# Lēmums lietā 1953/2008/MF - Apgalvojums par retroaktīva pabalsta par apgādībā esošu bērnu neizmaksāšanu

Lēmums
**Lieta** 1953/2008/MF - **Uzsākta {0}** 30/07/2008 - **Atzinuma projekts par {0}** 07/09/2009 - **Lēmums par {0}** 18/10/2010

Sūdzības iesniedzējs ir Parlamenta amatpersona ar bērnu-invalīdu. Tā kā viņa bērns ir invalīds, sūdzības iesniedzējs saņēma dubultu ES pabalstu par apgādībā esošu bērnu, ko paredz Civildienesta noteikumi, un arī pabalstu valsts līmenī.

Parlaments uzskatīja, ka abi pabalsti pēc rakstura ir vienādi, un atskaitīja valsts pabalsta summu no dubultā ES pabalsta. Parlaments tā rīkojās, neskatoties uz to, ka sūdzības iesniedzējs bija lūdzis nepieņemt lēmumu, pirms Eiropas tiesa nav pabeigusi izskatīt līdzīgu jautājumu vēl neizšķirtā lietā. Dažus mēnešus vēlāk tiesa konstatēja, ka abi attiecīgie pabalsti nav vienāda rakstura. Pamatojoties uz šo spriedumu, sūdzības iesniedzējs lūdza Parlamentu retroaktīvi izmaksāt viņam dubulto pabalstu par apgādībā esošu bērnu. Parlaments atteica, balstoties uz to, ka spriedums attiecas tikai uz tiesvedībā iesaistītajām pusēm.

Savā sūdzībā sūdzības iesniedzējs apgalvo, ka Parlaments nav rīkojies taisnīgi un atbilstīgi vienlīdzīgas attieksmes principam. Viņš apgalvoja, ka Parlaments, atsakot viņam retroaktīvi izmaksāt pilnu dubulto pabalstu par apgādībā esošu bērnu, nav pietiekami ņēmis vērā iepriekšminēto spriedumu.

Ombuds uzskatīja, ka, kaut arī Parlamentam nebija juridisku saistību īstenot spriedumu attiecībā uz amatpersonām, kas nebija lietas dalībnieki līdzīgos apstākļos, juridiski tam nebija liegts piemērot Tiesas Eiropas tiesību interpretāciju attiecībā pret šādām amatpersonām. Tas bija ne tikai juridiski pareizi, bet arī atbilstoši labas administrācijas principiem. Viņš konstatēja, ka Parlamenta atteikums kompensēt sūdzības iesniedzējam nelikumīgo dubulto ES pabalsta par apgādībā esošu bērnu samazinājumu ir administratīvs pārkāpums. Parlamenta atteikuma nopietnību pastiprina tas fakts, ka sūdzības iesniedzējs īpaši lūdza sagaidīt tiesas spriedumu pirms lēmuma pieņemšanas, bet Parlaments to neizdarīja.

Tāpēc ombuds sagatavoja šādu rekomendācijas projektu: " *Parlamentam retroaktīvi jāsamaksā sūdzības iesniedzējam dubultais pabalsts par apgādībā esošu bērnu par laika posmu no 2004. gada 1. marta līdz 2005. gada 1. aprīlim, konkrēti summu EUR 5500 apmērā.* "

Parlaments noraidīja šo rekomendācijas projektu.

Ombuds uzsvēra bērnu-invalīdu vecākiem izmaksāto pabalstu sociālo nozīmīgumu un atkārtoti apstiprināja, ka ir konstatējis administratīvu pārkāpumu. Viņš slēdza šo lietu, izsakot aizrādījumu. Turklāt viņš informēja Parlamenta Lūgumrakstu komiteju par administratīvo dienestu nostāju saistībā ar bērnu un invalīdu pamattiesībām.

## The background to the complaint

**1.** The complainant's son was born in 1979. He is mentally disabled.

**2.** The complainant is an official of the European Parliament. In accordance with Article 67(3) of the Staff Regulations [1] , from 1992 until 2004, Parliament granted to the complainant the double monthly dependent child allowance, amounting to EUR 521. In addition, in accordance with the Luxembourg Law of 16 April 1979, the Luxembourg mutual aid fund paid the complainant, as legal representative of his disabled child, a special allowance for disabled children ('the Luxembourg allowance'). This amounted to EUR 553 a month.

