of him within the meaning of the second subparagraph of Article 3 (4) of the aforesaid regulation.

2. The tax system of the Communities is an independent system which is applied irrespective of the national systems. Consequently the principle of equality does not require account to be taken of possible inequalities which may become apparent because the Community and national systems overlap.

In Joined Cases 81, 82 and 146/79

1. DENISE SORASIO-ALLO, an official of the Commission of the European Communities, of 68 Avenue Emile Duray, Brussels 1050,

2. CECILIA AIMO-CAMPOGRANDE, an official of the Commission of the European Communities, of 21 Spaltlaan, Overijse 1900 (Belgium),

3. ALAIN-PIERRE ALLO, an official of the Commission of the European Communities, of 68 Avenue Emile Duray, Brussels 1050,

assisted and represented by Edmond Lebrun of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Tony Biever, Advocate, 83 Boulevard Grande-Duchesse Charlotte,

applicants,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Thomas F. Cusack, acting as Agent, assisted by Daniel Jacob of the Brussels Bar, with an address for service in Luxembourg at the office of its Legal Adviser, Mario Cervino, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION

In Case 81/79:

On the one hand, for annulment of the implied decision rejecting the complaint lodged on 24 October 1978 and, to the extent necessary, of Mr Bosmans's note dated 29 September 1978 on the calculation of the taxable

amount of the applicant's remuneration and, on the other hand, for an order that the Commission do pay the sums corresponding to the overpayments of tax from the date when she took up her appointment until date of execution of the judgment to be delivered;

In Case 82/79:

On the one hand, for annulment of the implied decision rejecting the complaint lodged on 30 October 1978 and, to the extent necessary, the decision calculating the taxable amount of the applicant's remuneration when she advanced to Step 5 of Grade A 7 (on 1 October 1978) and, on the other hand, for an order that the Commission do pay the sums corresponding to the overpayments of tax from the date when she took up her appointment until the date of execution of the judgment to be delivered;

In Case 146/79:

On the one hand, for annulment of the decision discontinuing the additional abatements in respect of dependent children and of the implied decision rejecting the complaint made in this connexion on 16 May 1979 and supplemented by letter dated 21 June 1979 and, on the other hand, for an order that the Commission do pay the sums corresponding to the overpayments of tax from 1 April 1979 until the date of execution of the judgment to be delivered,

THE COURT (First Chamber)

composed of: T. Koopmans, President of Chamber, A. O'Keeffe and G. Bosco, Judges,

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

gives the following

JUDGMENT

Facts and Issues

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

I — Facts and written procedure

A — The rules applicable

1. The second paragraph of Article 3 (4) of Regulation (EEC, Euratom, ECSC) No 260/68 of the Council of 29 February 1968 laying down the conditions and procedure for applying the tax for the benefit of the European Communities (Official Journal, English Special Edition 1968 (I), p. 37 provides that:

"An additional abatement equivalent to twice the amount of the allowance for a dependent child shall be made for each dependent child of the person liable as well as for each person treated as a dependent child within the meaning of Article 2 (4) of Annex VII to the Staff Regulations."

2. Article 2 of Annex VII to the Staff Regulations provides that:

"(1) An official who has one or more dependent children shall ... receive an allowance ... for each dependent child.

(2) 'Dependent child' means the legitimate, natural or adopted child of an official, or of his spouse, who is actually being maintained by the official.

(6) Not more than one dependent-child allowance shall be paid in respect of any one dependent child within the meaning of this article, even where the parents are in the service of two different institutions of the three European Communities".

B — The facts

1. Denise Sorasio-Allo, the applicant in Case 81/79, is an official of the defendant in Grade A 5. Her husband, Jean-Pierre Allo, the applicant in Case 146/79, is also an official of the Commission and is in Grade A 6. Cecilia Aimo-Campogrande, the applicant in Case 82/79, is also an official of the defendant and is in Grade A 6. Her husband, Gianluigi Campogrande, is also an official of the Commission.

Mr and Mrs Allo have two children born in 1967 and 1974. Mr and Mrs Campogrande have three children born in 1966, 1967 and 1968.

