JUDGMENT OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL (Second Chamber)

14 October 2010 (*)

(Civil service — Contract staff — Remuneration — Family allowances — Same-sex couple — Household allowance — Condition for granting — Access to legal marriage — Notion — Article 1(2)(c)(iv) of Annex VII to the Staff Regulations)

In Case F-86/09,

ACTION under Articles 236 EC and 152 EA,

W, member of the contract staff of the European Commission, residing in Brussels (Belgium), represented by É. Boigelot, lawyer,

applicant,

v

European Commission, represented by J. Currall and D. Martin, acting as Agents,

defendant,

THE CIVIL SERVICE TRIBUNAL (Second Chamber),

composed of H. Tagaras (Rapporteur), President, S. Van Raepenbusch and M.I. Rofes i Pujol, Judges,

Registrar: R. Schiano, Administrator,

having regard to the written procedure and further to the hearing on 15 April 2010,

gives the following

Judgment

1 By an application received at the Registry of the Tribunal on 21 October 2009 by fax (the original being lodged the following day), W seeks annulment of the decisions of the Commission of the European Communities of 5 March 2009 and 17 July 2009 refusing to pay him the household allowance provided for in Article 1 of Annex VII to the Staff Regulations of Officials of the European Union ('the Staff Regulations').

Legal context

2 Article 13(1) EC provides as follows:

'Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.'

3 Article 21(1) of the Charter of Fundamental Rights of the European Union ('the Charter of Fundamental Rights'), entitled 'Non-discrimination', reads as follows:

‘Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.’

4 Under the terms of Article 7 of the Charter of Fundamental Rights, entitled ‘Respect for private and family life’:

‘Everyone has the right to respect for his or her private and family life, home and communications.’

5 Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (‘the ECHR’) provides as follows:

‘1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.’

6 According to Articles 21 and 92 of the Conditions of Employment of Other Servants of the European Union, the provisions of Article 1 of Annex VII to the Staff Regulations concerning payment of family allowances are applicable by analogy to members of the contract staff.

7 Article 1(2) of Annex VII to the Staff Regulations provides as follows:

‘The household allowance shall be granted to:

…

(c) an official who is registered as a stable non-marital partner, provided that:

(i) the couple produces a legal document recognised as such by a Member State, or any competent authority of a Member State, acknowledging their status as non-marital partners,

(ii) neither partner is in a marital relationship or in another non-marital partnership,

(iii) the partners are not related in any of the following ways: parent, child, grandparent, grandchild, brother, sister, aunt, uncle, nephew, niece, son-in-law, daughter-in-law,

(iv) the couple has no access to legal marriage in a Member State; a couple shall be considered to have access to legal marriage for the purposes of this point only where the members of the couple meet all the conditions laid down by the legislation of a Member State permitting marriage of such a couple;

(d) by special reasoned decision of the appointing authority based on supporting documents, an official who, while not fulfilling the conditions laid down in (a), (b) and (c), nevertheless actually assumes family responsibilities.’

8 According to the recitals in the preamble to Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004, which established the current version of the Staff Regulations:

‘(7) Compliance should be observed with the principle of non-discrimination as enshrined in the EC Treaty, which thus necessitates the further development of a staff policy ensuring equal opportunities for all, regardless of sex, physical capacity, age, racial or ethnic identity, sexual orientation and marital status.

(8) Officials in a non-marital relationship recognised by a Member State as a stable partnership who do not have legal access to marriage should be granted the same range of benefits as married couples.’

9 According to Article 489 of the Criminal Code of the Kingdom of Morocco (‘Article 489 CCM’):

‘Anyone committing an indecent or unnatural act with an individual of his or her own sex shall be sentenced to imprisonment of six months to three years and fined MAD 200-1 000, unless the offending conduct constitutes a more serious offence.’

10 Article 46 of the Law of 16 July 2004 setting out the Code of Private International Law of the Kingdom of Belgium (‘Article 46 CPIL’), entitled ‘Law applicable to the formation of marriage’, provides as follows:

‘Subject to Article 47 [relating to the formalities for the celebration of marriage], the conditions for lawful marriage shall be governed, for each spouse, by the law of the State of which he is a national at the time when the marriage is celebrated.

