JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)
6 March 1996 *

In Case T-141/95,

Kirsten Schelbeck, an official of the European Parliament, residing in Luxembourg, represented by Jean-Noël Louis, Thierry Demaseure and Véronique Leclercq, of the Brussels Bar, with an address for service in Luxembourg at the offices of Fiduciaire Myson SARL, 1 Rue Glesener,

applicant,

v

European Parliament, represented by Manfred Peter, Head of Division in its Legal Service, and Jannis Pantalis, of its Legal Service, acting as Agents, with an address for service at the Secretariat of the European Parliament, Kirchberg,

defendant,

APPLICATION for the annulment of the decision of the European Parliament of 1 December 1994, adopted pursuant to a decision discontinuing the application of

* Language of the case: French.

Article 67(2) of the Staff Regulations of Officials of the European Communities to certain allowances provided for by Danish legislation, refusing to reimburse the amounts deducted from the applicant's pay pursuant to that provision for the period from 1 November 1987 to 30 April 1993,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (First Chamber),

composed of: A. Saggio, President, V. Tiili and R. M. Moura Ramos, Judges,

Registrar: B. Pastor, Principal Administrator,

having regard to the written procedure and further to the hearing on 24 January 1996,

gives the following

Judgment

Facts and legal background

1 The applicant was recruited as a translator under an auxiliary contract beginning on 1 November 1987. She was assigned to the Danish Translation Division of the European Parliament.

2 By decision of the appointing authority of 3 March 1988, which took effect on 1 January 1988, the applicant was appointed a probationer official. She was established in Grade LA 7, step 3, by decision of 10 October 1988, which took effect on 1 October 1988.

3 In accordance with Article 67(2) of the Staff Regulations of Officials of the European Communities, the applicant declared the allowances which she was receiving for her three children pursuant to Danish Law No 147 of 19 March 1986.

4 On the basis of Article 67(2) of the Staff Regulations, the Parliament proceeded to deduct those national allowances, with effect from 1 November 1987, from the family allowances received by the applicant under Article 2 of Annex VII to the Staff Regulations.

5 On 17 March 1994 the applicant sent a note to the Parliament's Staff Regulations and Personnel Management Service. She pointed out in the first place that since 1 November 1987 the Parliament had deducted from her pay the allowances which she received under national law. Secondly, referring to a decision adopted by the competent service regarding the nature of those allowances, the applicant requested the Parliament to reimburse the amounts 'incorrectly' deducted and to inform her of the period set for that purpose.

6 It appears from the note attached to the calculations, drawn up by the aforesaid service and dated 14 March 1994, that the allowances paid to the applicant under national law were no longer to be deducted, as from 1 March 1994, from the dependent child allowance paid under Article 2(2) of Annex VII to the Staff Regulations. It is apparent from a second note, moreover, drawn up by the same service and dated 20 July 1994, that the sums deducted from the applicant's pay pursuant to Article 67(2) of the Staff Regulations as from 1 May 1993 were to be reimbursed to her.

7 With the applicant's pay for June 1994, the Parliament's administration reimbursed the sums which it had continued to deduct during the period from 1 March 1994 to 31 May 1994.

8 On 24 August 1994 the applicant sent a note to the Head of the Personnel Division. In it, she referred to the note of 14 March 1994 which, she maintained, had just been notified to her by the Staff Regulations and Personnel Management Service and which had informed her that the allowances paid by the Danish authorities would no longer be deducted from her pay. Pointing out that the Parliament had deducted those allowances since her appointment on 1 November 1987, the applicant sought, 'in consequence, reimbursement of the amounts improperly deducted'.

9 With the applicant's pay for September 1994, the Parliament reimbursed the amounts deducted during the period from 1 May 1993 to 28 February 1994.

10 Having received no reply to her letter of 24 August 1994, the applicant sent the Head of the Personnel Division another request for reimbursement, dated 18 November 1994, referring to the fact that the sums deducted had been reimbursed as from 1 May 1993 with her pay for September 1994. In addition, she sought reimbursement of the 'sums improperly deducted' for the period from 1 November 1987 to 30 April 1993.

