JUDGMENT OF THE COURT (SECOND CHAMBER)
OF 31 MAY 1979 [1]

Francis Woehrling
v Commission of the European Communities

"Education allowance"

Case 164/78

In Case 164/78

FRANCIS WOEHRLING, an official of the Commission of the European Communities, residing at 39 Boslaan, Overijse, represented and assisted by Georges Vandersanden, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of E. Arendt, 34 B IV Rue Philippe II,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Alain Van Solinge, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Mario Cervino, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the annulment of the implied decision of the Commission rejecting the applicant's request for the maximum education allowance in respect of his son to be doubled,

THE COURT (Second Chamber)

composed of: Lord Mackenzie Stuart, President of Chamber, P. Pescatore and A. Touffait, Judges,

Advocate General: G. Reischl
Registrar: A. Van Houtte

gives the following

1 — Language of the Case: French.

JUDGMENT

Facts and Issues

The facts of the case, the procedure, the conclusions and the submissions and arguments of the parties may be summarized as follows:

I — Facts and procedure

The applicant, a principal administrator at the Commission employed at Brussels, has a son who was born in Washington, District of Columbia, on 11 November 1970. Since his mother is American and English is his principal language the child was enrolled in the English Section in the first year of the primary department for the school year 1976/1977 at the European School (Woluwé).

During that school year difficulties arose which led the authorities of the European School to request that the child should receive help from a psychiatrist. To that end the applicant sought the assistance of Dr de Coninck, who speaks English. In addition, a re-education of the motor function governing precise movements was also advised, since a number of the problems experienced derived from the child's difficulties in writing. This therapy was to be the responsibility of Mrs Schmitz.

Dr de Coninck, Mrs Schmitz and Mrs Kahn, the psychologist attached to the European School, advised Mr and Mrs Woehrling not to re-enrol their son in the first year (as recommended by the child's teacher) and emphasized the need to place him in a school where the classes were smaller and the difficulties involved in motivating him would be more easily overcome.

An interview was arranged with Mrs Kahn, the Director of the European School, and the child's teacher, in the course of which it appears to have been established that the European School was not able to provide the conditions necessary for an education suited to the child's special difficulties. Consequently, for the school year 1977/1978 the applicant chose to enrol his son at the British Primary School (at Ixelles), which is small and has no more than 20 children in each class. The cost is high: almost Bfrs 65 000 in tuition fees in addition to the school fees normally borne by parents.

By letter to the Head of the Individual Rights and Privileges Division dated 19 July 1977 the applicant requested that the maximum education allowance be doubled, as provided for by the first part of the third paragraph of Article 3 of Annex VII to the Staff Regulations of Officials which in the version in force at that time was to the effect that the maximum education allowance per month for each dependent child in regular full-time attendance at an educational establishment should be doubled for:

— "an official whose place of employment is at least 50 km from a European school or an educational establishment working in his

language, provided that the child actually attends an educational establishment at least 50 km from the place of employment."

That provision must be read in conjunction with Article 4 (5) of the "General implementing provisions for granting the education allowance" (published in Administrative Notices No 153 of 2 May 1977), which is worded as follows:

"5. On presentation of supporting documents the official shall be entitled to receive double the amount set out in the first paragraph of Article 3 of Annex VII to the Staff Regulations by way of reimbursement of the costs specified in Article 3, provided his place of employment is at least 50 km either from a European school or from a school teaching in his mother tongue and the child must attend such a school for imperative educational reasons, adequate proof of which must be provided."

The applicant's request was rejected on 11 October 1977 on the ground that his place of employment (Brussels) was not at least 50 km from either a European school or the establishment attended by the child.

On 6 January 1978 the applicant submitted a complaint to the appointing authority under Article 90 (2) of the Staff Regulations.

As no reply was received to that complaint the applicant on 31 July 1978 lodged this application for the annulment of the implied decision of the Commission rejecting his request for the maximum education allowance to be doubled in respect of his son.

The written procedure followed the normal course. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court (Second Chamber) decided to open the oral procedure without holding any preparatory inquiry.