2. When Mrs Aimo-Campogrande received her salary statement for October 1978 following her advancement to step 5 of Grade A 7 (on 1 October 1978) she

felt that the tax deducted was higher than it should have been on the basis of Regulation No 260/68 and asked the administration for an explanation. She was informed that when the basic taxable amount was being calculated the additional abatement for a dependent child had not been applied.

3. As far as Mrs Sorasio-Allo was concerned she sent a note on 15 September 1978 to Mr Pratley, head of the Individual Rights and Privileges Division, asking him to tell her whether, when the taxable amount of her remuneration was calculated, account was taken of the tax abatement for dependent children provided for by Regulation No 260/68 and requesting that, if necessary, the requisite corrections be made for the past as well as for the future.

By a note of 29 September 1978 Mr Bosmans, head of the Salaries, Pensions, Missions and Miscellaneous Allowances Division, replied that the provision for the additional tax abatement for a dependent child applied only to an official to whom one or more dependent-child allowances were granted under Article 2 (1) of Annex VII to the Staff Regulations, and that the allowances were in fact not awarded to Mrs Sorasio-Allo but to her husband, so that the abatement in question applied only when Mr Allo's and not Mrs Sorasio-Allo's remuneration was calculated.

4. From the date when Mr Allo entered the service until May 1979 the additional abatement in respect of his two dependent children was always applied to the taxable amount of his remuneration. In May 1979 Mr Allo discovered that the additional tax abatements had been disallowed. An explanation obtained from the relevant division indicated that the disallowance of the said tax abatements was due not to a change in Mr Allo's personal situation but to the fact that his wife had been promoted to Grade A 5 and that from then on she and not he would receive the household, dependent-child and education allowances. In June 1979 an amount equivalent to the said allowances, paid in April, and to an increase in tax for the same month was deducted from Mr Allo's remuneration, since his wife's promotion had taken effect from 1 April 1979.

5. On 30 October 1978 Mrs Aimo-Campogrande submitted a complaint relating to the calculation of the taxable amount of her remuneration in her new step without the additional tax abatement's being made and asking for the taxable amount of her remuneration in the past to be corrected if necessary.

Mrs Sorasio-Allo submitted a complaint on 24 October 1978 against the failure to take into consideration her circumstances as to dependants when the taxable amount for the assessment of the tax payable by her was calculated and, to the extent necessary, against the rejection by the note of 29 September 1978 of her request of 15 September 1978 that, if necessary, the requisite corrections be made.

On 16 May 1979 Mr Allo lodged a complaint against the decision to disallow the additional abatements in

respect of his dependent children, followed on 21 June 1979 by the recovery of tax from his remuneration for June 1979.

There was no reply to these three complaints. Implied decisions rejecting the complaints are therefore deemed to have been taken pursuant to Article 90 (2) of the Staff Regulations.

C — Procedure

The applications in Cases 81, 82 and 146/79 were lodged on 21 May, 22 May and 19 September 1979 respectively. They were registered at the Court Registry on 22 May, 23 May and 20 September 1979 respectively.

In Case 146/79 Mr Allo asked for his application and those of his wife and of Mrs Aimo-Campogrande to be dealt with jointly. The First Chamber of the Court by an order dated 24 October 1979 ordered that for the purpose of the procedure and judgment Cases 81, 82 and 146/79 should be dealt with jointly. The applicants therefore lodged only a single reply and the Commission only a single rejoinder.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court (First Chamber) decided to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

The *applicants* claim that the Court should:

1. Declare the applications admissible and well-founded;

2. Consequently

(a) Declare that the applicants in Cases 81 and 82/79 have since they entered the service been and are entitled in respect of each dependent child to the additional abatement equivalent to twice the amount of the dependent-child allowance;

Declare that the applicant in Case 146/79 is entitled in respect of each dependent child to the additional abatement equivalent to twice the amount of the dependent-child allowance;

(b) Annul the implied decision rejecting the complaint lodged on 24 October 1978 and, to the extent necessary, Mr Bosmans's note of 29 September 1978 on the calculation of the taxable amount of the applicant's remuneration (Case 81/79);