A provision of the law designated pursuant to the first paragraph which prohibits the marriage of persons of the same sex shall not apply where one of them is a national of a State or has his habitual residence in the territory of a State whose law permits such a marriage.’

Facts of the case

11 The applicant, a member of the Commission’s contract staff since 1 March 2009, has dual Belgian and Moroccan nationality.

12 On 10 October 2008, the applicant and his same-sex non-marital partner, who is a Spanish national, made a ‘declaration of legal cohabitation’ before the Registrar of the city of Brussels (Belgium). That declaration was entered in the national register on the same day.

13 At the time when his individual entitlements were fixed, the applicant was refused the household allowance by a decision of the Office for the Administration and Payment of Individual Entitlements (PMO) of 5 March 2009, on the ground, given verbally, that the couple did not satisfy the condition laid down in Article 1(2)(c)(iv) of Annex VII to the Staff Regulations, since they had access to legal marriage in Belgium.

14 On 9 March 2009 the applicant asked the PMO to recognise his legal cohabitation so that his partner would be covered by the Commission’s sickness insurance scheme. By a letter of 6 April 2009 the PMO agreed to that request, informing the applicant that his partner, who had no work-related income, could come under the applicant’s primary insurance pursuant to the second subparagraph of Article 72(1) of the Staff Regulations.

15 By an email of 2 April 2009 the applicant lodged a complaint under Article 90(2) of the Staff Regulations against the decision of the PMO of 5 March 2009, essentially arguing that, because homosexual acts are a criminal offence under Moroccan legislation, his Moroccan nationality and the legal and emotional ties he had with Morocco ‘make it impossible [for him] to marry’ a person of the same sex.

16 By a decision of 17 July 2009 the appointing authority (‘the AIPN’) rejected the applicant’s complaint, pointing out that the fact that Moroccan legislation criminalises homosexual behaviour does not prevent the applicant from marrying in Belgium.

Forms of order sought and procedure

17 The applicant claims that the Tribunal should:

- annul the decision of the PMO of 5 March 2009 not to grant him the household allowance;
- annul the decision of the AIPN of 17 July 2009 rejecting his complaint;
- order the defendant to pay the costs.

18 The Commission claims that the Tribunal should:

¾ dismiss the application as unfounded;

¾ order the applicant to pay the costs.

19 By a letter received at the Registry on 21 October 2009 the applicant requested anonymity, which the Tribunal decided to grant. That decision was notified to the parties by a letter from the Registry of 19 November 2009.

20 In order to ensure efficient preparation of the case and conduct of the proceedings, the Tribunal adopted measures of organisation of procedure as provided for in Articles 55 and 56 of the Rules of Procedure. For that purpose the applicant was invited, in the preparatory report for the hearing, to answer questions about his ties with Morocco.

21 The applicant complied with the Tribunal's request in a letter which the Registry received on 19 March 2010. According to the letter and the attached documents, the applicant was born in Belgium on 23 October 1975 and, while he was Moroccan by birth, he obtained Belgian nationality automatically at the age of 14, after his father was granted Belgian nationality. The documents also show that the applicant has always lived in Belgium, apart from a period of seven years spent in Spain, and that he only visited Morocco on holiday. However, the applicant states that he speaks Berber and Arabic and that, as a Muslim, he attended the Arabic school once a week until the age of 13. He also states that since 2003, when his father retired, his parents have lived mainly in Morocco, where they have bought property. Lastly, he states that he is negotiating with an estate agent to buy a property in Morocco very soon, which would require him to give details of his marital status.

22 Also in the preparatory report for the hearing, the parties were asked to forward evidence to the Tribunal to prove that Article 489 CCM is actually applied.

23 By letters which the Registry received on 31 March 2010 and 2 April 2010, the Commission and the applicant respectively produced certain information on the actual application of Article 489 CCM from the international press and non-governmental organisations in particular, describing at least one case in which Article 489 CCM was actually applied, in December 2007.

24 At the hearing, the applicant submitted an email which he had sent to the PMO on 16 September 2009 informing it that his partner had taken up employment with the Commission from that date.

Subject-matter of the dispute

25 The applicant seeks annulment, first, of the decision of the PMO of 5 March 2009 refusing him the household allowance when his individual entitlements were fixed, and, second, of the decision of the AIPN of 17 July 2009 rejecting his complaint against the decision of 5 March 2009.