11 A letter of 1 December 1994 from the Parliament's Staff Regulations and Personnel Management Service informed the applicant that 'following a change in practice', it had been decided to discontinue as from 1 May 1993 the application of the rule

against overlapping provided for in Article 67(2) of the Staff Regulations to the allowances which she received under national law. According to the same letter, 'since the new practice was introduced as from 1 May 1993, it is not appropriate to repay the sums deducted for the period from 1 November 1987 to 30 April 1993'.

12 On 1 March 1995 the applicant submitted a complaint against the decision contained in that letter, pursuant to Article 90(2) of the Staff Regulations.

Procedure and forms of order sought

13 Those are the circumstances in which, by application lodged at the Registry of the Court of First Instance on 5 July 1995, the applicant brought this action under Article 91(2) of the Staff Regulations.

14 After the initiation of these proceedings, the applicant's complaint of 1 March 1995 was expressly rejected by decision of the Secretary-General of the Parliament, contained in a letter of 18 July 1995.

15 The written procedure before the Court ended on 17 October 1995 with the submission of the rejoinder.

16 On hearing the report of the Judge-Rapporteur, the Court decided to open the oral procedure without instituting any measures of enquiry. The parties presented oral argument and replied to the Court's oral questions at the hearing on 24 January 1996.

17 The applicant claims the Court should:

— annul the decision of the European Parliament of 1 December 1994 refusing to reimburse the amounts deducted from the applicant's pay pursuant to Article 67(2) of the Staff Regulations for the period from 1 November 1987 to 30 April 1993;

— annul, in so far as is necessary, the implied decision rejecting her complaint of 1 March 1995;

— order the Parliament to pay the costs.

18 The defendant contends that the Court should:

— adjudicate on the admissibility of the application;

— declare the application unfounded and, consequently, reject the request for reimbursement of the sums deducted from the applicant's pay pursuant to Article 67(2) of the Staff Regulations;

— make an order as to costs in accordance with the relevant provisions.

Admissibility

Summary of the arguments of the parties

19 The Parliament observes, without formally raising an objection of inadmissibility, that this application could be regarded as being out of time. In the first place, the applicant's note of 17 March 1994 could be treated as a request within the meaning of Article 90(1) of the Staff Regulations. Secondly, the administration's letter of 1 December 1994 could be regarded as a measure confirming the salary slips for June and September 1994, which would constitute the act adversely affecting the applicant within the meaning of Article 90(2) of the Staff Regulations.

20 The Parliament considers that the applicant should have submitted a complaint at the latest when she received her salary slip for September 1994, which enabled her to ascertain that the sums deducted pursuant to Article 67(2) of the Staff Regulations would be reimbursed to her only for the period subsequent to 1 May 1993.

21 The applicant points out, first of all, that the Parliament's decision concerning the nature of the national allowances in question, which was adopted at an indeterminate date and was not published, cannot be regarded as an act adversely affecting her within the meaning of Article 90(2) of the Staff Regulations. She maintains that it was only in her note of 24 August 1994 that she formally asked for repayment of the sums deducted from her pay since 1 November 1987. So far as concerns her salary slip for September 1994, she argues that it contained no indication of the Parliament's refusal to reimburse the amounts deducted for the period from 1 November 1987 to 30 April 1993.

22 In the applicant's view, it was only when she received the note of 1 December 1994 that she was able to take cognizance, for the first time, of the act adversely affecting her which she is contesting before the Court, namely the Parliament's decision refusing to reimburse the sums deducted from her pay for the period from

1 November 1987 to 30 April 1993. Since she submitted a complaint against that decision in due time under Article 90(2) of the Staff Regulations, the Parliament has no grounds whatsoever for challenging the admissibility of the application.

Findings of the Court

23 The Court notes at the outset that the applicant is challenging the Parliament's decision not to reimburse the amounts deducted from her pay pursuant to Article 67(2) of the Staff Regulations for the period from 1 November 1987 to 30 April 1993.