Annul the implied decision rejecting the complaint lodged on 30 October 1978 and, to the extent necessary, the decision calculating the taxable amount of the applicant's remuneration when she advanced to Step 5 of Grade A 7 on 1 October 1978 (Case 82/79);

Annul the decision discontinuing the additional abatement in respect of his two dependent children at the time when the applicant's taxable remuneration as from 1 April 1979 was calculated and the implied

decision rejecting the complaint made in this connexion on 16 May 1979 and supplemented by letter dated 21 June 1979 (Case 146/79);

(c) Order the defendant to pay the sums corresponding to the overpayments of tax from

1 November 1973 (Case 81/79)
1 October 1974 (Case 82/79)
1 April 1979 (Case 146/79)

until the date of execution of the judgment to be delivered, by reason of the

non-application (Cases 81 and 82/79)

discontinuance (Case 146/79)

of the additional abatement in respect of each dependent child at the time of the calculation of the taxable remuneration;

(d) Order the defendant to pay default interest calculated as from the date on which each overpayment of tax was collected, or interest fixed by the Court at the rate of 8% per annum;

3. Order the defendant to pay the costs

The *defendant* contends that the Court should:

— Dismiss the applications as unfounded;

— Order the applicants to bear the costs;

— Subject to all necessary reservations.

III — Submissions and arguments of the parties

1. Submission of infringement of the second subparagraph of Article 3 (4) of Regulation No 260/68, infringement of the first subparagraph of Article 2 (2) and of Article 2 (6) of Annex VII to the Staff Regulations and of ultra vires *acts*

The *applicants* submit that the Commission does not apply or no longer applies, when calculating their taxable remuneration, the additional abatements referred to in the second subparagraph of Article 3 (4) of Regulation No 260/68 on the pretext that their spouses receive the dependent child allowances.

The only condition attached to entitlement to the additional abatement is that the recipient must have at least one dependent child, whilst for its part the first subparagraph of Article 2 (2) of Annex VII lays down that *inter alios* a legitimate child who is actually being maintained by the official is regarded as a dependent child.

Although Article 2 (6) of Annex VII to the Staff Regulations lays down that not more than one dependent-child allowance shall be paid in respect of any one dependent child, even where the parents are in the service of two different institutions of the three European Communities, its only effect is to avoid the cumulation, in respect of one child, of two dependent-child allowances, and is not therefore in any way connected with the concept of a dependent child or the calculation of taxable remuneration.

The *Commission* points out that, although it cannot be denied that Article 2 (6) of Annex VII does not refer expressly to the tax abatement in question, the provision against over-

lapping which it contains is merely a reminder of the general principle against the overlapping of family allowances expressed in Article 67 (2) of the Staff Regulations.

The dependent-child allowance like the education allowance is intended to be a contribution to the cost to an official of educating and maintaining a dependent child. Although technically these allowances are paid to the child's parents it is the child who is in fact, if not formally in law, the person for whom they are actually intended. The tax abatement is in reality a dependent-child allowance supplemental to that provided for by Article 67 (1) of the Staff Regulations. This abatement granted technically to the official who received the remuneration ought in fact to benefit the dependent child. It necessarily follows from the nature and function of the abatement in question that it can be allowed only once in respect of each dependent child even if his parents are both officials of the Communities. The wording of the second subparagraph of Article 3 (4) of Regulation No 260/68 confirms this principle by providing that the abatement shall be made "for each dependent child of the person liable". The Commission's practice in this field is adopted also by the other Community institutions.

The *applicants* reply that the illegality of the defendant's conduct lies in the fact that it has added to the wording of the second subparagraph of Article 3 (4) of Regulation No 260/68 additional conditions: that of receiving the dependent-child allowance and that of the existence of a dependent child conferring the right to the dependent-child allowance.

Moreover, the Commission's practice is inconsistent. In the case of two officials who are married to each other and have dependent children it allows the tax abatement only in the case of the official who receives the dependent-child allowance and this means that the entitlement to the abatement depends on receipt of the allowance and *a fortiori* that the existence of the right to the allowance is regarded as a necessary (but not sufficient) condition. On the other hand, it means that an official who has a child not conferring an entitlement to the allowance and who, *a fortiori*, does not receive it, qualifies for the abatement.

