JUDGMENT OF THE COURT
7 May 1987 *

In Case 186/85

Commission of the European Communities, represented by Dimitrios Gouloussis, Legal Adviser, and by Marie Wolfcarius, a member of the Commission's Legal Department, acting as Agents, with an address for service in Luxembourg at the office of G. Kremlis, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

Kingdom of Belgium, represented by Robert Hoebaer, Director at the Ministry of Foreign Relations, acting as Agent, with an address for service in Luxembourg at the Belgian Embassy, 4 rue des Girondins,

defendant,

APPLICATION for a declaration that the Kingdom of Belgium has failed to fulfil its obligations under Article 67 (2) and the second paragraph of Article 68 of the Staff Regulations of Officials of the European Communities, Article 20 of the Conditions of Employment of Other Servants of the European Communities, Article 5 of the EEC Treaty and Articles 15 and 19 of the Protocol on the Privileges and Immunities of the European Communities by establishing a system involving the deduction of family allowances payable under the aforesaid Staff Regulations and Conditions of Employment from those to be paid under Belgian legislation and by maintaining a system of family benefits which alters the supplementary effect of the allowances paid by the Communities,

* Language of the Case: French.

THE COURT,

composed of: Lord Mackenzie Stuart, President, Y. Galmot and F. Schockweiler (Presidents of Chambers), G. Bosco, T. Koopmans, U. Everling and R. Joliet, Judges,

Advocate General: J. Mischo
Registrar: D. Louterman, Administrator

having regard to the Report for the Hearing and further to the hearing on 17 April 1986,

after hearing the Opinion of the Advocate General delivered at the sitting on 15 May 1986,

gives the following

Judgment

1 By an application lodged at the Court Registry on 18 June 1985, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that the Kingdom of Belgium has failed to fulfil its obligations under Article 67 (2) and the second paragraph of Article 68 of the Staff Regulations of Officials of the European Communities, ('the Staff Regulations'), Article 20 of the Conditions of Employment of Other Servants of the European Communities ('the Conditions of Employment'), Article 5 of the EEC Treaty and Articles 15 and 19 of the Protocol on the Privileges and Immunities of the European Communities ('the Protocol') by providing that family benefits payable under Belgian legislation are to be reduced by the amount of the family benefits to which the Staff Regulations or the Conditions of Employment confer entitlement, thereby altering the supplementary effect of the last-mentioned benefits.

2 Reference is made to the Report for the Hearing for the facts of the case, the course of the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

3 Article 67 (2) of the Staff Regulations provides as follows:

'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.'

The allowances referred to in that article are the household allowance, the dependent child allowance and the education allowance.

4 The second paragraph of Article 68 lays down the same rule for officials who have non-active status, who have been retired in the interests of the service or who are entitled to the allowance provided for in Articles 34 and 42 of the former Staff Regulations of the European Coal and Steel Community.

5 Article 20 of the Conditions of Employment provides that the rule in Article 67 (2) is to apply by analogy to other Community servants.

6 That rule is also intended to apply by analogy to recipients of a retirement pension, an invalidity pension or a survivor's pension payable by the Communities, who by virtue of Article 81 of the Staff Regulations are entitled, under the conditions laid down in Annex VII, to the family allowances referred to in Article 67.

7 As is clear from the documents before the Court, the Kingdom of Belgium agreed, from the entry into force of the Staff Regulations and the Conditions of Employment, to grant the family allowances payable under its own national legislation in advance of the corresponding allowances payable under the Staff Regulations or the Conditions of Employment.

8 However, Royal Decree No 54 of 15 July 1982 (*Moniteur belge* of 20. 7. 1982, p. 8393), amending earlier legislation on the matter (Article 60 of the laws consolidated by the Royal Decree of 19 December 1939 on family allowances for employed persons), provided that henceforth 'the amount of the family benefits shall be reduced by the amount of the benefits of like nature which may be claimed in respect of a child who is eligible pursuant to other laws or regulations in force in another country or by virtue of the rules applicable to the staff of an institution governed by public international law, even if the award of those benefits is described by the aforesaid provisions and rules as supplementary to the family benefits awarded pursuant to these laws'.

9 An amendment to the same effect was made by the Royal Decree of 19 November 1982 (*Moniteur belge* of 17 December 1982, p. 14773) to Article 29 of the Royal Decree of 8 April 1976 laying down rules on family benefits for self-employed persons.

