in question appears to correspond with both the purpose of the pre-contentious procedure, as described at paragraph 110 of the present judgment, and the rules on costs applicable to the pre-contentious procedure.

113 First, the extrajudicial resolution of disputes, which is the purpose of the pre-litigation procedure, is largely facilitated by the absence of legal formality during that procedure. That is why, moreover, the case-law does not require that the complaints put forward by the official in support of his complaint be formulated in legal terms (Case T-12/97 *Barnett* v *Commission* [1997] ECR-SC I-A-313 and II-863, paragraph 68, and *Nielsen* v *Council*, paragraph 26). If the correspondence rule were interpreted and applied strictly, the official, fearing that the boundaries of the dispute would be definitively fixed during the pre-litigation phase, would be encouraged to instruct a lawyer at that stage, whereas the object of such a phase is not so much to prepare the case for the judicial action as to avoid it. By instructing a lawyer, the applicant would make the pre-contentious procedure more cumbersome, which would be manifestly contrary to its purpose.

114 Second, the costs incurred by an official before lodging an action are regarded as irrecoverable (orders in Case T-80/97 DEP *Starway* v *Council* [2002] ECR II-1, paragraph 25, and Case T-251/00 DEP *Lagardère and Canal+* v *Commission* [2004] ECR II-4217, paragraphs 21 and 22), unlike the costs incurred during the contentious proceedings proper, that is to say, the proceedings which commence with the institution of the action. The purpose of that distinction lies in particular in the legislature's specific intention to discourage the official from instructing a lawyer during the pre-contentious procedure.

115 The need for a flexible interpretation of the requirement for correspondence between the administrative complaint and the legal action is now even more pressing.

116 First, such an interpretation is in keeping with the line of case-law that reflects the increasing importance of the principle of effective judicial protection, as a general principle of Union law, flowing from the constitutional principles common to the Member States and enshrined in Articles 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, that principle also having been re-asserted in Article 47 of the Charter of Fundamental Rights of the European Union (see, to that effect, Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International Foundation* v *Council and Commission* [2008] ECR I-6351, paragraph 335), which, pursuant to Article 6(1) TEU, has the same legal value as the Treaties. While the importance which that principle assumes for a community based on the rule of law justifies a broad interpretation of the provisions of primary law relating to the powers of the Court of Justice in preliminary ruling proceedings in the context of the EU Treaty, in the version before the Treaty of Lisbon (see, in particular, Case C-354/04 P *Gestoras Pro Amnistía and Others* v *Council* [2007] ECR I-1579, paragraph 53; Case C-355/04 P *Segi and Others* v *Council* [2007] ECR I-1657, paragraph 53; and Case C-303/05 *Advocaten voor de Wereld* [2007] ECR I-3633, paragraph 18), it must also justify, in the context of civil service law, an interpretation of the correspondence rule capable of alleviating as much as possible the constraints which that rule places on the applicant with respect to the pleas and arguments on which his counsel is entitled to rely in the originating application. While some subsequent constraints, for example those relating to offers of further evidence and new pleas in law (see Articles 42 and 43 of the Rules of Procedure of the Tribunal) are inherent in the proper conduct of the legal proceedings before the Tribunal and thus do not conflict with the principle of effective judicial protection, that principle could, on the contrary, lose

much of its substance if the lawyer representing the applicant were barred from submitting pleas that might prove decisive for the outcome of the dispute, on the ground that the applicant had not himself thought to raise those pleas in the pre-contentious procedure.

117 Second, since the entry into force of Council Decision 2004/752/EC, Euratom of 2 November 2004 establishing the European Union Civil Service Tribunal (OJ 2004 L 333, p. 7) ('the decision establishing the Tribunal'), Annex I to which provides, in Article 7(5), that the unsuccessful party is to pay the costs if they have been applied for in the successful party's pleadings, the official runs a higher financial risk by comparison with the period which saw the development in the case-law of the rule requiring correspondence between the complaint and the action, when the official was not required to bear the successful institution's costs. Admittedly, that novel feature introduced by the Decision establishing the Tribunal brings the costs regime in staff cases into line with the general rule in litigation before the Courts of the European Union; it should be observed, however, that the litigation in the latter category, in relation both to annulment and to liability, is not necessarily preceded by a pre-contentious procedure and is not subject to constraints comparable to those imposed by the correspondence rule. Thus, by way of compensation for the new financial risk which, by the effect of the Decision establishing the Tribunal, is imposed on officials wishing to bring proceedings before the Tribunal, it is reasonable, and in the interest of the proper administration of justice, to alleviate the constraints placed on them by allowing, in particular, their counsel not to confine himself to the criticisms made by the official, who in most cases is not a legal expert and, in any event, is not acting as a legal expert, still less as a practising advocate.