But the legal provisions are clear: Article 2 (6) of Annex VII does not refer to the tax abatement, Article 3 (4) of Regulation No 260/68 allows the tax abatement in respect of each dependent child of the person liable and Article 67 (1) of the Staff Regulations does not mention the tax abatement. The defendant's argument is therefore *contra legem.*

Likewise this argument disregards the principle of tax law that, if there is any doubt, the interpretation which is most favourable for the taxpayer must be adopted. The defendant also loses sight of the fact that the Community system of taxation is a system of individual taxation and this rules out the possibility of taking into consideration the tax position of the spouse or of the man and wife as a whole. The tax abatement is not an allowance and obeys its own laws.

The final absurdity of the defendant's reasoning is that the corollary of the rule

against the overlapping of family allowances is the obligation to declare allowances of the same type paid elsewhere. But there is no obligation to declare a tax abatement allowed elsewhere, in particular a tax abatement for which a spouse who is not an official qualifies. So that the defendant's system leads to the illogical situation that, in the case where husband and wife are both officials, there is only one tax abatement in respect of each dependent child, whereas in the case of a family where one spouse is an official and the other is not there may be two tax deductions in respect of each dependent child.

On the basis of the rationale of the scheme, the applicants consider it to be logical that, from the moment when, for example, parents jointly maintain a child, account is to be taken of this in the case not only of one parent but of both of them when taxable income is calculated.

The *defendant* replies that the fact that the conditions for allowing the fiscal abatement are wider than those for granting the dependent-child allowance is certainly not of such a kind as to render its interpretation illegal.

The administration's practice is not inconsistent. Allowing the spouse who receives the dependent-child allowance to receive the tax abatement is an appropriate arrangement, since the dependent-child allowance is granted to the spouse in receipt of the highest remuneration.

An exegetic interpretation makes it possible to establish that the second subparagraph of Article 3 (4) of Regulation No 260/68 lays the stress on the fact that each child is dependent. Consequently the abatement is allowed because of the existence of a dependent child without its being necessary to take into account the fact that the child depends on one or more Community taxpayers.

The defendant does not consider that it is bound by the principle of tax law relied on by the applicants either. The fact that two officials who are husband and wife are taxed separately in no way precludes the view that the abatement must be made only once in respect of each child. A dependent child can only be dependent once, whether he is entirely dependent on one of his parents or partially dependent on both of them, but in any case can never be entirely dependent on both his parents at the same time.

The defendant's argument is wholly in keeping with the practice adopted in the Member States, whose methods of allowing taxpayers who have dependent children a reduction of tax are certainly different but in each State the benefit is granted — whether the husband and wife are taxed separately or not — only once in respect of each dependent child.

2. *Submission of breaches of legal principles and rules, in particular the principles of equality, distributive justice, equity and the principle that a wrongful act or omission of the administration makes it liable and confers a right to compensation, which may be in kind, for the damage suffered.*

The *applicants* point out that the Commission systematically allows the tax abatement in the case of an official who

has a dependent child and whose spouse works outside the Communities even if he or she qualifies for such an abatement. The principles of equal treatment, equity and distributive justice are therefore disregarded to the extent to which the practice complained of — all the taxes being moreover equal — leads to the result that two salaries are taxed differently, whether the spouse of a Community official is in the service of the Communities or works outside them.

Appropriate compensation *in casu* is repayment of the taxes wrongly collected for this reason, together with interest.

The *defendant* thinks that it is not a question of comparing the applicants' situation with that of an imaginary official in a comparable situation to theirs but whose spouse works outside the Communities. In fact such a comparison would mean that account would have to be taken of a factor over which the administration has no control, namely the possible existence in the national law of rules comparable to those brought into force by Regulation No 260/68. The requirement of equal treatment is met as soon as compliance therewith is ensured in the rules adopted by the Community legislature, without its being necessary or moreover possible to take into consideration factors outside such rules such as the place where the official spends his remuneration or the national tax rules governing the salary of the offical's spouse.

