JUDGMENT OF THE COURT (SECOND CHAMBER)
OF 21 NOVEMBER 1974 [1]

Johannes Coenrad Moulijn
v Commission of the European Communities

Case 6/74

Summary

1. *Community law — Literal interpretation — Unsatisfactory result — Interpretation that is reasonable and appropriate to the purpose*
   (EEC Treaty, Article 164)
2. *Officials — Family allowances — Persons treated as a dependent child — Purposes — Staff Regulations, Annex VII, Article 2 (2) — Strict interpretation — Implementing provisions, Article 1 (4) — Objective criteria — Equality of treatment — Legality*

1. A provision which by reason of the divergence between the versions in different languages does not lend itself to a clear and uniform interpretation must be interpreted by reference to its purpose and its general scheme.
2. The provisions under which an official may claim an exceptional Community benefit — the treatment of a person as a dependent child — must be interpreted strictly. The person involved must in satisfying his legal obligations to maintain, first utilize his non-Community resources; accordingly the whole of these resources must count in calculating the sum on the basis of which the obligation to maintain is measured when determining whether it amounts to 'heavy expenditure'.

   Thus interpreted, Article 1 (4) of the implementing provision, affecting all persons falling within its area of application on the basis of objective and justified criteria, is not incompatible with the general principle of equal treatment of officials or with other general principles of law.

In Case 6/74

JOHANNES COENRAD MOULIJN, a former official of the Commission of the European Communities, represented by R. Samkalden, advocate of the Amsterdam Bar, with an address for service at Luxembourg at the chambers of Maîtres Loesch and Wolter, 2, rue Goethe,

applicant,

1 — Language of the Case: **Dutch.**

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by R. Bayens, its legal adviser, acting as agent, with an address for service in Luxembourg at the chambers of its legal adviser P. Lamoureux, 4, boulevard Royal,

defendant,

Application for annulment of the decision of the Commission, rejecting the applicant's request for a person to be treated as a dependent child, in conformity with the provisions of Article 2 (4) of Annex VII of the Staff Regulations.

THE COURT (Second Chamber)

composed of: Lord Mackenzie Stuart, President of Chamber, H. Kutscher, M. Sørensen (Rapporteur), Judges,

Advocate-General: H. Mayras
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact

The facts and the arguments of the parties presented in the course of the written procedure may be summarized as follows:

I — Facts and procedure

1. Mr Moulijn, a Dutch national, was a principal administrator with the Commission of the European Communities.

At his request the Commission decided, with effect from 1 October 1968, to adopt in relation to him a measure terminating his service under the provisions of Article 4 of Regulation No 259/68 of the Council of 29 February 1968 (OJ L 56, 4. 3. 1968).

The allowance granted to the applicant — which constituted his only source of

income — was at the time when he retired on 1 March 1973 converted into a retirement pension.

As from that date he was entitled not only to his Community retirement pension but also, as a former Dutch civil servant, to a Dutch retirement pension.

2. In 1965, a Dutch court pronounced a decree of divorce in his case; by the same decree he was ordered to pay to his former wife maintenance in the sum of Fl. 700 per month (increased in 1968 to Fl. 784 per month).

The applicant thereupon asked the Commission to treat his former wife as though she were a dependent child within the meaning of Article 2 (4) of Annex VII of the Staff Regulation which provides:

'Any person whom the official has a legal responsibility to maintain and whose maintenance involves heavy expenditure may, exceptionally, be treated as if he were a dependent child by special reasoned decision of the appointing authority, based on supporting documents.'

By a decision of 1969, having an effect retrospective to December 1965 the Commission acceded to this request. This decision was twice renewed, the last occasion being 28 February 1973.

3. On 15 November 1972 the applicant requested an extension of this treatment of his former wife as if she were a dependent child.