10 The Commission took the view that the Royal Decrees of 15 July and 19 November 1982 were incompatible with Article 67 (2) and the second paragraph of Article 68 of the Staff Regulations and with Article 20 of the Conditions of Employment, and that their implementation had been contrary to Article 5 of the EEC Treaty and Articles 15 and 19 of the Protocol, and therefore gave the Belgian Government formal notice to that effect by letter of 15 February 1983. As the Belgian Government denied that it was at fault, the Commission issued a reasoned opinion under Article 169 of the EEC Treaty on 29 November 1984. In response to the observations of the Belgian Government, which maintained its view, the Commission brought this action before the Court.

11 In these proceedings, the Commission has made three complaints, the first alleging infringement of Article 67 (2) and the second paragraph of Article 68 of the Staff Regulations and Article 20 of the Conditions of Employment, the second alleging infringement of Articles 15 and 19 of the Protocol and Article 5 of the EEC Treaty and the third alleging breach of the principle of non-discrimination.

12 The third complaint was made, as the Commission itself has acknowledged in its reply, only in the course of these proceedings and not during the procedure prior to the initiation of them.

13 The Court has consistently held (in particular in its judgment of 7 February 1984 in Case 166/82 *Commission* v *Italy* [1984] ECR 459) that the scope of an action brought under Article 169 of the Treaty is delimited by the preliminary administrative procedure provided for by that article and that the Commission's reasoned opinion and its application must be founded on the same grounds and submissions. It follows that the Court cannot consider, in these proceedings, a complaint that was not formulated in the reasoned opinion.

14 Accordingly the Commission's third submission must be declared inadmissible.

Definition of the circumstances covered by this case

15 Before considering the other complaints made by the Commission against Belgium, it must be emphasized that the family allowance scheme established by the Royal Decrees of 15 July and 19 November 1982 confers entitlement to allowances of that kind only on persons who are affiliated to the scheme, particularly by virtue of the pursuit of an activity as an employed or self-employed person, and who pay contributions to that end.

16 Accordingly, as the Commission pointed out at the hearing, this case really concerns only the situation of an official or servant of the Communities whose spouse carries on in Belgium an activity as an employed or self-employed person and is for that reason affiliated to the Belgian family allowance scheme described earlier, and the situation of an official or servant of the Communities who himself has part-time paid employment in Belgium, but outside the Community institutions, entailing his affiliation to the aforesaid scheme. More precisely, the Commission alleges that Belgium incorporated in its legislation certain provisions which led, in such situations, to Belgian family allowances being paid only in the form of supplements to the allowances of the same kind payable under the Staff Regulations.

17 The Court is therefore called upon to make a declaration in this case only in relation to those situations.

First complaint: infringement of Article 67 (2) and the second paragraph of Article 68 of the Staff Regulations and Article 20 of the Conditions of Employment

18 The Commission states that Article 67 (2) of the Staff Regulations contains a provision against the overlapping of family allowances which is also to be found in the second paragraph of Article 68 of the Staff Regulations and which has been extended to other Community servants by Article 20 of the Conditions of Employment. That rule against the overlapping of benefits requires officials to declare allowances of like nature paid from other sources so as to enable those allowances to be deducted from those payable under the Staff Regulations. In adopting Article 67 (2), the Community legislature wished to make the allowances provided for by the Staff Regulations and the Conditions of Employment supplementary to the benefits of like nature paid under the various national systems. Accordingly, the purpose of that article is, *inter alia*, to limit the financial burden of the Communities.

19 The Commission contends that the provision against the overlapping of benefits which was adopted by Belgium disregards the supplementary role of the benefits provided for by the Staff Regulations and has the effect of augmenting the financial burden of the Communities in this area.

20 The Belgian Government, on the other hand, denies that the purpose of Article 67 (2) is to impose an obligation on the Member States. In its view, that provision constitutes merely a rule against the overlapping of benefits, which is designed to prevent a person from benefiting twice from allowances of like nature and is therefore merely an internal rule of the Community administration. With regard to the reduction of the financial burden borne by the Communities as a result of the application of the rule against the overlapping of benefits, that is merely an indirect effect of Article 67 (2) and not the objective pursued by it.

21 It must be borne in mind, first, that the Staff Regulations and the Conditions of Employment were adopted by means of Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968 (Official Journal, English Special Edition 1968 (I), p. 30) and that, by virtue of the second paragraph of Article 189 of the EEC Treaty, that regulation has general application, is binding in its entirety and is directly applicable in all Member States. It follows that, as the Court pointed out in particular in its judgment of 20 October 1981 in Case 137/80 *Commission* v *Belgium* [1981] ECR 2393, in addition to having effects within the Community administration, the Staff Regulations and the Conditions of Employment are also binding on Member States in so far as their cooperation is necessary in order to give effect to those measures. Accordingly, it is necessary to consider whether Article 67 (2) of the Staff Regulations imposes binding obligations on the Member States.