In fact for there to be discrimination there must also be unequal treatment applied to identical or comparable situations. But in this case the comparison must not be between the tax position of the applicants and what it would be if their spouses worked outside the Communities, but between the general tax position of the applicants and their spouses as against what it would be if the latter were not employed by the Communities (cf. judgment of 16 December 1960 in Case 6/60, *Jean-E. Humblet* v *Belgian State* [1960] ECR 559).

The Commission considers that, even if the way in which it has interpreted the provisions in question is assumed to be wrong, it does not constitute a wrongful act or omission which could lead to the award of damages. The judgment in Case 23/69, *Anneliese Fiehn* v *Commission of the European Communities* [1970] ECR 547 shows that "The adoption of an incorrect interpretation ... does not constitute in itself a wrongful act". The applicants have not established the existence of exceptional circumstances. The judgment in Case 106/76, *Francine Gelders (née Deboeck)* v *Commission of the European Communities* [1977] ECR 1623 shows that "It is ... unnecessary to order the Commission to pay ... the sums claimed since the annulment of the contested decision will in itself cause the Commission to take a new decision in accordance with the judgment given".

The *applicants* reply that the Staff Regulations make it clear that it is the corollary of every rule against overlapping that benefits obtained from elsewhere must be declared. The defendant's system is condemned by the very proposition which it puts forward as its main argument, since, for the

observance of the legal principles to which it refers, account must in fact be taken of the similar benefit received elsewhere, that is to say of external factors, even in the absence of any provision to that effect.

The applicants confirm that there is indeed unequal treatment by adopting the line of reasoning taken up by the Commission in connexion with the first submission, which the Commission forgot when dealing with the second: the child of a man and wife who are both officials qualifies for only one tax allowance, whilst the child of an official and a person working outside may qualify for two tax reductions.

The illegal practice is not applied uniformly to everyone but only to the official whose spouse is also an official. Even if an illegal practice does not *in se* constitute a wrong it does so where, as in this case, it is arbitrary (no objective criterion), inconsistent (rule against overlapping without its indispensable counterpart) and discriminatory.

The applicants leave it to the Court to deal as it thinks best with their claims that the Commission should be ordered to pay the sums corresponding to the overpayments of tax to the extent to which the object of the claims may appear to be a consequence of the annulment of the contested decisions, but insist that they are entitled to an order for payment of default interest, since the fact that such interest is owed does not necessarily arise out of the annulment. Once there has been a wrongful act, default interest becomes payable as from the date when each overpayment of tax was collected (judgment of 16 March 1978 in Case 115/76, *Leonardo Leonardini* v *Commission of the European Communities* [1978] ECR 735).

The *Commission* replies that allowing two tax abatements in respect of each dependent child where the child's parents are both in the service of the Communities would itself be discriminatory. Thus a husband and wife who are both officials of the Communities would receive two abatements whereas an official whose spouse is not gainfully employed could only receive one. Such different treatment is clearly unjustifiable in view of the close link between the tax abatement and the existence of a dependent child and is therefore discriminatory.

The *Leonardini* judgment cannot provide the answer, since the Commission was ordered to pay default interest "having regard to . . . the lengthy delay preceding settlement of the claims arising from the accident", which was judged to be wrongful. The circumstances were entirely different both from those which gave rise to the *Fiehn* judgment and also from those in this case.

At the sitting held on 19 June 1980 the applicants, represented by Edmond Lebrun of the Brussels Bar and the Commission of the European Communities, represented by Daniel Jacob of the Brussels Bar, presented oral argument.

The Advocate General delivered his opinion at the sitting on 19 June 1980.

Decision

1 By applications lodged at the Court Registry on 22 May 1979, 23 May 1979 and 20 September 1979 the applicants, officials of the Commission, ask in substance for a declaration that they are entitled to the additional tax abatement equivalent to twice the amount of the allowance for a dependent child.