26 It is settled case-law that claims for the annulment of a decision rejecting a complaint expressly or by implication have, as such, no content of their own and are in reality indissociable from claims for the annulment of the act adversely affecting the person concerned against which the complaint was lodged (see the judgment of 23 February 2010 in Case F-7/09 *Faria* v *OHIM*, paragraph 30, and the case-law cited therein).

27 Where it only confirms the act or failure to act to which the complainant takes exception, a decision rejecting a complaint, whether it be express or implied, is not, by itself, a decision which may be challenged (Joined Cases 33/79 and 75/79 *Kuhner* v *Commission* [1980] ECR 1677, paragraph 9; order in Case 371/87 *Progoulis* v *Commission* [1988] ECR 3081, paragraph 17; Joined Cases T-338/00 and T-376/00 *Morello* v *Commission* [2002] ECR-SC I-A-301 and II-1457, paragraph 34, and Case T-14/03 *Di Marzio* v *Commission* [2004] ECR-SC I-A-43 and II-167, paragraph 54).

28 A purely confirmatory measure, such as an act which contains no new factors as compared with a previous measure adversely affecting the applicant and which has not therefore replaced it, cannot be described as an act adversely affecting the applicant (see, to that effect, Case 23/80 *Grasselli* v

Commission [1980] ECR 3709, paragraph 18; order in Case T-608/97 *Plug* v *Commission* [2000] ECR-SC I-A-125 and II-569, paragraph 23; *Di Marzio* v *Commission*, cited above, paragraph 54).

29 However, it has been held on several occasions that an express decision rejecting a complaint may, in the light of its content, not be confirmatory of the measure contested by the applicant. That applies where the decision rejecting the complaint contains a re-examination of the applicant's situation in the light of new elements of law or of fact, or where it changes or adds to the original decision. In such circumstances, the rejection of the complaint constitutes a measure subject to review by the court, which will take it into consideration when assessing the legality of the contested measure (Case T-258/01 *Eveillard* v *Commission* [2004] ECR-SC I-A-167 and II-747, paragraph 31, Case T-375/02 *Cavallaro* v *Commission* [2005] ECR-SC I-A-151 and II-673, paragraphs 63 to 66, and Case F-18/08 *Ritto* v *Commission* [2008] ECR-SC I-A-1-281 and II-A-1-1495, paragraph 17), or will even regard it as an act adversely affecting the applicant replacing the contested measure (see, to that effect, *Kuhner* v *Commission*, cited above, paragraph 9; *Morello* v *Commission*, cited above, paragraph 35, and Case T-389/02 *Sandini* v *Court of Justice* [2004] ECR-SC I-A-295 and II-1339, paragraph 49).

30 In the present case, it must be noted that the decision of 5 March 2009 merely refused to grant the applicant the household allowance, the ground for which was given verbally. Following that refusal, the applicant, in his complaint, submitted to the Commission elements of law and of fact concerning the Moroccan legislation criminalising homosexual acts, which he claimed applied to him because of his nationality. Accordingly, while the decision of 17 July 2009 confirms the Commission's refusal to grant the applicant the household allowance, dismissing his arguments and expanding on the verbal grounds for that refusal, the fact remains that the decision was taken following a re-examination of the applicant's situation.

31 That being so, the decision of 17 July 2009 does not constitute a measure confirming the decision of 5 March 2009 and must be taken into consideration in the review of legality which the Tribunal must conduct.

32 The application therefore has the effect of bringing before the Tribunal claims for annulment both of the decision of 5 March 2009 and of the decision of 17 July 2009 ('the contested decisions').

The claim for annulment of the contested decisions

33 In support of his claim for annulment of the contested decisions, the applicant relies on a single plea alleging infringement of Article 1(2)(c)(iv) ('the first disputed provision') and (d) ('the second disputed provision') of Annex VII to the Staff Regulations.

Arguments of the parties

34 In his single plea the applicant essentially submits three complaints against the contested decisions.

35 First, the applicant argues that, in the light of one of his dual nationalities, namely his Moroccan nationality, which he claims he is not allowed to renounce, he would be prosecuted in Morocco under Article 489 CCM if he contracted a marriage in Belgium with his partner, rendering such a marriage impossible. According to the applicant, his homosexuality would immediately be revealed and he would then be prosecuted solely because of the change to his civil status resulting from the marriage. In any administrative procedure requiring a statement of his civil status (for example, renewal of his passport, buying or selling property or for inheritance purposes) he would therefore run a genuine risk of a criminal penalty.