22 It must be pointed out, for those purposes, that the family allowances at issue in this case constitute benefits the award of which depends on the family circumstances of the official concerned. Accordingly, in the absence of special provisions, the application of the Community scheme in conjunction with a national scheme could give rise to conflicts, inasmuch as allowances could be claimed in full under both schemes in respect of the same set of family circumstances. The purpose of Article 67 (2) of the Staff Regulations is precisely to resolve conflicts of that kind.

23 If the conflicts in question were governed by provisions of national law, they might be resolved in different ways according to the Member State within whose territory the official or his spouse carried on their activities or resided. Article 67 (2) of the Staff Regulations makes it possible to resolve conflicts between the

Community scheme and the various national schemes, as the family allowances provided for by the Staff Regulations are paid to those entitled to them only in so far as they exceed the amount of the comparable allowances paid under a scheme established by the legislation of a Member State. Since it is based on Article 67 (2) itself, that is to say on a provision contained in a regulation adopted pursuant to the second paragraph of Article 189 of the EEC Treaty, the supplementary effect of allowances payable under the Staff Regulations is binding on the Member States and cannot be disregarded by national legislation.

24 The Belgian provisions at issue in this case disregard the supplementary effect of those allowances. It is clear from the wording of Article 60 of the consolidated laws on family allowances for employed persons, as amended by the Royal Decree of 15 July 1982, that the amount of the family benefits awarded under the rules applicable to the staff of an institution governed by public international law must be deducted from the amount of the benefits of like nature paid under Belgian law 'even if the award of those benefits is described by the aforesaid provisions and rules as supplementary to the family benefits awarded pursuant to these laws'.

25 Once it has been established that the supplementary effect of the family allowances provided for by the Staff Regulations and the Conditions of Employment is binding on the Member States, the circumstances in which that effect is binding and therefore imposes obligations on the Member States remain to be determined.

26 In that regard, Article 67 (2) must be regarded as forming part of the general system governing the remuneration which the Communities are required to pay their officials pursuant to Article 62 of the Staff Regulations. That provision includes family allowances in the remuneration to which those officials are entitled. For the same reason, Article 67 is included in Section 1, Chapter I, Title V of the Staff Regulations, which is headed 'Remuneration'. Articles 19 and 61 of the Conditions of Employment also treat the family allowances payable to other Community servants as remuneration.

27 In the context of the system of remuneration, Article 67 (2), in so far as it provides that allowances of like nature paid from other sources are to be deducted

from those payable by the Communities, constitutes an exception to Article 62 of the Staff Regulations and cannot therefore be given a broad interpretation.

28 Even if the effect of that provision is to limit the financial burden of the Communities in the sphere of family allowances, it cannot remove the Communities' obligation to pay the allowance in question whenever a Member State confers entitlement to family allowances in respect of the child of an official, former official or other servant of the Communities.

29 In that regard, family allowances, in so far as they are components of remuneration, must be regarded as linked, in the scheme of the Staff Regulations, to an employment relationship or, in general, to a gainful occupation.

30 It must be acknowledged, therefore, that Article 67 (2) applies only where, in relation to a Member State whose legislation confers entitlement in principle to the payment of national allowances in respect of a child who is eligible for allowances under the Staff Regulations, there is a comparable link with circumstances conferring entitlement to the award of allowances under the Staff Regulations.

31 Accordingly, it is only where the spouse of an official, retired official or other Community servant has or has had paid employment in a Member State that Article 67 (2) of the Staff Regulations and the other provisions related thereto preclude that State from withholding payment of the family allowances provided for by its own legislation on the ground that the spouse may qualify for allowances under the Staff Regulations in respect of the same child.

32 Similarly, Article 67 (2) and the provisions related thereto preclude a Member State from withholding payment of the family allowances provided for by its own legislation in circumstances such as those envisaged by the Commission in its application, in which the official himself has part-time paid employment outside the institutions, within the territory of that State, and is for that reason affiliated to the national family allowance scheme.