The Commission rejected this application by letter dated 18 April 1973. The letter contains the following passage:

'As regards the application of the provisions implementing Article 2 (4) of Annex VII of the Staff Regulations, made by the Commission on 7 November 1963, I have to inform you that the expenditure resulting from your obligation to maintain your former wife must be calculated as follows:

1. Amount of actual expenditure: Fl. 784 = 10 827 FB

2. Taxable amount of retirement pension = 24 053 FB

3. 20 % of the taxable amount (2) = 4 811 FB

4. Net amount of other income (approx. Fl. 1 400 = 19 334 FB

5. Total (3 + 4) = 24 145 FB

It follows that the actual expenduture borne by you is less than 20 % of the taxable amount of the pension paid to you by the Commission, increased by the net amount of the Dutch pension received by you since 1 February 1973, i.e. FB 10 827 < FB 24 145 (FB 4 811 + FB 19 334).

In these circumstances, you no longer fulfil the conditions laid down by the provisions of the Staff Regulations governing the grant of the allowance for a person treated as a dependent child.'

The first paragraph of Article 1 (4) of these implementing provisions reads:

'The official must provide evidence that he devotes a sum equal to not less than 20 % of the taxable amount of his salary, increased, where appropriate, by the net amount of any other income he may have, to the maintenance of the person for whom he is responsible.'

(The Dutch version of that provision reads:

'De ambtenaar moet aantonen dat hij voor het onderhoud van de desbetreffende persoon ten minste 20 % besteedt van het belastbare bedrag van zijn bezoldiging, eventueel vermeerderd met het netto bedrag van zijn andere inkomsten').

4. Since the complaint lodged on 25 June 1973 against the Commission's refusal contained in its letter of 18 April 1973 remained unanswered, the present application was lodged on 30 January 1974 and registered at the Court on the same date.

5. By letter of 14 February 1974 the Commission informed the applicant that it had been unable to accede to his request.

The written procedure followed the normal course.

6. The Court (Second Chamber), having heard the Advocate-General, decided to open the oral procedure without any preparatory inquiry.

II — Submissions of the parties

The *applicant* submits that the Court should:

— annul the implied decision rejecting the applicant's complaint against the decision not to treat his former wife as if she were a dependent child;

— find — and to the extent that this may be necessary, rule — that the applicant fulfils the conditions laid down by the Staff Regulations of the European Communities and in particular Article 2 (4) of Annex VII of the Staff Regulations and by Article 1 (4) of the Decision of the Commission of the European Communities of 7 November 1963, laying down implementing provisions as to the treatment of a person as a dependent child;

— as a subsidiary point — to the extent that this may be necessary — find that for other reasons the applicant's request for his former wife to be treated as a dependent child can be acceded to;

— consequently to rule and adjudge that the Commission must as from 1 March 1973 treat the applicant's former wife as if she were a dependent child and for that reason grant the applicant all the advantages resulting from the application of the Staff Regulations, their annexes and their general implementing provisions;

— adjudge that the sum to be paid to the applicant in the light of the foregoing be increased by interest at the rate of 8 % per annum as from 1 March 1973 until payment, or at any rate such interest as the Court may deem just;

— order the Commission to pay the entire costs of the proceedings.

The *Commission* submits that the Court should reject the application as unfounded and order the applicant to pay the costs to the extent that they are not payable by the Commission under the provisions of Articles 70 and 95 (1) of the Rules of Procedure.

III — Pleas and arguments of the parties

The *applicant* submits that the interpretation given by the Commission to Article 1 (4) of the provisions implementing Article 2 (4) of Annex VII of the Staff Regulations implies that he could not claim the benefit of assimilation unless all his other income, increased by 1/5 of his EEC pension, were less than the effective amount of maintenance.

He considers that on the contrary this Article refers to 20 % of the total income, so that it must be interpreted as meaning that the effective expenditure borne is in excess of 20 % of his EEC pension increased by the net amount of his Dutch pension.

In the applicant's view the comma which appears in the Dutch text after the word 'bezoldiging' (salary) has the purpose of indicating a pause in the sentence and does not prevent the 20 % being calculated on the remuneration and on any additional income.

This interpretation has the merit of being more in conformity with the purpose of Article 2 (4) of Annex VII of the Staff Regulations. The determining factor is that of 'heavy expenditure', and the sole objective criterion for determining whether it is a case of heavy expenditure is the proportion of the

obligation to maintain in relation to the total amount of the income. By limiting oneself to 20 % of the Community remuneration whilst taking into consideration other income to the extent of a 100 %, one introduces an arbitrary element, that of the origin of the income.