**3.** On 25 March 2004, Parliament's Head of Unit for Individual Rights informed the complainant that Article 67(2) of the Staff Regulations [2] did not allow European benefits to overlap with those from other sources. The Head of Unit for Individual Rights went on to state that, as of 1 March 2004, the Luxembourg allowance for his disabled child would therefore be deducted from the doubled dependent child allowance because the two allowances were of the same nature. As a result, the complainant did not receive the double dependent child allowance at all because it was lower than the Luxembourg allowance.

**4.** On 2 February 2004, another Parliament official (Mr W.), whose child is also mentally disabled, lodged an application before the Court of First Instance (CFI) against Parliament's decision to deduct the Luxembourg allowance from the double dependent child allowance paid by Parliament ( *W. v Parliament* ) [3] .

**5.** On 16 June 2004, the complainant lodged a complaint under Article 90(2) of the Staff Regulations against Parliament's decision of 25 March 2004. In this complaint, he challenged the deduction of the Luxembourg allowance from the double dependent child allowance due to him under the Staff Regulations, and requested the Appointing Authority to postpone its decision on his complaint in light of the above-mentioned pending case.

**6.** By letter dated 27 September 2004, Parliament rejected the complainant's Article 90(2) complaint on the grounds that the two allowances were of the same nature. Parliament further refused to postpone its decision in light of the pending case, but did not give any reasons for its refusal.

**7.** The CFI rejected Mr W.'s application. Subsequently, Mr W. submitted an appeal to the

European Court of Justice (ECJ). In its judgment of 18 December 2007 [4] ('the Judgment'), the ECJ ruled that, given its object and aim, the Luxembourg allowance for a disabled child was not of the same nature as the double dependent child allowance granted by Parliament in accordance with Article 67(3) of the Staff Regulations. Parliament was ordered retroactively to pay the appellant the relevant double dependent child allowance, as well as the accrued interest.

**8.** On 21 January 2008, the complainant lodged a request with Parliament under Article 90(1) of the Staff Regulations. On the basis of the Judgment, he requested Parliament to pay him the double dependent child allowance as well as the accrued for the period from 1 March 2004 to 1 April 2005.

**9.** On 7 February 2008, the complainant submitted an application for the double dependent child allowance without the deduction of the Luxembourg allowance. By decision of 4 March 2008, this was granted to the complainant, with effect from 1 January 2008.

**10.** The complainant made a further request for payment of sums deducted by Parliament prior to the Judgment, between 1 March 2004 and 1 April 2005. These deductions were made from the double dependent child allowance on the basis of Article 67(2) of the Staff Regulations.

**11.** On 15 February 2008, Parliament's Head of Unit for Individual Rights rejected the complainant's request on the grounds that the Judgment concerning retroactive payment only applied between the parties and could not be applied in the complainant's case. Parliament further stated that, on 4 March 2008, the Head of Unit for Individual Rights informed the complainant that " *he was entitled to the doubled dependent child allowance as from 1 January 2008.* "

**12.** On 5 March 2008, the complainant lodged a second complaint under Article 90(2) of the Staff Regulations with Parliament. The complainant invoked the *erga omnes* application of the Judgment.

**13.** By letter of 16 June 2008, Parliament rejected the Article 90(2) complaint on the grounds that the Judgment could not be considered a new substantive fact. The deadlines for internal remedies in the complainant's case could not, therefore, be reopened.

**14.** On 9 July 2008, the complainant turned to the Ombudsman.

## The subject matter of the inquiry

**15.** In his complaint, the complainant alleged that Parliament failed to act fairly and in accordance with the principle of equal treatment. In support of this allegation, the complainant argued that Parliament did not take sufficient account of the Judgment when it refused retroactively to pay him the full double dependent child allowance for the period during which it had been reduced.