36 Secondly, the applicant claims that, in any event and regardless of whether the first disputed provision is applicable, it is possible, on the basis of the administration's duty to have regard for an official's welfare, for an official to obtain the household allowance under the second disputed provision where he does not, in the Commission's view, fulfil the conditions laid down in the first disputed provision if he nevertheless actually assumes family responsibilities.

37 Thirdly, he claims that infringement of the two disputed provisions results in discrimination against him compared with officials for whom the decision to marry does not infringe any principle of public law in their country of origin.

38 The Commission, disputing the three complaints referred to above, submits that the applicant's single plea should be dismissed.

39 First, the Commission argues that it is not marriage between persons of the same sex which is criminalised by Article 489 CCM, but the sexual act between persons of the same sex. Regardless of his marital status, therefore, the applicant is, in any event, theoretically at risk of prosecution, since the Moroccan authorities could learn of his homosexuality through other channels, in particular by becoming aware of his legal cohabitation with his same-sex partner, which has already been registered. Furthermore, given that the marriage of the applicant and his partner in Belgium would not produce any effect in Morocco, the applicant should not have to reveal its existence to the Moroccan authorities, particularly as his Moroccan identity card would be sufficient for any administrative procedures in that country. Moreover, the Commission states that it does not require the applicant to renounce his Moroccan nationality in order to receive the household allowance, since in this instance his marriage is allowed under Belgian law despite his Moroccan nationality. Furthermore, it is not the task of the EU courts to interpret that provision since it expressly refers to the legislation of the Member States, so that the question whether a couple has access to legal marriage in a Member State depends on a decision which that Member State alone — in the present case Belgium — has the power to take.

40 Secondly, regarding the applicability of the second disputed provision, the Commission considers that the complaint is inadmissible in so far as the applicant, in failing to submit a request to that effect or a complaint against the Commission's alleged implied refusal to apply the provision in question, did not comply with the pre-contentious procedure. Furthermore, the applicant has not produced reliable documents proving that he has family responsibilities. In any event, the Commission has a wide discretion in applying the second disputed provision, which would not give the applicant an absolute right to the household allowance even if he fulfilled its conditions.

41 Thirdly, the Commission considers that, according to the case-law, a difference in treatment on the basis of family status does not constitute discrimination. Since the first disputed provision applies different rules to officials in a partnership and married officials, the applicant should have submitted a plea of illegality against that provision, but he did not do so.

Findings of the Tribunal

42 It should be noted, first of all, that the extension of entitlement to the household allowance to officials registered as stable, non-marital partners, including those of the same sex, reflects the legislature's concern, according to the seventh recital in the preamble to Regulation No 723/2004, that compliance should be observed with the principle of non-discrimination enshrined in Article 13(1) EC (now, after amendment, Article 19(1) TFEU), thus necessitating the further development of a staff policy ensuring equal opportunities for all, regardless of the person's sexual orientation or marital status, which also corresponds to the prohibition of any discrimination based on sexual orientation provided for in Article 21(1) of the Charter of Fundamental Rights. Furthermore, the extension of entitlement to the household allowance to officials registered as stable, non-marital partners, including those of the same sex, reflects the need to protect officials against the administration's interference in the exercise of their right to respect for their family and private life, as recognised in Article 7 of the Charter of Fundamental Rights and Article 8 of the ECHR.

43 As with protection of the rights ensured by the ECHR, the rules of the Staff Regulations extending entitlement to the household allowance to officials registered as stable, non-marital partners, including those of the same sex, must be interpreted in such a way as to make those rules as effective as possible, so that the right in question is not theoretical or illusory, but practical and effective (see Eur. Court H. R., *Airey* v *Ireland*, judgment of 9 October 1979, Series A no. 32, § 24; *United Communist Party of Turkey and Others* v *Turkey*, judgment of 30 January 1998, *Reports of Judgments and Decisions* 1998-I, § 33; *Kreuz* v *Poland*, judgment of 19 June 2001, *Reports of Judgments and Decisions* 2001-VI, § 57; and *Scoppola* v *Italy* (No 2) [GC], judgment of 17 September 2009, *Reports of Judgments and Decisions* 2009-, § 104).