The applicant refers to the Court's Judgment of 7 June 1972 (Case 46/71, *Brandau v Council,* Rec. 1972, p. 373) according to which the administration must, in putting Article 2 (4) of Annex VII of the Staff Regulations into operation, proceed on 'principles of equity'.

The applicant argues that the Commission violated both the letter and the purpose of Article 1 (4) of the implementing provisions. In particular he considers that the Commission has not taken into account the heavy charges he has to bear by reason of the maintenance obligation imposed on him, since the obligation which he in fact bears must be considered heavy.

Finally, he argues that the Commission violated general principles of Community law, in particular the principle of equal treatment for officials. The Commission has the obligation of ensuring that the assimilation provided for by Article 2 (4) of Annex VII be granted to every official where the charge which he bears is in excess of 20 % of the total amount of his income, whatever its origin.

He refers also to the principles of legal certainty and equity, generally recognized in Community law. On this point he claims that the Commission has refused him the extension of the assimilation previously granted to him, and this notwithstanding the fact that the total amount of his income has diminished by almost one half. Added to this circumstance is the fact that the Commission has not taken into account that because of the withdrawal of the allowance that had been granted to the applicant by virtue of the assimilation, his former wife had not been able to remain a member of the Community's sickness insurance scheme and that for that reason she had been obliged to effect her own insurance, the cost of such contract of insurance in turn becoming the applicant's liability (as a consequence the mantenance payment had as from 1 May 1973 been increased to Fl. 864 per month).

Finally, the applicant recalls the manner in which his request and his complaint had been treated by the Commission, resulting in unnecessary expense and subjecting him to psychological tension; the Commission had failed to comply with its specific promise to forward to the applicant in good time a reasoned decision.

The applicant considers that by reason of these facts there are good grounds for ordering the Commission to pay the full costs of the proceedings.

In the *Commission's* view, the present proceedings essentially have the purpose of interpreting the first paragraph of Article 1 (4) of the general provisions implementing Article 2 (4) of Annex VII to the Staff Regulations. The Commission considers that, on a closer examination of the term 'heavy expenditure', one has in accordance with the general implementing provisions to take into account the total net amount of income other than Community remuneration (in the present case, the EEC pension) and not only 1/5 of such income from other sources. This restrictive interpretation is not only in line with the meaning of the restrictive basic provision, which is what Article 2 (4) of Annex VII to the Staff Regulations amounts to, it is also based on the logical connexion of the text: in the Dutch text the part of the sentence reading 'eventueel vermeerderd...' (increased, where appropriate) following upon a comma, refers to the '20 % ... van het belastbare bedrag van (de) bezoldiging' (20 % of the taxable amount of (the) salary) of the official. Moreover, it appears both equitable and normal that a European official who has other means at his disposal should start

by using these before claiming a family allowance which essentially has an exceptional character — that clearly emerges from the aforementioned Judgment of 7 June 1972. The notion of 'heavy expenditure' must essentially be seen in relation to the possible existence of 'other income', other than the Community remuneration (or pension) and this way of looking at the matter is perfectly in accordance with the 'considerations of equity' relied upon.

In the Commission's view the applicant is wrong in the present case to invoke general principles of Community law. What is in issue is whether the administration in a particular case has made a correct use of its discretionary power of assessment, and not at all a matter of searching outside the Community texts — possibly even contrary to these texts — for a basis to enable a grant of an exceptional nature to be continued.

Finally, the Commission argues that the question of costs cannot be dealt with independently of the outcome of the case.

The parties refrained from making oral observations.

The Advocate-General delivered his opinion on 10 October 1974.

Law

1 The application is for the annulment of the decision of 18 April 1973 by which the Commission rejected the applicant's request for his divorced wife to be treated as a dependent child, in conformity with the provisions of Article 2 (4) of Annex VII of the Staff Regulations.