**16.** The complainant claimed that Parliament should pay him the sums it deducted between 1 March 2004 and 1 April 2005 from the double dependent child allowance granted by Parliament because of the Luxembourg allowance he was receiving for his disabled child.

# The inquiry

**17.** On 30 July 2008, the Ombudsman opened an inquiry into the complainant's allegation and claim.

**18.** On 11 November 2008, Parliament sent its opinion. The Ombudsman forwarded it to the complainant with an invitation to make observations, which he sent on 25 November 2008.

**19.** After a careful consideration of the opinion and observations, on 7 September 2009, the Ombudsman made a draft recommendation in accordance with Article 3(6) of his Statute.

**20.** On 18 January 2010, Parliament sent its reasoned opinion. The Ombudsman forwarded this reply to the complainant, with an invitation to submit observations. The complainant sent his observations on 1 March 2010.

# The Ombudsman's analysis and conclusions

## A. Alleged unfair treatment

### Arguments presented to the Ombudsman

**21.** The complainant alleged that Parliament failed to act fairly and in accordance with the principle of equal treatment. In support of this allegation, the complainant argued that Parliament failed to take sufficient account of the Judgment when it refused retroactively to pay him the full double dependent child allowance for the period during which it had been reduced.

**22.** The complainant claimed that Parliament should pay him the amount which, from 1 March 2004 to 1 April 2005, it deducted from the double dependent child allowance it had granted the complainant, because of the Luxembourg allowance he was receiving for his disabled child.

**23.** In its opinion, Parliament stated that it *partially* [5] rejected the Article 90(2) complaint of 27 September 2004. According to the settled case-law in force at that time, the enforcement of the non-overlapping of benefits rule, laid down in Article 67(2) of the Staff Regulations, was justified [6] because the two allowances were comparable in nature and had the same objective: " *both the statutory allowance and the "Luxembourg allowance" were clearly intended to provide assistance with the costs incurred by the help and care needed to look after a seriously disabled*

*person.* " However, in 2004, the complainant did not make use of the judicial appeal procedures, as foreseen by Article 91(3) of the Staff Regulations [7] , which he could have used to challenge Parliament's decision. As a result, the decision regarding his situation became final.

**24.** In *W. v Parliament* , the ECJ held that the Luxembourg allowance *was not of like nature* to the double dependent child allowance provided for in Article 67(3) of the Staff Regulations. Parliament was ordered to pay the arrears of the child allowance, which the applicant, Mr W., should have received from 1 July 2003 onwards. In light of the Judgment, which annulled the CFI [8] judgment, Parliament decided to change its administrative practice.

**25.** However, Parliament considered that it cannot be required retroactively to pay the complainant the allowances in question. The Judgment was not applicable to third parties to the case, in respect of whom the Judgment may not have any retroactive legal effect. The Judgment was applicable only to the parties to the case.

**26.** Parliament referred to the applicable case-law [9] , which states that, apart from the actual parties in proceedings before the Court, the only persons concerned by the legal effects of a judgment of the Court which annuls a measure are the persons directly affected by the annulled measure. Such a judgment can only constitute a new factor as regards those persons.

**27.** The complainant was not a party to the *W. v Parliament* case. He was not, therefore, directly concerned by the measures annulled by the ECJ. Accordingly, the Judgment did not constitute a new factor. Furthermore, the deadline to lodge an appeal against the rejection of his complaint in 2004 had expired. As a result, Parliament's administrative decision of 25 March 2004 became final and cannot be amended. The complainant may not argue, by virtue of the principle of equal treatment, for a retroactive application of the Judgment to his personal situation, and claim repayment of sums deducted from the double dependent child allowance.

## The Ombudsman's assessment leading to a draft recommendation

**28.** It is indisputable that the Judgment annulling Parliament's decision in Mr W.'s case, and ordering retroactive payment, was legally binding only on the parties to the proceedings. The settled case-law is therefore restricted by the personal, material, and temporal limits of the matter in dispute.

**29.** However, even if the Judgment does not have a straightforward *erga omnes* effect *de jure* , it is not excluded that the Judgment could have an *erga omnes* effect *de facto* . Even if Parliament is not legally obliged to implement the Judgment in relation to officials who find themselves in similar circumstances, but are not a party to the case, Parliament is surely not legally prevented from applying the Court's interpretation of European law to such officials. This would not only be perfectly legal, but would also be in conformity with principles of good administration [10] .