44 For officials registered as stable, non-marital partners, including those of the same sex, the right to the household allowance laid down in the first disputed provision could prove theoretical and illusory if the notion of 'access to legal marriage in a Member State', the absence of which is one of the conditions for such an official to receive the household allowance, were construed in a purely formal sense, making the application of the first disputed provision contingent on whether the couple fulfils the statutory conditions laid down in the national legislation applicable, without any verification of whether their access to marriage is practical and effective, as defined in the abovementioned judgments of the European Court of Human Rights.

45 It follows that, in investigating whether a same-sex couple has access to legal marriage under the legislation of a Member State, the administration cannot disregard the provisions of the law of another State with which the situation in question is closely connected because of the nationality of the persons concerned, where that law, although not applicable to matters relating to the formation of marriage, could render access to marriage and therefore the right to the household allowance theoretical and illusory. That is particularly true of a national law which criminalises homosexual acts without making any distinction according to the place where the homosexual act is committed, such as Article 489 CCM.

46 That conclusion cannot be called into question by the wording of the second clause of the first disputed provision, which merely states that, for there to be 'access to legal marriage' within the meaning of the first clause of the first disputed provision, the couple concerned must meet 'all' the conditions laid down by the applicable legislation. It thus merely clarifies the rule already laid down by the first clause of the same provision, a clarification which is entirely unconnected with the issues discussed in paragraphs 43 to 45 of this judgment and which is not inconsistent with the conclusions reached there on the issue in question. Interpreting the second clause as meaning that only the provisions in force in the legislation of the Member State concerned should be taken into account for the application of Article 1(2) of Annex VII to the Staff Regulations would disregard the need for a dynamic interpretation which, according to the settled case-law, should take account not just of the terms of the provision in question, but also of the aims pursued by the legislature (Joined Cases F-69/07 and F-60/08 *O* v *Commission* [2009] ECR-SC I-A-1-349 and II-A-1-1833, paragraph 114, and the case-law cited therein).

47 In the present case the Tribunal notes that the applicant is a member of the contract staff registered as a stable, non-marital partner in Belgium. Consequently the couple in question could, in principle, have contracted a legal marriage in Belgium, since the second paragraph of Article 46 CPIL rejects any prohibition of marriage between persons of the same sex contained in the national legislation of either member of the couple, thus making it clear that such a prohibition is contrary to the prevailing social and legal perceptions in Belgium.

48 However, the applicant claimed, without being contradicted by the Commission, that Article 489 CCM still forms part of the legislation in force in Morocco, a country with which he has close ties because of one of his dual nationalities.

49 Furthermore, relying on voluminous documentation testifying to a continuing persecution of homosexuals in Morocco today, the applicant contended that Article 489 CCM is actually applied in the country and that any Moroccan citizen considering marriage with a person of the same sex faces serious risks and constraints. It must be found that, as the documentation in question shows, those risks and constraints are not hypothetical but very real.

50 In a letter of 31 March 2010 the Commission forwarded to the Tribunal a series of documents on the same subject. Those documents, some of which are identical to those submitted by the applicant, do not seriously call into doubt the applicant's claims set out in the previous paragraph.

51 It is clear first of all from the documents produced by the Commission that, because of Article 489 CCM, the French consular authorities in Morocco are not authorised to register partnerships between persons of the same sex. Next, the documents state, first, that 'homosexuality in Morocco is tolerated if it is in secret, but … is punished if it is practised openly', second, that 'in June 2004 43 gays who had met to celebrate a birthday in a village hall were arrested and detained', third, that on 10 December 2007, the court of first instance at Ksar El Kébir (Morocco) convicted six men of infringing Article 489

CCM, a decision which was subsequently upheld by the Appeal Court in Tangiers (Morocco), and fourth, that 'since Moroccan independence in 1956 over 5 000 homosexuals [have been brought before] the courts' pursuant to Article 489 CCM.

52 It is true that, at the hearing, the Commission stated that if the applicant had provided evidence that there was the slightest risk that he would place himself in a legally difficult situation under Article 489 CCM if he married, it would have displayed compassionate regard for his welfare by considering the possibility of applying the second disputed provision to him. However, it denied that there was such a risk.

