JUDGMENT OF THE COURT (FIRST CHAMBER)
30 OCTOBER 1969[1]

Eva Rittweger
v Commission of the European Communities

Case 33/68

In Case 33/68

EVA RITTWEGER, an official of the Commission of the European Communities, represented by Alex Bonn, Advocate of the Luxembourg Bar,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Louis de la Fontaine, with an address for service in Luxembourg at the office of Emile Reuter, Legal Adviser to the Commission, 4 boulevard Royal,

defendant,

Application

(a) For the annulment of the decisions of 3 October 1968 and 11 November 1968 by the Director-General for Personnel and Administration;

(b) For a declaration that the allowance for a dependent person is to continue to be granted to the applicant in respect of her mother;

THE COURT (First Chamber)

composed of: R. Monaco, President of Chamber, A. M. Donner and J. Mertens de Wilmars (Rapporteur), Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

1 — Language of the Case: French.

JUDGMENT

Issues of fact and of law

I — Summary of the facts

The applicant has been in the service of the European Coal and Steel Community as an official since 16 June 1963; by a decision of the Director of the Division for Personnel and Administration dated 16 September 1954, taken on the basis of Articles 20 and 21(b) of the Provisional Regulations on the position of the staff of the ECSC in force at that date, the mother of the applicant was treated as if she were a dependent child and the benefit of the relevant allowance was granted to the applicant.

Later, that provision was replaced by Article 5(c) of the General Regulations of the Community, drawn up by the Committee of Presidents, which entered into force at the same time as the Staff Regulations of the Community, on 1 July 1956.

That provision, by virtue of Article 96 of the Staff Regulations of 1962 and the last paragraph of Article 2 of Regulation No 259/68 of the Council of 29 February 1968 still governs the position of the applicant as respects the payment of the allowance for a dependent person other than a child.

The Directorate-General for Administration and Finance periodically verified the position of the applicant to establish whether her mother could still be treated as if she were a dependent child in accordance with the relevant provisions of the regulations.

By a note of 7 June 1962, the applicant was informed that, having regard to her income as a translator, the benefit of the allowance in question had been withdrawn.

Following an appeal through official channels, that benefit was continued by a decision of the President of the High Authority of 10 December 1964 and further continued by decisions of 13 December 1965 and 21 April 1966.

On 3 October 1968, the Directorate-General for Personnel and Administration informed the applicant that the allowance would no longer be paid, the expenses to be borne by her no longer being regarded as heavy considering the amount of her income.

On 11 November 1968 that decision was confirmed by the same Directorate-General.

On 24 December 1968 the applicant made the present application.

On 13 March 1969 the Directorate-General for Personnel and Administration informed the applicant that the allowance would be continued and did so in the following terms:

> 'I have the honour to inform you that following a fresh examination of your personal and official position I have decided, in my capacity as the competent authority in the matter, to continue for a further year as from 1 September 1969 the benefit of the allowance for a dependent person in respect of your mother.
>
> It must be understood that you are required to inform the administration without delay of any change in the situation which has given rise to the present decision.
>
> A certified copy of the formal decision granting this allowance will be forwarded to you in the course of the next few days.'

The decision mentioned, dated 17 April 1969, states that 'the allowance . . . is granted until 31 August 1969, the date on which the position of Miss Rittweger will be re-examined in order to determine whether the conditions for the grant are still fulfilled'.

On 6 June 1969, with the proceedings before the Court still pending, the Director-General for Personnel and Ad-

ministration gave details of the contents of his letter of 13 March 1969, mentioning that the use of the expression 'continue [the allowance] for a further year' did not mean that it would be continued only for one year, but indicated that at the end of that year, her file would be re-examined by the Administration, and that in principle the allowance would be continued as long as the conditions for its payment were fulfilled.

II — Conclusions of the parties

The *applicant* claims that the Court should:

Admit the application as formulated and declare it to be well founded;

Annul or declare void the following disputed decisions:

(1) The decision by Mr van Gronsveld, Director-General for Personnel and Administration or by the Director-ate-General for Personnel and Administration, communicated to the applicant on 3 October 1968, discontinuing the allowance for a dependent person;

(2) The decision by the same Director-General or by the same Directorate-General communicated to the applicant on 11 November 1968 confirming the first decision;

Declare that the allowance for a dependent person must continue to be paid to the applicant in respect of her mother Mrs Erna Rittweger;

Refer the case to the competent authority;

Order the defendant to pay the costs.