118 Third, both the evolution of administrative practice and the establishment of the fundamental right to an effective remedy before a court have progressively weakened one of the main justifications for the correspondence rule stated in the case-law in the 1970s, namely facilitating the extrajudicial resolution of disputes in the sense explained at paragraph 110 of the present judgment. In the first place, while it cannot be denied that the preliminary complaints procedure continues to serve as an effective filter for disputes and gives the administration the opportunity, before legal proceedings are brought, to correct any irregularities or to defend the legality of its decisions, the question arises whether the pre-contentious procedure continues to be the occasion of an active and specific search for an amicable settlement of disputes. It was on account of the inadequacies found in that regard, moreover, that in the Decision establishing the Tribunal particular emphasis was placed on examining the possibilities for amicable settlement of disputes at all stages of the procedure before the Civil Service Tribunal. In the second place, while the guarantee of an effective remedy before the Tribunal, as the expression of the principle of effective judicial protection referred to at paragraph 116 of the present judgment, is exercised according to rules, notably procedural rules, which circumscribe its application and scope, it cannot, owing to its fundamental nature, be made too narrowly subject to the purpose of the procedure preceding the judicial stage without being excessively undermined. However desirable it may be, the extrajudicial resolution of disputes is not a fundamental right and cannot therefore justify the radical restriction of the possibilities of access to judicial proceedings available to officials.

119 In the light of the foregoing considerations, it must be held that, in line with the case-law cited at paragraph 109, the correspondence rule can apply only where the judicial action alters the relief sought in the complaint or its cause of action, and the concept of 'cause of action' must be given a broad interpretation. According to such an interpretation, as regards claims for annulment, such as the claims before the Tribunal in the present case for annulment of the appointing authority's decision of 8 September 2006, the 'cause of action of the dispute' must be understood as the applicant's challenge to the substantive legality of the contested decision or, in the alternative, the challenge to its procedural legality, a distinction which has been recognised many times in the case-law (Case C-367/95 P *Commission* v *Sytraval and Brink's France* [1998] ECR I-1719, paragraph 67; Case F-31/07 *Putterie-De-Beukelaer* v *Commission* [2008] ECR-SC I-A-1-53

and II-A-1-261, paragraph 57 et seq., on appeal before the General Court, Case T-160/08 P; and Case F-135/07 *Smadja* v *Commission* [2008] ECR-SC I-A-1-299 and II-A-1-1585, paragraph 40, on appeal before the General Court, Case T-513/08 P).

120 Consequently, and subject to pleas alleging illegality of a legislative or regulatory text, and of course to grounds raising a public-policy issue, the cause of action of the dispute will normally be altered, and the action therefore inadmissible on the ground that it fails to observe the correspondence rule, only where the applicant, who criticises in his administrative complaint solely the formal validity of the act adversely affecting him, including in its procedural aspects, raises substantive pleas in the originating application, or in the opposite case where the applicant, after having disputed in the complaint only the substantive legality of the act adversely affecting him, submits an application containing pleas relating to the formal validity of that act, including in its procedural aspects.

121 As regards pleas alleging illegality of a legislative or regulatory text, and even where they relate to a legal cause of action other than that set out in the complaint, to hold them inadmissible for breach of the correspondence rule would upset the balance between the protection of the official's procedural rights and the purpose pursued by the pre-contentious procedure and would amount to a disproportionate and unjustified penalty for the official. Given the intrinsically legal nature of a plea alleging illegality of a legislative or regulatory text, and also of the reasoning which underlies contemplating and then pleading illegality of this nature, the official or servant who lodges the complaint, and who does not necessarily have the appropriate legal expertise, cannot be required to formulate such a plea at the pre-contentious stage, failing which it will be declared inadmissible in the legal proceedings. That is particularly so since, to raise a plea of illegality at the pre-contentious stage seems hardly liable to result in the complainant being successful at that stage, as the administration is unlikely to choose to disapply a provision in force, on the ground of the provision's possible non-compliance with a higher-ranking rule, for the sole purpose of allowing an extrajudicial resolution of the dispute.