33 However, Article 67 (2) is not applicable in the other case envisaged in the Commission's application, that is to say, where the spouse of an official carries on within the territory of a Member State an activity as a self-employed person, even if such an activity entails affiliation to the national family allowance scheme and thereby confers entitlement in principle to the award of those allowances by the Member State in question. The allowances of like nature which, according to the aforesaid provision, must be deducted from the family allowances payable under the Staff Regulations and thus relieve the Community institutions of the obligation to pay the last-mentioned allowances, are only those paid in connection with paid employment.

34 The conclusion must therefore be drawn that Article 67 (2), and the provisions of the Staff Regulations and the Conditions of Employment which are related to it, do not impose any obligations on the Member States in the sphere of family allowances where the spouse of an official, retired official or other Community servant carries on within the territory of a Member State an activity as a self-employed person.

35 In conclusion, it must be held that, by providing that the family benefits payable under the Belgian legislation referred to in this case are to be reduced by the amount of the allowances of the same kind provided for by the Staff Regulations or the Conditions of Employment, thereby altering the supplementary effect of those allowances where the spouse of the official, retired official or other Community servant has paid employment within Belgian territory or where the official himself has part-time paid employment outside the Community institutions which entails his affiliation to the national family allowance scheme, the Kingdom of Belgium has failed to fulfil its obligations under Article 67 (2) and the second paragraph of Article 68 of the Staff Regulations and Article 20 of the Conditions of Employment.

Second complaint: infringement of Article 5 of the EEC Treaty and Articles 15 and 19 of the Protocol

36 In its second complaint, the Commission alleges that the Belgian Government adopted the Royal Decrees of 15 July and 19 November 1982 without consulting it.

37 According to the Commission, the obligation to consult it is imposed on the Belgian Government by Article 19 of the Protocol, which provides that 'the institutions of the Communities shall, for the purposes of applying this Protocol, cooperate with the responsible authorities of the Member States concerned'. The Commission also refers to Article 15 of the Protocol, which provides that 'the Council shall, acting unanimously on a proposal from the Commission, lay down the scheme of social security benefits for officials and other servants of the Communities', and to Article 5 of the EEC Treaty.

38 According to the Belgian Government, none of the provisions relied upon by the Commission imposes an obligation on the Member States to regulate situations in which family allowances payable under the various national systems overlap with allowances of the same kind payable under the Staff Regulations.

39 Without there being any need to consider whether Articles 15 and 19 of the Protocol impose any obligations on the Member States with regard to the subject-matter of this case, it is sufficient to state that a Member State may not adopt, as Belgium has done in this case, any provisions affecting the application of the Staff Regulations and amending an earlier practice consistently followed by it, without consulting the Community institutions concerned. The Belgian Government has therefore disregarded the duty of cooperation which must govern relations between the Community and the Member States and has infringed Article 5 of the EEC Treaty.

40 Accordingly, it must be held that, by failing to consult the Commission on certain provisions which it intended to adopt and which concerned the overlapping of family allowances provided for by Belgian legislation with the allowances of like nature provided for by the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities, the Kingdom of Belgium has failed to fulfil its obligations under Article 5 of the EEC Treaty.

Costs

41 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. However, under the first subparagraph of Article 69 (3),

where each party succeeds on some and fails on other heads, the Court may order that the parties bear their own costs in whole or in part. As the Commission has succeeded in only some of its submissions, the parties must be ordered to bear their own costs.

On those grounds,

THE COURT

hereby:

(1) Declares that, by providing that the family benefits payable under the Belgian legislation referred to in this case are to be reduced by the amount of the allowances of the same kind provided for by the Staff Regulations of Officials of the European Communities or the Conditions of Employment of Other Servants of the European Communities, thereby altering the supplementary effect of those allowances where the spouse of the official, retired official or other Community servant has paid employment within Belgian territory or where the official himself has part-time paid employment outside the Community institutions which entails his affiliation to the national family allowance scheme, the Kingdom of Belgium has failed to fulfil its obligations under Article 67 (2) and the second paragraph of Article 68 of the aforesaid Staff Regulations and Article 20 of the aforesaid Conditions of Employment;

(2) Declares that, by failing to consult the Commission on certain provisions which it intended to adopt and which concerned the overlapping of family allowances provided for by Belgian legislation with the allowances of like nature provided for by the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities, the Kingdom of Belgium has failed to fulfil its obligations under Article 5 of the EEC Treaty;

(3) Dismisses the remainder of the application;

(4) Orders the parties to bear their own costs.

Mackenzie Stuart Galmot Schockweiler

Bosco Koopmans Everling Joliet

Delivered in open court in Luxembourg on 7 May 1987.

P. Heim
Registrar

A. J. Mackenzie Stuart
President