II — Conclusions of the parties

The *applicant* claims that the Court should:

"— Annul the implied decision of the Commission rejecting the applicant's request for the maximum education allowance to be doubled in respect of his son, Eric;

— Accordingly, award him the double allowance;

— Order the Commission to pay the costs."

The *defendant* contends that the application should be dismissed as unfounded and that the applicant should be ordered to pay the costs.

III — Submissions and arguments of the parties

The *applicant* bases his application on the alleged breach by the Commission of, first, the "general principles of good management and sound administration" and, secondly, the principle of non-discrimination.

He maintains, first, that the principle of good management and sound administration is one of the general legal principles which form an integral part of the law, observance of which is to be ensured by the Court. That principle comprises *inter alia* the duty of conscientious administration ("zorgvuldigheidbeginsel") defined in administrative case-law in the Netherlands, in accordance with which an

administrative authority is bound to consider all the provisions by virtue of which an application might be accepted. In *Reinarz* v *Commission of the European Communities*, Case 55/70, [1971] 1 ECR at p. 385, the Court of Justice itself accepted the applicant's reference to the "general principle of good administration", which that party regarded as a means of investigating whether the administrative authority had made a reasonable use of its discretionary power.

Taking that as his basis, the applicant goes on to argue that in this instance the most important question from an administrative point of view is whether the educational establishment in which he had to place his child is in fact appropriate from the point of view of the child's necessary re-education. That is, moreover, the meaning of Article 4 (5) of the general implementing provisions, which added to the wording of the third paragraph of Article 3 of Annex VII to the Staff Regulations the condition that the child must be attending a school "for imperative educational reasons, adequate proof of which must be provided". The condition relating to distance is, therefore, only relevant if, for reasons unconnected with the child's psychological and educational circumstances, it is decided to place him in an educational establishment other than a European school. In other words, the requirement of special educational needs is an alternative and not a cumulative condition (the other being that relating to distance), which must be satisfied in order for the maximum education allowance to be doubled.

Moreover, that is apparently the sense in which the Community institutions, in a spirit of fairness and social justice, have applied the provisions in question in cases in which difficulties might arise. Thus, for example, under the former version of Article 3 of Annex VII to the Staff Regulations in force on the arrival in Brussels of officials from the new Member States, the Commission granted them double the maximum education allowance, despite the existence of a European school at their place of employment, on the sole ground that the school in question was not able to provide their children with an education consistent in particular with their linguistic requirements. The Commision was able to do so through an extension of the term "European school" to mean "suitable European school". A similar solution must be adopted in the present case.

Furthermore, if it were necessary to accept the reasoning linking the condition relating to distance to that relating to "imperative educational reasons adequate proof of which must be provided", the result would be discrimination between "special" children according to whether the educational establishment chosen was or was not situated more than 50 km from the official's place of employment. There would also be discrimination between "special" children of Dutch and French mother tongue (for whom it would be easy to find in the surroundings of Brussels an inexpensive suitable education not requiring assistance by a double education allowance) and "special" children speaking another language. Finally, it would even lead to discrimination between the "normal" children and the "special" children, since

the latter alone would benefit from the doubling of the maximum education allowance, provided that the condition relating to distance were satisfied, whereas the former could never receive the double allowance.

In its defence the *Commission* analyses the three types of family allowances provided for in Article 67 of the Staff Regulations (household allowance, dependent child allowance and education allowance) and states that the main aim of the system of family allowances established by the Staff Regulations is to provide assistance for all the expenses incurred on behalf of any dependent child of an official, whether or not of school age, whether he is "normal" or suffers from a mental or physical handicap and whether such involvement ceases at the age of 26 or, as in certain cases, continues without any age limit where the child is unable to provide for his own needs.

As regards the submissions put forward by the applicant the Commission observes, first, that he is not relying on Article 184 of the Treaty in order to challenge the legality of the provisions of the Staff Regulations and implementing provisions which govern the grant of the double allowance.

Even assuming that the existence of the principle of good administration, which is relied on by the applicant in the guise of the "duty of conscientious administration" and the fact that it is common to the law of all the Member States are established, that cannot be a reason for interpreting a provision of the Staff Regulations in a manner which is incompatible with its clear wording (cf. opinion of Mr Advocate General Mayras in Case 33/72, *Gunnella* v *Commission of the European Communities*, [1973] 1 ECR 475, especially at p. 486).