24 In order to ascertain whether her application is admissible, it is necessary to examine whether the applicant was able, as the defendant contends, to take cognizance of that decision adversely affecting her within the meaning of Article 90(2) of the Staff Regulations before she was informed of it by the Parliament's letter of 1 December 1994. Accordingly, it is necessary to establish whether or not that letter is to be regarded as a confirmatory act.

25 The first point to note is that in her letter of 17 March 1994 to the Parliament, the applicant referred to a new decision concerning the nature of the allowances received by her under national law and sought reimbursement of all the sums deducted from her pay pursuant to Article 67(2) of the Staff Regulations since she entered the service of the Parliament on 1 November 1987.

26 Furthermore, with the applicant's pay for June 1994, part of the sums deducted under Article 67(2) of the Staff Regulations were in fact reimbursed to her. Contrary to the defendant's contention, however, such partial reimbursement cannot

reasonably be interpreted as a decision by the Parliament refusing to reimburse the remainder of the sums deducted under the same provision.

27 That finding also applies to the reimbursement made with the applicant's pay for September 1994, following her letter of 24 August 1994. Reimbursement of the sums deducted for the period from 1 May 1993 to 28 February 1994, as a result of a decision discontinuing the application of Article 67(2) of the Staff Regulations to the national allowances in question, cannot by any means be equated with a decision refusing to reimburse the amounts deducted under that provision for the period from 1 November 1987 to 30 April 1993.

28 Those findings are not in any way called in question by the fact that, when reimbursement was effected in September 1994, the applicant was familiar with the notes of 14 March and 20 July 1994 attached to the calculations in question. Those notes do not contain any objective particulars capable of being interpreted as a possible refusal by the Parliament to reimburse the sums deducted from the applicant's pay for the period from 1 November 1987 to 30 April 1993.

29 The Parliament's decision contained in its letter of 1 December 1994 must therefore be regarded as an act adversely affecting the applicant within the meaning of Article 91(1) of the Staff Regulations, and not as a confirmatory act. The application challenging that decision must therefore be declared admissible.

Substance

30 In support of her application, the applicant relies on two pleas in law, the first alleging failure to provide a statement of reasons, the second alleging breach of Article 67(2) of the Staff Regulations in conjunction with Article 2 of Annex VII to the Staff Regulations.

Plea alleging failure to provide a statement of reasons

Summary of the arguments of the parties

31 According to the applicant, the contested decision is vitiated by the complete absence of any statement of reasons in that the Parliament, contrary to the requirements laid down in consistent case-law, has not stated the reasons on which the decision is based and knowledge of which is essential in order to permit judicial review of the decision. More specifically, the Parliament has failed to specify why it decided to confine reimbursement of the sums deducted pursuant to Article 67(2) of the Staff Regulations to the period subsequent to 1 May 1993.

32 The Parliament, for its part, argues that the plea in question was not raised in the official complaint and must accordingly be rejected as inadmissible; however, it considers that in any event the reference in the letter of 1 December 1994 to the introduction of a new administrative practice, namely that of no longer applying the rule against overlapping to the national allowances in question, provides a plausible and satisfactory answer directly linked to the date set for the contested decision to take effect, namely 1 May 1993.

Findings of the Court

33 It is settled law that the purpose of the requirement that a decision should state the reasons on which it is based is to enable the Community judicature to review the legality of the contested decision and to provide the person concerned with sufficient details to enable him to ascertain whether the decision is well founded or whether it is vitiated by an error allowing its legality to be contested (see Case T-508/93 *Mancini* v *Commission* [1994] ECR-SC II-761, paragraph 36).

34 Furthermore, it is apparent from the letter of 1 December 1994 that the Parliament relied on the concept of a 'change in administrative practice', which does not have retroactive effect, in limiting reimbursement of the sums deducted under Article 67(2) of the Staff Regulations as from the date on which 'the new practice was introduced', namely 1 May 1993.

35 The contested decision is thus sufficiently clear to enable the applicant to challenge the grounds on which it is based, as indeed she has done, and to enable the Community judicature to review its legality. The plea alleging failure to provide a statement of reasons must therefore be rejected.