122 It follows from the foregoing considerations, and particularly from those set out at paragraphs 119 to 121, that the submission in the application of the plea alleging breach of the principle of legitimate expectations does not in any way infringe the correspondence rule. By taking issue in the complaint with the reason stated for the Parliament's decision reducing by 50% the amount of the survivor's pension which he received as the surviving spouse, namely that there was another surviving spouse, the applicant manifestly disputed the substantive legality of the contested decision. The plea relating to legitimate expectations is quite clearly a plea of substantive legality. Thus, the plea must be declared admissible.

123 As the plea alleging breach of the principle of legitimate expectations is admissible, the Tribunal must examine its merits.

124 As regards the merits of the plea, and apart from the fact that the applicant relies on his legitimate expectation in relation to the Parliament's recognition of his status as spouse of the late Ms Neumann and not on a legitimate expectation in relation to the survivor's pension and, moreover, to his possible right to receive the full amount of that pension, it must be held that the conditions laid down in the case-law and giving entitlement to rely on the protection of legitimate expectation (Case T-235/94 *Galtieri* v *Parliament* [1996] ECR-SC I-A-43 and II-129, paragraphs 63 and 65; Case T-329/03 *Ricci* v *Commission* [2005] ECR-SC I-A-69 and II-315, paragraph 79; Case F-4/07 *Skoulidi* v *Commission* [2008] ECR-SC I-A-1-47 and II-A-1-229, paragraph 79; and Case F-126/07 *Van Beers* v *Commission* [2008] ECR-SC I-A-1-355 and II-A-1-1929, paragraph 70) are not satisfied in the present case, as the applicant cannot rely on precise, unconditional and consistent assurances given by the administration.

125 In the first place, the fact that the person concerned was paid financial benefits by the administration, even for several years, cannot in itself be considered a precise, unconditional and consistent assurance within the meaning of the case-law cited in the preceding paragraph. Otherwise, any decision of the

administration refusing for the future, and possibly with retroactive effect, to pay a pecuniary benefit unduly paid to the person concerned for several years would be systematically annulled by the Union courts for non-compliance with the principle of legitimate expectations, with the consequence that Article 85 of the Staff Regulations, on the recovery of undue payment, would be largely deprived of any practical effect. Thus, the payment of the household allowance to the late Ms Neumann by reason of her marriage to the applicant, and then of the survivor's pension to the applicant, cannot in itself give rise to a legitimate expectation on the applicant's part as to the recognition of his status as spouse and the legality of those payments, when the Parliament had given no other assurance to that effect.

126 In the second place, that fact that, as soon as the judgment of the Namur Court of First Instance became final, the Parliament considered the late Ms Neumann to be divorced for the purposes of the Staff Regulations (with all the financial consequences which that involves, namely, in particular, the fact that she no longer received the household allowance), and then to be married to the applicant (when on account of that marriage she again received the household allowance) cannot be regarded, in view of the particular circumstances of the case, as capable of giving rise to a legitimate expectation on the applicant's part as regards the future grant of the full survivor's pension.

127 By analogy to the position under Article 85 of the Staff Regulations (see paragraph 125 of the present judgment), there can be no doubt that it is not for the administration of an institution to undertake voluntarily and by itself inquiries into the personal status of its officials, but that it must simply take account of the information provided by those concerned, by reference to evidence supplied by the production of official documents or court decisions. It is on the basis of that information and those documents that the administration must establish the necessary financial implications and take the relevant decisions. That is so in the present case as regards the Parliament, which, as is apparent upon examination of the circumstances of the case, merely took into account the information supplied by the late Ms Neumann, and also the evidence which she provided in support of that information, over the years and as her personal situation changed. On the contrary, and as the Parliament stated at the hearing without being contradicted by the applicant, it was not aware of the action brought on 16 December 1996 by the late Ms Neumann before the Bayerisches Staatsministerium der Justiz (Ministry of Justice of the *Land* of Bavaria, Germany) or of the decision of 11 October 1999 by the Bayerisches Oberstes Landesgericht refusing to recognise in Germany the divorce judgment of the Namur Court of First Instance, or even of the action subsequently brought, in 2003, by the late Mr Braun-Neumann before the Amtsgericht-Familiengericht-Merzig.

128 If the Parliament had had that information, it would very likely have taken a different decision vis-à-vis the applicant, or would at least have expressed doubts about his marital situation.