**30.** In paragraph 99 of the Judgment [11] , the ECJ decided that the Luxembourg allowance for disabled persons, and the European double dependent child allowance, paid to parents of disabled children, are not of the same nature. Parliament's decision of 25 March 2004 was therefore unlawful where it stated that the Luxembourg allowance, granted to the complainant's disabled child, as well as the European allowance, granted to the complainant as father of that child, were of the same nature. In its reply to the complainant dated 16 June 2008, Parliament rightly referred to the case-law in *Centeno Mediavilla* [12] , confirming that the lawfulness of a European measure must be assessed on the basis of the facts and law existing on the date of its adoption. In 2004, however, the relevant facts were the same as in the present case, namely, the complainant's son was disabled and entitled to the Luxembourg allowance. The Ombudsman is unaware of any case-law prior to the Judgment in which the European double dependent child allowance and the Luxembourg allowance have been compared within the meaning of Article 67(2) of the Staff Regulations.

**31.** There is well established case-law that unlawful administrative declaratory acts may be withdrawn with retroactive effect. In light of *Hoogovens* [13] , the rule that revocation is permissible only within a reasonable period of time does not necessarily appear to apply to such declaratory unlawful acts [14] .

**32.** In this respect, the Ombudsman noted that Parliament duly changed its administrative practice as of the date of the Judgment. However, while Parliament revoked its unlawful measure with immediate effect, it refused to do so retroactively and pay the complainant what was unlawfully deducted in his case. The Ombudsman considered, however, that in the present case, it would be reasonable for the revocation to be retroactive in order to comply with its own objective.

**33.** First, it appeared that **only** the complainant and Mr W. have children to whom the Luxembourg allowance is granted. They were therefore the only Parliament officials who could profit from the revocation at that time and in the future. Mr W.'s situation has already been remedied. In order to remedy its unlawful actions with regard to the complainant, the Ombudsman held that Parliament should revoke its decision, with retroactive effect, as it did in the case of Mr W. after the Judgment.

**34.** Second, while the purpose of the European double dependent child allowance is to help officials to cope with the heavy expenditure needed to care for a disabled child, the Luxembourg allowance is designed to cover costs enabling the disabled person to function in society. Both benefits have a strong social objective. Through its unlawful actions in the present case, Parliament denied this objective and jeopardised the disabled person's legitimate expectations for a better life. In this respect, the Ombudsman recalled Article 26 of the Charter of Fundamental Rights of the European Union, which states that the Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

**35.** Finally, in its reply of 26 June 2008, Parliament referred to the principle of legal certainty to justify its refusal to revoke, with retroactive effect, the unlawful decision in question. The

Ombudsman was not convinced that the complainant's failure to comply with a deadline to submit an appeal before the Court justified sacrificing his and, ultimately, his disabled child's private interests. As the Court stated in its 'classic' judgment *SNUPAT* , concerning the withdrawal of an unlawful administrative measure, " *the principle of respect for legal certainty, important as it may be, cannot be applied in an absolute manner but its application must be combined with that of the principle of legality; the question which of these principles would prevail in each particular case depends upon a comparison of the public interest with the private interests* ". [15] Similarly, the ECJ made the following conclusion in the Judgment: " *As regards the determination of the appellant's rights, the deduction decision notified on 18 September 2000 has become definitive with all its financial effects, as it was not challenged within the time limit for bringing an action. However, this Court decides that the Parliament must pay the appellant the sums which were wrongly deducted from his remuneration as from 1 July 2003, the date on which the decision of 26 June 2003 took effect, together with interest.* "

**36.** The Ombudsman therefore considered that the refusal to compensate the complainant for the illegal deduction of the European allowance, thereby denying financial assistance to the already heavily burdened parent of a disabled child, was not in conformity with the principles of good administration. This constituted an instance of maladministration. This was aggravated by the fact that, in his first Article 90(2) complaint, the complainant specifically asked Parliament to wait for the result of Mr. W.'s case before making the deduction, but Parliament refused to do so.