2 The second subparagraph of Article 3 (4) of Regulation (EEC, Euratom, ECSC) No 260/68 of the Council of 29 February 1968 laying down the conditions and procedure for applying the tax for the benefit of the European Communities (Official Journal, English Special Edition 1968 (I), p. 37) provides that:

"An additional abatement equivalent to twice the amount of the allowance for a dependent child shall be made for each dependent child of the person liable as well as for each person treated as a dependent child within the meaning of Article 2 (4) of Annex VII to the Staff Regulations."

3 Article 2 of Annex VII to the Staff Regulations provides that:

"(1) An official who has one or more dependent children shall . . . receive an allowance . . . for each dependent child.

(2) 'Dependent child' means the legitimate, natural or adopted child of an official, or of his spouse, who is actually being maintained by the official.

. . .

(6) Not more than one dependent-child allowance shall be paid in respect of any one dependent child within the meaning of this article, even where the parents are in the service of two different institutions of the three European Communities."

4 Mr and Mrs Allo have two children, born in 1967 and 1974. Mr and Mrs Campogrande have three children, born in 1966, 1967 and 1968.

5 On 24 October 1978 Mrs Sorasio-Allo submitted a complaint against the failure to take into consideration her circumstances as to dependants in the calculation of the taxable amount for the assessment of the tax payable by her. Mrs Aimo-Campogrande submitted a similar complaint on 30 October 1978. It is unfortunate that there were no replies to these complaints.

6 From the date when Mr Allo took up duty until May 1979 the additional abatement in respect of his two dependent children has always been applied to the taxable amount of his remuneration. In consequence of the promotion of his wife to Grade A 5 she and not Mr Allo has since then been allowed the abatement. On 16 May 1979 Mr Allo submitted a complaint against the decision to disallow the additional abatements in respect of his dependent children, to which there was also no reply.

7 The applicants' first submission is that the Commission, by refusing to allow them the additional tax abatement, has infringed the second subparagraph of Article 3 (4) of Regulation No 260/68. They allege that the only condition attached to entitlement to the abatement in question is that the recipient must have at least one dependent child, whilst the first subparagraph of Article 2 (2) of Annex VII to the Staff Regulations lays down that *inter alios* a legitimate child who is actually being maintained by the official is regarded as a dependent child. Article 2 (6) of Annex VII to the Staff Regulations which lays down that not more than one dependent-child allowance shall be paid in respect of any one child, even where the parents are in the service of two different institutions of the Communities, is not in any way connected with the concept of a dependent child or the calculation of taxable remuneration.

8 The Commission, for its part, submits that the tax abatement is in reality an allowance for a dependent child supplemental to that provided for by Article 67 (1) of the Staff Regulations. This abatement, which technically is granted to the official in receipt of the remuneration, ought in fact to benefit the dependent child. It necessarily follows from the nature and the function of the abatement that it can be allowed only once in respect of each dependent child even if both his parents are in the service of the European Communities.

9 The applicants in a second submission assert that the Commission is in breach of certain legal principles and rules, in particular of the principles of equality, distributive justice and equity. The Commission systematically allows the additional abatement in the case of an official who has at least one dependent child and whose spouse works outside the Community institutions, that is to say even if that spouse also receives dependent-child allowances which are deducted from those granted to the official and which may even reduce them to zero, and without taking into account the tax abatements which the spouse is allowed also in respect of the dependent child under his or her national tax rules.

10 Therefore not to allow this abatement in the case of an official who has at least one dependent child but whose spouse is also an official and where it is the latter spouse who, because of the rule against overlapping of Article 2 (6) of Annex VII to the Staff Regulations, receives the dependent-child allowance, would be to disregard the principles of equal treatment, equity and distributive justice.

11 In fact the consequences of the contested practice are that, all other things being moreover equal, two salaries are taxed differently simply because one includes the payment in respect of the dependent child and the other does not, and that one official, merely because his or her spouse is also an official, pays much more tax than a colleague in receipt of the same remuneration and being in the same circumstances as to dependants as that official but whose spouse works outside the Community institutions.

12 The Commission replies that it is not a question in this case of comparing the applicants' situation with that of an imaginary official in a comparable situation but whose spouse works outside the Community institutions. The requirement of equal treatment is met as soon as compliance therewith is ensured in the rules adopted by the Community legislature, without its being necessary or moreover possible to take into consideration factors outside

these rules such as the place where the official spends his remuneration or the national tax rules governing the salary of this official's spouse.