In any event, the applicant has not shown that such a principle, whose existence was, moreover, not recognized by the Court in the *Reinarz* case to which he refers, is common to the law of all the Member States. Even if the existence of such a principle is accepted the precise nature of the provisions in question does not allow the administrative authority to exercise any discretion whatever. In fact, the linking of the condition relating to distance with that relating to "imperative reasons, adequate proof of which must be provided" results from the clear wording of the applicable provisions.

The version of the first indent of the third paragraph of Article 3 of Annex VII to the Staff Regulations which was in force on the accession of the new Member States empowered the Commission to make a temporary award of double the maximum education allowance to the officials who were nationals of the new Member States, on the ground that there were no English and Danish sections at the European School. The present wording of that provision does not allow the Commission to comply with the applicant's request.

Turning to the submission relating to breach of the principle of non-discrimination, the Commission maintains that the criterion relating to distance fixed by Annex VII to the Staff Regulations is objective in nature and that the borderline case which the applicant puts forward as a hypothesis (comparison between the position of a child who attends an establishment situated 49 km from the place of employment and one who attends an establishment 51 km away) is not such as to justify a complaint of discrimination between "special" children according to whether

the establishment which they attend is situated more or less than 50 km from the place of employment. The other complaints of discrimination are also unfounded.

In his reply the *applicant* states that it was only as late as at the end of May 1978 that he was informed by the competent officers of the Commission of the possible existence of another and more appropriate means of solving the problem posed by his son, that is, the doubling of the dependent child allowance provided for in Article 67 (3) of the Staff Regulations. To that end the applicant's son underwent a medical examination.

Irrespective of the decision to be taken by the Commission within the context of Article 67 (3) of the Staff Regulations the applicant considers that the education allowance is in the nature of a supplement to the dependent child allowance. Within the context of family allowances the rôle of the education allowance is quite specific: it is only intended to cover education costs but to that extent it must be calculated in such a way as to cover, up to a maximum which may in appropriate cases be doubled, the costs actually incurred, which includes those incurred as a result of the child's state of health.

The wording of the provision in question is not as clear as the defendant seeks to maintain. To limit the doubling of the maximum education allowance to the existence of considerations based on distance would be in contradiction with both its aim, (which is to cover all of the costs incurred in schooling) and the method by which the amount of that allowance, which seeks to cover the actual costs of schooling is fixed. Since doubt remains as to the scope of the first indent to the third paragraph of Article 3 of Annex VII to the Staff Regulations it is for the Court to interpret the provision in question on the basis of its case-law and general legal principles in order to determine "the intention of the legislature". The point to be taken into consideration is the unsuitable nature of the European School so that parents who place their children at that school and those who cannot do so for imperative educational reasons, adequate proof of which must be provided, cannot be treated in the same way with regard to the condition relating to distance.

The principle of good management and sound administration, whose existence is denied by the defendant, is one of the specific manifestations, appropriate to the sphere of internal administration, of the general principle of the protection of legitimate expectation which the Court has acknowledged on many occasions in actions both for damages and for annulment. The defendant has failed to observe that principle, since it did not inform the applicant in either a suitable manner or at the proper time of the system of allowances for which provision is made in the Staff Regulation.

In its rejoinder the *Commission* gives details of the outcome of the applicant's request for the dependent child allowance to be doubled: the request was rejected by decision of 22 November 1978. The defendant maintains that the provisions governing the doubling of the maximum education allowance are clear and therefore leave no room for interpre-

tation. Since the applicant has not availed himself of Article 184 of the Treaty in order to challenge the legality of those provisions he cannot be allowed to do so indirectly by proposing an interpretation which is radically opposed to their clear terms. At no time did the Commission's officers frustrate the applicant's legitimate expectations nor did they discriminate against him: they simply found that he did not satisfy the conditions laid down for the doubling of the maximum education allowance.

IV — Oral procedure

The parties presented oral argument at the hearing on 22 March 1979.