53 By its nature and content a provision such as Article 489 CCM criminalising homosexual acts, acts which a marriage between persons of the same sex by definition implies, may reasonably lead the applicant to fear persecution and rightly justifies his reluctance, as well as the reluctance of any normally informed and cautious Moroccan citizen, to contract a marriage with a person of the same sex. There is nothing in the file which suggests that such fears are illogical or exaggerated; on the contrary, in the light of the documents produced by the parties, the risks and constraints faced by Moroccan citizens considering marriage with a person of the same sex (see paragraphs 49 and 50 of the present judgment) are undeniably real.

54 Furthermore, even if Article 489 CCM had fallen out of use, that fact, apart from not sparing the applicant feelings of fear, suffering and anxiety resulting from the very existence of that Article, would not preclude the risk that the competent authorities might change their policy as long as the Article remained in force (see Eur. Court H. R., *Dudgeon* v *United Kingdom*, judgment of 22 October 1981, Series A no. 45, § 40-41, and *Norris* v *Ireland*, judgment of 26 October 1988, Series A no. 142, § 33). Furthermore, as matters currently stand, it is not inconceivable that, if a legal or administrative measure is adopted in Morocco requiring the applicant to state his civil status, his private behaviour may, if he had married a person of the same sex in Belgium, be the subject of investigation by the police, or that an attempt may be made to bring a private prosecution against him in Morocco (see Eur. Court H. R., *Modinos* v *Cyprus*, judgment of 22 April 1993, Series A no. 259, § 23).

55 It follows that, in the light of the case-file, the applicant's access to marriage in Belgium cannot be regarded as practical and effective within the meaning of the case-law cited in paragraph 43 of the present judgment.

56 The Commission also cannot succeed in its argument that the applicant is, in any event, under the theoretical threat of prosecution, in so far as the Moroccan authorities could discover his homosexuality from the fact that he has already registered his legal cohabitation with his same-sex partner. Suffice it to note in that regard that in Belgium only marriage brings about a change in civil status; partners in legal cohabitation, introduced by the Law of 23 November 1998 (*Moniteur Belge* of 12 January 1999, p. 786), appear on Belgian administrative documents as still having unmarried status. Furthermore, Article 15 of the Family Code of the Kingdom of Morocco provides that Moroccans who have contracted a marriage in accordance with the local legislation of their country of residence must submit a copy of the marriage certificate, within three months of its conclusion, with the Moroccan consular services at the location where the certificate was issued, so that it can be forwarded to the registrar at the spouses' place of birth in Morocco. Accordingly, contrary to the Commission's assertion (see paragraph 39 of the present judgment), any marriage between the applicant and his same-sex partner would have to be notified to the Moroccan authorities, with the risk that Article 489 CCM would be applied, since any marriage by definition implies sexual relations between the partners. For that same reason the Commission's argument that it is not marriage between persons of the same sex that is criminalised by Article 489 CCM, but the sexual act between persons of the same sex, must also be rejected.

57 It follows that the claims for annulment must be upheld on the basis of the first complaint set out in the applicant's single plea, without any need to decide on the other complaints in that plea.

58 In view of all the above, the contested decisions must be annulled.

Costs

59 Under Article 87(1) of the Rules of Procedure, without prejudice to the other provisions of Chapter 8 of Title II of those Rules, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Under Article 87(2), if equity so requires, the Tribunal may decide that an unsuccessful party is to pay only part of the costs or even that he is not to be ordered to pay any.

60 It follows from the grounds set out above that the Commission is the unsuccessful party. Furthermore, the applicant expressly claimed in his pleadings that the Commission should be ordered to pay the costs. As the circumstances of the present case do not warrant the application of Article 87(2) of the Rules of Procedure, the Commission must therefore be ordered to pay the costs of the proceedings.

On those grounds,

THE CIVIL SERVICE TRIBUNAL (Second Chamber)

hereby:

1. Annuls the decisions of the Commission of 5 March 2009 and 17 July 2009 refusing W the benefit of the grant of the household allowance provided for in Article 1 of Annex VII to the Staff Regulations of the European Union;

2. Orders the European Commission to pay all the costs.

Tagaras Van Raepenbusch Rofes i Pujol

Delivered in open court in Luxembourg on 14 October 2010.

W. Hakenberg H. Tagaras

Registrar President

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* Language of the case: French.