13 The applicants criticize the Commission's argument by stressing that, as far as concerns the dependent-child allowance, the Community rules impose the obligation on officials to declare allowances of the same kind paid elsewhere, such allowances being deducted from those paid pursuant to Articles 1, 2 and 3 of Annex VII to the Staff Regulations. On the other hand, there is no such rule with regard to the tax abatement which the spouse of an official is allowed elsewhere and consequently the tax abatement which the spouse of an official working outside the Community institutions is allowed is not deducted from that of the official. This treatment is discriminatory and therefore illegal.

14 The Commission does not accept the applicants' argument. The dependent-child allowance is granted each month just like the family allowances granted in the different Member States and the application of the Community rule against overlapping does not encounter any practical difficulties. On the other hand, the Community tax abatement is allowed each month, although the tax abatement in respect of a dependent child is calculated in the Member States on an annual basis. Furthermore, since the tax abatement allowed by the Member States is calculated in accordance with the various national income-tax rules, it is impossible for the Community administration to calculate its effect for tax purposes on the taxable incomes.

15 Consideration of the submissions put forward by the applicants leads to their rejection. Although it is true that the applicable provisions do not expressly preclude a husband and wife who are both officials of the Communities from being allowed the tax abatement, such an exclusion is, however, in accordance with the aim and scheme of the system. The tax abatement for a dependent child is justified only if it is allowed for social reasons connected with the existence of the child and the cost of maintaining him. Article 3 (3) of Regulation No 260/68 provides that the dependent-child allowance shall be deducted from the basic taxable amount for the purpose of calculating the tax. The second subparagraph of Article 4 (2), which provides that an "additional" abatement equivalent to twice the amount of the allowance for

a dependent child shall be made for each dependent child, must be read in this context.

16 It is not disputed that pursuant to paragraph (6) of Article 2 of Annex VII to the Staff Regulations not more than one dependent-child allowance shall be paid in respect of any one dependent child, even where the parents are in the service of two different institutions of the Communities. Article 2 (2) thereof provides that "dependent child" means the child of an official, or of his spouse, who is actually being maintained by the official. It cannot be thought that a child may actually be maintained at the same time by each of his parents. Under these circumstances, if the two parents are officials, the institutions apply by analogy the provisions of Article 1 (4) of Annex VII, which provides that, in cases where, under the provisions of the said Article 1, a husband and wife employed in the service of the Communities are both entitled to the household allowance, this shall be payable only to the person whose basic salary is the higher. It was by the application by analogy of this provision that as from the date when Mrs Sorasio-Allo was promoted, the dependent-child allowance was granted thenceforth to her and not to her husband Mr Allo.

17 The Commission has maintained with good reason that for the purpose of applying the provisions of the second subparagraph of Article 3 (4) of Regulation No 260/68 a child cannot be deemed to be actually maintained by each of his parents individually, so that, if not more than one dependent-child allowance is to be paid in respect of him within the meaning of Annex VII to the Staff Regulations and of Article 3 (3) of Regulation No 260/68, an "additional" abatement within the meaning of the said second subparagraph cannot be allowed in respect of him either.

18 As far as concerns the alleged breach of the principle of equality the tax system of the Communities is an independent system which is applied irrespective of the national systems, and the Commission is right to maintain that the hypothetical situations put forward by the applicants are not comparable. The principle of equality does not require account to be taken of possible inequalities which may become apparent because the Community and national systems overlap.

19 It follows that the applications are unfounded and must be dismissed.

Costs

20 Under Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs. As the applicants have failed in their submissions they must be ordered to pay the costs. However, under Article 70 of the Rules of Procedure, in proceedings by officials and other servants of the Communities, institutions are to bear their own costs.

On those grounds,

THE COURT (First Chamber)

hereby:

1. **Dismisses the applications;**

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

Koopmans O'Keeffe Bosco

Delivered in open court in Luxembourg on 27 November 1980.

A. Van Houtte
Registrar

T. Koopmans
President of the First Chamber