The *defendant* in its statement of defence contends that the Court should:

(1) Declare that it is not necessary to give judgment on the application made by the applicant on 24 December 1968, as it has no purpose;

(2) Take note that the Commission is willing to defray the costs incurred by the applicant until the lodging of the statement of defence;

Declare that the costs incurred by the applicant after that date are to be borne by her.

The *applicant* puts forward further conclusions in her reply claiming that the Court should:

Declare that the fresh decision taken by the defendant during the proceedings does not destroy the purpose of the application;

Consequently reject the conclusions of the defendant;

Declare that there is reason to decide upon the application made by the applicant;

Admit the conclusions of the applicant in the initial application;

Reject as inadequate the offer of the Commission to defray the costs incurred by the applicant until the lodging of the statement of defence;

Order the defendant to pay the entire costs of the proceedings.

The *defendant* in the rejoinder contends that the Court should:

(1) Declare that there is no reason to decide upon the application made by the applicant on 24 December 1968, as it has no purpose;

(2) Take note that the Commission is ready to defray the costs incurred by the applicant until the lodging of the statement of defence;

(3) Declare that the costs incurred by the applicant after that date are to be borne by her.

III — Submissions and arguments of the parties

1. *Object of the proceedings*

The *defendant* maintains that the proceedings have become without purpose; according to the Commission it follows from the fresh decision of the Director-General for Personnel and Administration of 13 March 1969, that the decision of 3 October 1968, which is the

subject of the application, has been rescinded and superseded by a fresh decision which grants the allowance asked for.

The *applicant* replies that the new decision is not satisfactory to her; the benefit of the allowance will henceforth be temporary and limited in time, which was not the case previously.

The applicant moreover has submitted to the Court of Justice the question whether in considering the justification for the allowance, it was the financial position of the applicant or that of the dependent person which was looked at and whether in deciding upon the continuation or withdrawal of the allowance it was a change in the applicant's or in the dependent person's financial position which had to be considered; the fresh decision leaves the applicant in doubt.

The *defendant* in the rejoinder replies that the interpretation which the applicant gives to the decision of 13 March 1969, putting the benefit of the allowance for a dependent person on a temporary basis rests on a mistaken understanding of the wording and is outside the provisions of the regulations constituting the legal basis of the decision adopted.

The period of twelve months indicated in the letter had the sole purpose of settling the date for re-examining the file, such a clause having been already included in previous decisions.

This time-limit is purely for internal purposes and has not and cannot have the purpose, without going beyond the field of the strict execution of the provisions of the regulations, of setting the *dies ad quem* on the allowance granted to the applicant.

The letter of 6 June 1969 sets out these facts and indicates that so long as the conditions for the payment of the allowance are fulfilled, that allowance will be paid automatically without further request; the clause mentioning a time in no way sets a limit to the period for which the allowance is granted but is included as part of the administrative practice of regular re-examination of the files.

Again, according to the defendant, the question of interpretation in accordance with the regulations of the situation, a change of which has to be envisaged, can be decided only within the framework of an application for annulment.

As the application has become purposeless the Court cannot decide upon this question.

2. *Conditions on which the allowance was granted*

The *applicant* submits that the conditions concerning the grant of the allowance for a dependent person are determined in her case by Article 5(c) of the ECSC General Regulations by virtue both of the transitional provisions of the ECSC Staff Regulations of 1962 (Article 96) and of the consolidated Staff Regulations of 1968 (Article 2, last paragraph) which allow officials who received an allowance for a dependent person before the 1962 regulations came into force to continue to receive it under the conditions of the former General Regulations.

According to that article, states the applicant, only the financial position of the dependent person, independently of that of the official obliged to maintain him or her, can be taken into consideration in determining the right to the allowance.

This has been recognized by implication by the various decisions of the administration continuing the allowance, despite the promotions obtained by the applicant.

The *defendant* considers that there is no reason to decide this question.

IV — Procedure

The written procedure followed the normal course.

The First Chamber of the Court upon

the report of the Judge-Rapporteur and after hearing the Advocate-General decided to open the oral procedure without a preparatory inquiry.

The public hearing took place on 17 September 1969.

The Advocate-General delivered his opinion on 14 October 1969.