**37.** In light of the above, the Ombudsman made the following draft recommendation in accordance with Article 3(6) of the Statute of the European Ombudsman.

"Parliament should retroactively pay the complainant the double dependent child allowance for the period from 1 March 2004 to 1 April 2005, namely, the sum of EUR 5 500."

## The arguments presented to the Ombudsman after his draft recommendation

### Parliament's reasoned opinion

**38.** First, Parliament underlined its greatest respect for the Ombudsman's comments, particularly because the present case affects the interests of an individual. Nevertheless, it refused to comply with the draft recommendation.

**39.** Parliament stated that the Ombudsman's recommendation to reimburse the sums deducted from the amount of the doubled dependent child allowance was likely to concern more than two officials.

**40.** The complainant's administrative and legal situation became final because he failed to contest it within the time limit laid down by the Staff Regulations. According to the case-law of

the European Union courts, the deadlines for complaints and appeals laid down by Articles 90(2) [16] and 91(3) [17] of the Staff Regulations are a matter of public policy. They have been laid down to ensure clarity and certainty in judicial situations.

**41.** The principle of legal certainty, a general principle of European law, should be understood as meaning that the administrative authority needs to ensure legal stability of individual judicial situations over time and to make certain that the applicable rules are clear.

**42.** Judgments annulling an individual administrative measure cannot apply to the situations of persons who were not parties to proceedings. The complainant was not a party to the Judgment and he was not directly concerned by the measure annulled by the ECJ.

**43.** In view of the importance of the principle of legal certainty and, in particular, the requirement of certainty in judicial situations, Parliament stated that it is not in favour of applying the Judgment to the complainant's situation.

**44.** The complainant's situation concerns an individual right under the Staff Regulations. In 2007, the Community courts issued other judgments which led Parliament to change its administrative practice with effect from the date of the rulings. If Parliament were to decide in favour of the complainant, this would be likely to create a precedent within the institution.

**45.** Indeed, by virtue of the case-law of the Union courts [18] , if the Judgment were applied to officials in similar situations, this would reopen the deadlines for them to contest similar decisions, not only those taken after the Judgment was issued, but also those taken before the date of the Judgment.

**46.** Furthermore, an arbitrary time limit on the effects of a judicial decision could be arguable or contestable if its retroactive application were to infringe the principles of sound financial and administrative management.

**47.** Parliament pointed out that there could also be very considerable budgetary implications in other areas where the European courts have obliged an Appointing Authority to change its interpretation of the Staff Regulations. Parliament referred to the judgment in *Cristina Asturias Cuerno v Commission* [19] , in which the Court of First Instance overturned the Appointing Authority's decision not to grant an expatriation allowance to officials who had worked as parliamentary assistants during a specific period. If Parliament were retroactively to apply the Judgment to the complainant's situation, the officials concerned by the aforementioned case could also ask Parliament for the retroactive payment of their expatriation allowances.

**48.** The *SNUPAT* case-law to which the Ombudsman referred in his draft recommendation provides that the principle of legal certainty is not absolute and its application must be combined with that of the principle of legality. However, in this same judgment, the ECJ held that the principle of legal certainty can be overridden if the appraisal of the respective importance of the interests in question " *devolve(s) in the first instance to the author of that decision* ". Moreover, the *SNUPAT* case-law was based on different factual and legal circumstances than those of the

complainant.

**49.** However, in this case, the balance of interests lies in favour of the public interest, so as not to run the risk that Parliament may be obliged to withdraw an administrative measure and pay amounts due retroactively when a decision affecting the personal interests of an official is annulled by the European Union courts.

**50.** Parliament did not make any commitment to the complainant on postponing its decision because of a pending case with the European Union courts.

## The Ombudsman's assessment

**51.** The Ombudsman deeply regrets that Parliament has taken a legalistic approach to a complaint submitted by the parent of a disabled child without taking into consideration the fact that not all the entitlements under Staff Regulations are the same.