The Advocate General delivered his opinion at the hearing on 10 May 1979.

Decision

1 This application, which was lodged on 31 July 1978, seeks the annulment of the implied decision of the Commission rejecting the applicant's request on the basis of the first indent of the third paragraph of Article 3 of Annex VII to the Staff Regulations for the maximum education allowance to be doubled in respect of his son.

2 By a letter dated 19 July 1977 the applicant requested the Head of the Individual Rights and Privileges Division to allow the education allowance to be doubled so as to cover the additional expenses incurred as a result of the fact that for imperative educational reasons he was obliged to withdraw his son from the European School where he was enrolled and to place him at another educational establishment better suited to his special educational needs.

3 On 11 October 1977 the request was rejected on the ground that the conditions laid down in the first indent of the third paragraph of Article 3 of Annex VII to the Staff Regulations were not satisfied, since the applicant's place of employment (Brussels) was not at least 50 km from either a European school or from the establishment attended by the child.

4 The applicant lodged this application against the implied decision of rejection resulting from the failure of the Commission to reply within the period laid down by the Staff Regulations to the complaint submitted by the applicant under Article 90 (2) on 6 January 1978.

5 In support of his application the applicant puts forward two submissions relating first to the breach by the Commission of the "general principle of good management and sound administration" and secondly to the breach of the principle of non-discrimination.

6 The applicant maintains first that the Commission breached "the general principle of good management and sound administration" by failing to interpret the contested provision of the Staff Regulations in the manner most favourable to the person concerned, that is, the applicant. He maintains that it was possible to interpret the provision in question to mean that the condition relating to distance which it contains would be relevant only if the child attended an educational establishment other than a European school for reasons which were independent of his psychological and educational state. As in this instance it is not disputed that the decision to enrol the applicant's son at an educational establishment other than a European school is based upon "imperative educational reasons" the applicant maintains that by refusing to comply with his request the Commission did not make a reasonable use of its discretion.

7 Secondly, the applicant maintains that the interpretation of the provision in dispute given by the Commission would lead to discrimination between children *inter alia* according to whether the educational establishment selected was or was not situated more than 50 km from the official's place of employment.

8 The version of the first part of the third paragraph of Article 3 of Annex VII to the Staff Regulations in force at the time of the events which form the subject of this application was to the effect that the maximum amount of the

education allowance for each dependent child in regular full-time attendance at an educational establishment should be doubled for:

"An official whose place of employment is at least 50 km from a European school or an educational establishment working in his language, provided that the child actually attends an educational establishment at least 50 km from the place of employment."

9 It is clear from the wording of that provision that the doubling of the maximum education allowance is subject to the condition that the educational establishment attended by the child shall be at least 50 km from the place of employment. The applicant's argument that the defendant is bound to award double the maximum allowance in a case in which the condition relating to distance is not satisfied is incompatible with the aim of the provision in question, which is to lighten the additional burdens necessarily incurred by an official as a result of that distance.

10 In finding that the applicant did not satisfy the conditions laid down in order to claim the benefit of the provision in dispute the Commission did not act in a manner which was open to criticism.

11 The application must, therefore, be dismissed.

Costs

12 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs.

13 However, under Article 70 of the Rules of Procedure, in proceedings by servants of the Communities, institutions shall bear their own costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the parties to bear their own costs.**

Mackenzie Stuart Pescatore Touffait

Delivered in open court in Luxembourg on 31 May 1979.

A. Van Houtte
Registrar

A. J. Mackenzie Stuart
President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 10 MAY 1979 [1]

Mr President,
Members of the Court,

The applicant in this case is requesting his appointing authority to double the maximum amount which he is awarded each month by way of education allowance.

The applicant is a principal administrator with the Commission of the European Communities at Brussels. During the school year 1976/1977 his son, who was born in Washington D.C. in 1970, attended the first primary class at the European School at Woluwé, English Section. His parents had chosen that section because his mother is American and English is consequently his principal language.

Difficulties arose during the school year, *inter alia* because of the child's problems with writing, and the school authorities recommended that a psychiatrist be consulted and that therapy be provided for disorders of the motor function governing precise movements.

1 — Translated from the German.