Grounds of judgment

1 The application, based upon Article 91 of the Staff Regulations of the European Communities, seeks on the one hand the annulment of two decisions dated 3 October and 11 November 1968 communicating to the applicant and afterwards confirming that the allowance for a dependent person provided for, as far as she is concerned, by Article 5 of the General Regulations of the ECSC which entered into force on 1 July 1956 and were continued by Article 96 of the ECSC Staff Regulations and Article 2 of Regulation No 259/68, was withdrawn from her, and on the other hand a declaration that this allowance: 'must continue to be paid to the applicant in respect of her mother'.

2 The applicant has benefited since 1954 from the abovementioned allowance, which the administration granted her so long as the conditions for its payment were fulfilled; an annual check on this was to be kept by the administration.

3 These conditions are laid down by Article 5(c) of the General Regulations mentioned above under which the maintenance of the dependent person must involve the servant concerned in heavy expenditure.

4 The defendant considered that, having regard to the income of the applicant, this expenditure could no longer be regarded as sufficiently heavy to justify the continuance of the allowance and withdrew it by the decision of 3 October 1968.

5 Upon an appeal by the applicant through official channels and after a fresh examination of her personal position the allowance was reinstated by a decision of 13 March 1969 'for a further year'.

6 Nevertheless by an explanatory note of 6 June 1969 the defendant explained that the clause mentioning a time in relation to the grant of the allowance did not signify that after expiry of this period the grant would not be continued, but only that at such time there would be a fresh examination of the applicant's position in order to check whether the conditions for payment were still fulfilled.

7 The applicant thus found herself reinstated in law in the same situation in which she had been before the disputed decisions were taken.

[8] The application which seeks the annulment of the disputed decisions and the continuation of the allowance has become without purpose, since the disputed decisions have been withdrawn and the allowance to the applicant is being continued on the same conditions as before.

[9] It must therefore be rejected as having become inadmissible for lack of purpose.

Costs

[10] Under Article 70 of the Rules of Procedure of the Court of Justice the costs incurred by institutions in applications by servants of the Communities shall be borne by the latter, without prejudice to the provisions of the second subparagraph of Article 69(3) of those rules.

[11] The defendant has agreed in its statement of defence to bear the costs of the proceedings incurred by the applicant until the lodging of its statement.

[12] However it was only in the schedule to its rejoinder that it produced a staff memorandum of 6 June 1969 containing the necessary details on the scope of its decision withdrawing the disputed measures.

[13] Under the second subparagraph of Article 69(3) mentioned above, the Court may order even a successful party to bear the costs which that party has caused the opposite party to incur.

[14] It is appropriate to order the Commission to pay the costs of the proceedings.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Coal and Steel Community, especially Article 33;
Having regard to the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Community;
Having regard to Article 5 of the General Regulations of the ECSC annexed to the Staff Regulations of the ECSC of 1 July 1956;

Having regard to Article 96 of the Staff Regulations of the ECSC which entered into force on 1 January 1962;
Having regard to the Staff Regulations of Officials of the European Communities, especially Article 91;
Having regard to the last paragraph of Article 2 of Regulation No 259/68;

THE COURT

hereby :

1. **Dismisses the application as inadmissible for lack of purpose;**
2. **Orders the Commission of the European Communities to pay the costs of the proceedings.**

Moncao Donner Mertens de Wilmars

Delivered in open court in Luxembourg on 30 October 1969.

A. Van Houtte
Registrar

R. Monaco
President of the First Chamber of the Court

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 14 OCTOBER 1969[1]

Mr President,
Members of the Court,

In 1953 Miss Rittweger the applicant in the case in which I am today delivering my opinion entered the service of the High Authority of the European Coal and Steel Community. She was first of all employed as a secretary and since 1 November 1957, following a competition in which she took part, has been a translator. On a submission by the applicant the administration agreed that her mother, who is at present aged 84 years and lives with her, was sick and without means; accordingly as from 1 July 1953 it treated her mother as if she were a dependent child, with all the attendant consequences, by a decision of 16 September 1954 of the Director of Personnel taken upon the basis of the Règlement provisoire de la Communauté Européene du Charbon et de l'Acier (Provisional Regulations of the European Coal and Steel Community) in force at that time. Later, the personal and official position of Miss Rittweger, which changed on various occasions (in 1961 and in 1963) following promotions, was regularly examined each year to decide whether the benefit of the allowance for a dependent person thus granted to her could be continued. After the entry into force of the Staff Regulations of the Coal and Steel Community, the situation was governed by its Règlement général (General Regulations) and afterwards by the special transitional provisions. These re-examin-

1 — Translated from the German.