**52.** The Ombudsman does not consider it useful to enter into further exchanges of legal argumentation with Parliament. As stated in his draft recommendation, even if Parliament is not legally obliged to implement the Judgment in relation to officials who find themselves in similar circumstances, but who were not a party to the case, Parliament is not legally prevented from applying the Court's interpretation of EU law to such officials.

**53.** In this respect, the Ombudsman would like to make two remarks. First, he recalls the settled case-law [20] , of which Parliament is certainly aware, which provides that the interpretation of EU law given by the Court has a retroactive effect, unless this Court sets a time limit in relation to the effects of its judgment on the relevant interpretation [21] . The Ombudsman notes that, in the Judgment, the Court did not decide on such a limit as regards its interpretation of the relevant articles of the Staff Regulations.

**54.** Second, he points out that the Court's decisions on individual claims concerning family allowances designed for staff with disabled **children** are of particular importance, even if they do not have *erga omnes* effect. The fundamental rights of children [22] and of disabled persons [23] are involved in the present case. These are codified in the Charter of Fundamental Rights of the European Union and constitute binding EU law. The Ombudsman does not consider that the social weight of the expatriation allowance paid to an official because he is living in the European capital and not in his own country is the same as the one of the double dependent child allowance paid to staff who need to take care of their disabled children. The Ombudsman notes in this respect that, in the Judgment, the highest court in the EU decided not to follow the view of its Advocate-General, but to decide in favour of the parent of a disabled child.

**55.** Parliament appears to consider that if it accepts the Ombudsman's recommendation, the many officials concerned by the Judgment, or other judgments in cases to which they were not a party and in which Parliament was condemned for the unlawfulness of its actions, will ask for the same treatment. The Ombudsman points out, however, that Parliament's acceptance of his

draft recommendation would only constitute a precedent for *similar* circumstances. Even if Parliament argues that there are more than two similar cases among its staff, the Ombudsman is convinced that they are still very few in number.

**56.** Parliament chose not to accept the draft recommendation which the Ombudsman made in favour of the parent of a disabled child. Parliament represents European citizens and should understand and respect the situation of such parents better than any other institution. However, it failed to do so. Moreover, Parliament obviously acted unfairly by not following the complainant's request to suspend its decision before the Judgment was issued. The Ombudsman has no choice but to close the case and make a critical remark below.

**57.** In light of the above, the Ombudsman also finds it appropriate to inform the Committee on Petitions of Parliament about the position of its administrative services in relation to the fundamental rights of children and of disabled persons.

# B. Conclusions

On the basis of his inquiry into this complaint, the Ombudsman closes it with the following critical remark:

**Parliament's refusal to compensate the complainant for the illegal deduction of the European allowance, thereby denying financial assistance to the already heavily burdened parent of a disabled child, was not in conformity with the principles of good administration. This is aggravated by the fact that, in his first Article 90(2) complaint, the complainant specifically asked Parliament to wait for the result of Mr W.'s case before making the deduction, but Parliament refused to do so.**

This was an instance of maladministration.

The complainant and Parliament will be informed of this decision

P. Nikiforos Diamandouros

Done in Strasbourg on 18 October 2010

[1] Article 67(3) of the Staff Regulations reads as follows: *"The dependent child allowance may be doubled by special reasoned decision of the appointing authority based on medical documents establishing that the child concerned is suffering from a mental or physical handicap which involves the official in heavy expenditure."*

[2] Article 67(2) of the Staff Regulations reads 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."*

[3] Case T-33/04 Weißenfels v European Parliament [2006] ECR-SC I-A-2-1.

[4] Case C-135/06 P Weißenfels v European Parliament [2007] ECR I-12041.

[5] In its reply to the complainant's Article 90(2) complaint, Parliament stated that it cancelled the decision to reduce the Luxembourg allowance to the simple statutory child allowance when the complainant's children reached the age of 26 on the grounds that these two allowances were not of the same nature.

[6] Case T-147/95 Pavan v Parliament [1996] ECR SC I-A-291.