2 Article 2 (4) of Annex VII of the Staff Regulations reads:
'Any person whom the official has a legal responsibility to maintain and whose maintenance involves heavy expenditure may, exceptionally, be treated as if he were a dependent child by special reasoned decision of the appointing authority, based on supporting documents.'

3 The Commission made regulations laying down the manner of implementing this provision (hereinafter called the 'implementing provisions'.

4 Under Article 1 of these implementing provisions the following conditions must be present for a person to be treated as if he were a dependent child:

'. . . .

4. The official must provide evidence that he devotes a sum equal to not less than 20 % of the taxable amount of his salary, increased, where appropriate, by the net amount of any other income he may have, to the maintenance of the person for whom he is responsible.'

5 The Commission rejected the applicant's request for Article 2 (4) of Annex VII of the Staff Regulations to be applied, on the grounds that he did not fulfil the conditions laid down by Article 1 (4) of the implementing provisions.

6 The Commission interpreted this as meaning that the expenditure for which the applicant is liable must not be less than 20 % of his Community remuneration and the total of his non-Community income.

7 The applicant contested this interpretation and argued that the provision in question must be interpreted as meaning that the expenditure must not be less than 20 % of the official's total income, irrespective of its source.

8 It is not in dispute that if his own interpretation is correct, the applicant fulfils the conditions laid down by the provision in question.

9 Accordingly, the outcome of the suit depends on the interpretation that ought to be given to Article 1 (4) of the implementing provisions.

10 By reason of the divergences that exist between the versions of this text in different languages it does not lend itself to a clear and uniform interpretation on the point in question.

11 Accordingly, it must be interpreted by reference to the purpose and the general scheme of the implementing provisions on the treatment of another person as if he were a dependent child.

12 In this respect it is necessary to bear in mind that treatment as a dependent child has an exceptional character which is emphasized by the very text of

Article 2 (4) of Annex VII of the Staff Regulations, which provides that this can only be done 'exceptionally' and 'by special reasoned decision'.

13 The conditions laid down for another person to be treated as a dependent child must accordingly be interpreted strictly.

14 It seems to be in accordance with the purpose of Article 2 (4) of Annex VII that the person involved should, in satisfying his legal obligations to maintain, first utilize his non-Community resources before applying for an exceptional Community benefit, which means that the whole of these resources and not only a part thereof must count in calculating the sum on the basis of which the obligation to maintain is measured when determining whether it amounts to heavy expenditure within the meaning of the provision cited.

15 Thus interpreted, Article 1 (4) of the implementing provisions, affecting all persons falling within its area of application on the basis of objective and justified criteria, is not incompatible with the general principle of equal treatment of officials or with other general principles of law cited by the applicant.

16 Accordingly, the application must be rejected as unfounded.

Costs

17 The applicant has failed in his action.

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

19 However, under the terms of Article 70 of the said Rules, costs incurred by the institutions in actions by servants of the Community are to be borne by such institutions.

on those grounds,

THE COURT (Second Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders each party to bear its own costs.**

Mackenzie Stuart Kutscher Sørensen

Delivered in open court in Luxembourg on 21 November 1974.

A. Van Houtte
Registrar

Mackenzie Stuart
President of the Second Chamber

OPINION OF MR ADVOCATE-GENERAL MAYRAS DELIVERED ON 10 OCTOBER 1974 [1]

Mr President,
Members of the Court,

Mr Moulijn, a former principal adminstrator at the Commission of the European Economic Community, retired on 1 March 1973. He is therefore entitled to a Community retirement pension and in addition a national retirement pension, since he had also been an official of the Dutch State.

Mr Moulijn has been divorced since 1965. The Dutch court which granted the divorce ordered him to pay his former wife monthly maintenance of Fl. 700, which was increased to Fl. 784 in 1968.

Under Article 2 (4) of Annex VII to the Staff Regulations it is stated that:

'Any person whom the official has a legal responsibility to maintain and whose maintenance involves heavy expenditure may, exceptionally, be treated as if he were a dependent child by special reasoned decision of the appointing authority, based on supporting documents.'

Mr Moulijn requested the Commission to treat his former wife as a dependent

1 — Translated from the French.