Plea alleging breach of Article 67(2) of the Staff Regulations in conjunction with Article 2 of Annex VII thereto

Summary of the arguments of the parties

36 The applicant argues in substance that an institution can make a deduction under Article 67(2) of the Staff Regulations only in so far as it establishes that the allowances paid from other sources and the family allowances to which the official is entitled under section 1 of Annex VII to the Staff Regulations are of like nature. In this case, the fact that the Parliament decided to discontinue the application of the rule against overlapping with respect to allowances of the kind received by the applicant under Danish law can only mean that it formally acknowledged its error of assessment with regard to the nature of those allowances. In those circumstances, the applicant considers that the Parliament is under an obligation to reimburse her all the sums which it deducted under Article 67(2) of the Staff Regulations as from 1 November 1987, together with interest at the rate of 8% per annum.

37 The Parliament notes at the outset that the Staff Regulations do not expressly provide that Article 67(2) is inapplicable to the allowances paid under Danish law.

Furthermore, it observes that the institutions have a broad discretion in determining the nature of the allowances paid under national legislation. It also considers that its previous 'administrative practice' with regard to Article 67(2) does not constitute an illegal act capable of being withdrawn with retroactive effect, and that its new practice is the result not of an individual decision capable of conferring individual rights, but of a decision applicable to the abstract category of Danish officials with one or more dependent children. Finally, the Parliament relied exclusively on the declarations made by the applicant, who had never challenged its previous practice.

Findings of the Court

38 According to Article 67(2) of the Staff Regulations, 'officials in receipt of family allowances specified in this article shall declare allowances of like nature paid from other sources; such latter allowances shall be deducted from those paid under Articles 1, 2 and 3 of Annex VII'.

39 That provision must be interpreted as meaning that it is for the institutions to determine whether or not the allowances declared by officials or other servants in pursuance of the obligation which it lays down and the family allowances paid under Articles 1, 2 and 3 of Annex VII to the Staff Regulations are of like nature. It follows that the fact than an official declares allowances under Article 67(2) of the Staff Regulations cannot in any circumstances relieve the institution concerned of the obligation to examine as soon as possible whether or not those allowances constitute 'allowances of like nature paid from other sources' for the purposes of the application of the relevant rule against overlapping.

40 Furthermore, Article 67(2) of the Staff Regulations permits the institutions to decide to discontinue the application of the rule against overlapping laid down

therein only in two situations. The first is where there is an objective change in the nature of the allowances paid from other sources as a result, in particular, of the national legislation under which they are paid being amended. The second is where the institution, in discharging the duty imposed on it by that provision (see paragraph 39), finds that it has failed correctly to classify, in accordance with objective, uniformly applicable criteria, the national allowances declared by the person concerned and has thus improperly deducted those allowances. In those circumstances, the compulsory decision to discontinue the application of Article 67(2) of the Staff Regulations takes effect when the improper deduction was first made.

41 Accordingly, it must be held that, after deciding in this instance to discontinue the application of Article 67(2) of the Staff Regulations to the national allowances in question on the ground that those allowances and those paid under Article 2 of Annex VII to the Staff Regulations were not of like nature, the Parliament was wrong to refuse to reimburse the amounts which it had deducted from the applicant's pay pursuant to that provision for the period from 1 November 1987 to 30 April 1993.

42 This plea must consequently be upheld.

43 It follows from all the foregoing that the application is well founded.

Costs

44 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in

the successful party's pleadings. Since the Parliament has been unsuccessful and the applicant has applied for an order as to costs, the Parliament must be ordered to pay the whole of the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby:

1. **Annuls the decision of the European Parliament of 1 December 1994 refusing to reimburse to the applicant the amounts deducted from her pay pursuant to Article 67(2) of the Staff Regulations of Officials of the European Communities for the period from 1 November 1987 to 30 April 1993;**

2. **Orders the Parliament to bear its own costs and to pay the applicant's costs.**

Saggio Tiili Moura Ramos

Delivered in open court in Luxembourg on 6 March 1996.

H. Jung A. Saggio

Registrar President