[7] Article 91(3) of the Staff Regulations reads as follows: "Appeals under paragraph 2 shall be filed within three months. The period shall begin:

– on the date of notification of the decision taken in response to the complaint;

– on the date of expiry of the period prescribed for the reply where the appeal is against an implied decision rejecting a complaint submitted pursuant to Article 90(2); nevertheless, where a complaint is rejected by express decision after being rejected by implied decision but before the period for lodging an appeal has expired, the period for lodging the appeal shall start to run afresh."

[8] See footnote 4 above.

[9] Order of the CFI of 11 July 1997: Case T-16/97 Chauvin v Commission [1997] ECR II-681, paragraph 43.

[10] The Ombudsman recalls that, in the past, Parliament has applied *erga omnes* to its officials the legal interpretation of a European Union court in a particular case pending before it. This happened in relation to the transitional measures foreseen in Annex XIII to the new Staff Regulations. Such course of action confirms that, contrary to what Parliament now considers, it is perfectly legal for an institution to apply the legal interpretation of a/the European court(s).

[11] Case C-135/06 P Weißenfels v European Parliament [2007] ECR I-12041, in particular paragraph 99:

"Therefore, the allowance under the Staff Regulations and the Luxembourg allowance are not of like nature within the meaning of Article 67(2) of the Staff Regulations."

[12] Case C-443/07 P Isabel Clara Centeno Mediavilla and Others v Commission, judgment of

22 December 2008, not yet published in the ECR.

[13] Case 14/61 Koninklijke Nederlandsche Hoogovens en Staalfabrieken N.V. v High Authority of the European Coal and Steel Community [1962] ECR 253.

[14] See the above-mentioned case-law, paragraph 6:

*"Moreover, there is a distinction to be drawn, because the rule which requires that withdrawal must take place within a reasonable period of time varies in substance and extent according to the circumstances. In fact, this rule, which may be of considerable importance where it is a question of decisions creating individual rights, is of less significance where it is a question of purely declaratory decisions ... the question of 'a reasonable period of time could not be of decisive importance in this case, but constituted only one element in the applicant's special interest in the respect for the principle of legal certainty, a principle which the high authority was bound to, and did, take into account."*

[15] Joined Cases 42 and 49/59 *SNUPAT* v *High Authority* [1961] ECR 1953, paragraph 78.

[16] Article 90(2) of the Staff Regulations reads as follows: "Any person to whom these Staff Regulations apply may submit to the appointing authority a complaint against an act adversely affecting him, either where the said authority has taken a decision or where it has failed to adopt a measure prescribed by the Staff Regulations. The complaint must be lodged within three months. The period shall start to run:

– on the date of publication of the act if it is a measure of a general nature;

– on the date of notification of the decision to the person concerned

– on the date of expiry of the period prescribed for reply where the complaint concerns an implied decision rejecting a request as provided for in paragraph 1."

[17] See footnote 7 above.

[18] Case C-389/98 P Gevaert v Commission [2001] ECR I-65, paragraphs 49, 55, 56 and Case T-242/94 Sergio del Plato v Commission [1994] ECR II-961 paragraphs 18 and 20: "A decision concerning one or more of an applicant's colleagues may … constitute a new substantial fact justifying the re-examination of his case where the situations concerned are similar and in particular where the reasons justifying the decision which may be adopted following re-examination are not different from the reasons which justified adoption of the decision which the applicant invokes by way of new fact."

[19] See Case T-473/04 Cristina Asturias Cuerno v Commission, judgment of 19 June 2007 not yet published in the ECR. This case concerned the granting of an expatriation allowance to officials or other staff who had worked as parliamentary assistants during the reference period laid down in Article 4(1)(a) of Annex VII of the Staff Regulations.

[20] The Ombudsman recalls that, in legal discussions, references to the case-law on principles of EU law are made by analogy and not because the circumstances of the case referred to are the same as in the case discussed.

[21] Case C24/86 Blaizot v University of Liege and Others [1988] ECR I-379 paragraph 27 and the case-law cited therein.

[22] See Article 24 (The rights of the child) of the Charter of Fundamental Rights of the European Union ( http://www.europarl.europa.eu/charter/default_en.htm [Saite]).

"1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests."

[23] See Article 26 (Integration of persons with disabilities) of the Charter of Fundamental Rights of the European Union:

*"The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community."*