129 The failure to provide the Parliament with the information and documents referred to above is attributable to the late Ms Neumann, and, at least from the latter's death, to the applicant. It is unlikely that the applicant, who, as is apparent from the letter of 22 September 1997 annexed to the documents submitted by the late Mr Braun-Neumann after the hearing (see paragraph 33 of the present judgment), had already formed a couple with the late Ms Neumann in 1997 and knew of the existence of the late Mr Braun-Neumann, could have been unaware of the marriage entered into in 1993 between the latter and the late Ms Neumann or of the order of 11 October 1999 of the Bayerisches Oberstes Landesgericht refusing to recognise in Germany the divorce judgment of the Namur Court of First Instance. It is also highly likely that, on the date on which the applicant applied to the Parliament for the survivor's pension, that is to say, on 11 August 2004, he was aware that there was potentially another person who might also contact the Parliament claiming to have the status of surviving spouse and seeking payment of the survivor's pension. In that context, it is also appropriate to refer, first, to the complaint for bigamy lodged by the late Mr Braun-Neumann on 17 March 2005 against the applicant, who, according to the letter of the Staatsanwaltschaft Siegen of 16 February 2006 (see paragraph 33 of the present judgment), had contested the facts alleged against him, which means that he had been informed of them; and, second, to the proceedings before the Amtsgericht Siegen, in

which the applicant was a represented party and thus clearly cognisant of the actual terms of the order of 25 January 2006, which refers expressly to the abovementioned order of the Bayerisches Oberstes Landesgericht. Both the proceedings initiated by the complaint for bigamy and those leading to the abovementioned order of 25 January 2006 date from a period well before the date on which the late Mr Braun-Neumann applied to the Parliament for the survivor's pension. In those circumstances, there can be no doubt that the applicant could legitimately expect that the late Mr Braun-Neumann would one day claim the survivor's pension from the Parliament on the basis of his status as surviving spouse.

130 For all those reasons, the plea alleging breach of the principle of legitimate expectations must be rejected. In this context, it should moreover be borne in mind that, even after having awarded the late Mr Braun-Neumann 50% of the survivor's pension in respect of the late Ms Neumann with retroactive effect from 1 August 2004, the Parliament decided not to recover the amount unduly received by the applicant in the form of the 50% of the survivor's pension which he had been overpaid between 1 August 2004 and the date on which the contested decision took effect.

131 It follows from all the foregoing that the claims for annulment and, consequently, the claims that the Parliament should be ordered to pay retroactively to the applicant, with effect from 1 April 2006, an additional 50% of the late Ms Neumann's survivor's pension and continue to pay that amount monthly, until October 2009, must be rejected.

Costs

132 Under Article 122 of the Rules of Procedure, the provisions of Title 2, Chapter 8, of those rules, on costs, are to apply only to cases brought before the Tribunal from the date on which those Rules of Procedure entered into force, namely 1 November 2007. The relevant provisions of the Rules of Procedure of the General Court on the subject are to continue to apply *mutatis mutandis* to cases pending before the Tribunal before that date.

133 Under Article 87(2) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. However, under Article 88 of those Rules of Procedure, in proceedings between the institutions and their servants the institutions are to bear their own costs.

134 The third subparagraph of Article 87(4) of the Rules of Procedure of the General Court provides that an intervener may be ordered to bear his own costs.

135 In the present case, as the applicant has been unsuccessful, the main parties must be ordered to bear their own costs.

136 As for the intervener, while it is true that the Tribunal, acting on its own initiative, invited him to intervene in the present proceedings, it is none the less common ground, first, that the intervener, in response, sought leave to intervene in support of the form of order sought by the Parliament; next, that such intervention ensured that his interests would be represented in the proceedings; and, last and most importantly, that he was thus able to assert and defend his rights as against the applicant's claims, which proved advantageous, as his intervention influenced the reasoning of the Tribunal, which resulted in the rejection of the applicant's claims. For those reasons, the Tribunal decides that the intervener must bear his own costs.

On those grounds,

THE CIVIL SERVICE TRIBUNAL (Full Court)

hereby:

1. **Decides that there is no need to adjudicate on the claim that the Parliament should pay Mr Mandt the full survivor's pension in so far as that claim relates to the period after 31 October 2009;**

2. **Dismisses the action as to the remainder;**

3. **Orders the parties, including the intervener, to bear their own costs.**

Mahoney Gervasoni

Kreppel Tagaras Van Raepenbusch

Delivered in open court in Luxembourg on 1 July 2010.

W. Hakenberg
Registrar

P. Mahoney
President