

**Elfriede Meinhardt, née Forderung,
v Commission of the European Communities²**

Case 24/71

Summary

- 1. Officials — Widow and divorced wife — Survivor's pension — Nature — Calculation (Staff Regulations of Officials of the EC, Annex VIII, Articles 27, 28)*
- 2. Officials — Widow and divorced wife — Survivor's pension — Division — Obligation to pay maintenance ensuing from divorce — Extent — Proof (Staff Regulations of Officials, Annex VIII, Article 28)*
- 3. Right conferred on individuals by a provision of Community law — Proof of existence of such right governed by national law — Jurisdiction of the Community administration and the Court of Justice*

1. Articles 27 and 28 of Annex VIII to the Staff Regulations of Officials are not intended to preserve in a different form, for the benefit of a widow or divorced spouse, an obligation to pay maintenance which stems from the marriage or the divorce, but establish a right which the parties concerned hold directly under the Staff Regulations and as regards which the claim to maintenance against the deceased official is only a factor for the purpose of calculating the division of the pension.

2. The final sentence of the first paragraph of Article 28 cannot be interpreted as only accepting a judicial decision by way

of proof and as excluding other means of proving the obligation to pay maintenance which are required or accepted by the law governing the consequences of divorce.

3. If the evidence of the existence of a right granted by a provision of Community law is governed by the national law to which the person concerned is subject, it is for the Community administration and, in the case of an action before the Court of Justice, for that Court, to consider, in order to ensure a correct application of the said provision, whether the conditions required by the national law are satisfied.

In Case 24/71

ELFRIEDE MEINHARDT, NÉE FORDERUNG, residing at 62 Wiesbaden, Burgstraße 6, represented and assisted by Mr Rossmeissl, K. Weidmann and Mr Wahl of the

¹ — Language of the Case: German.

² — CMLR.

Wiesbaden Bar, with an address for service in Luxembourg at the Chambers of Mr Wintersdorff, Advocate, 22 avenue de la Liberté,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Jürgen Utermann, acting as Agent, with an address for service in Luxembourg at the Chambers of Emile Reuter, Legal Adviser, 4 boulevard Royal,

defendant,

in the presence of MARIANNE MEINHARDT, NÉE PRANGE, residing at Tervuren, Chaussée de Bruxelles 73, represented by Mr Zimmer of the Wiesbaden Bar, with an address for service in Luxembourg at the Chambers of Mr Wennmacher, 17 boulevard Royal,

intervener,

Application for the annulment of the decision of the Commission of the European Communities of 18 February 1971 concerning the division of a widow's pension in accordance with Article 28 of Annex VIII to the Staff Regulations of Officials.

THE COURT (First Chamber)

composed of: J. Mertens de Wilmars (Rapporteur), President of Chamber, H. Kutscher and R. Monaco, Judges,

Advocate-General: K. Roemer

Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts and the procedure may be summarized as follows:

1. In 1945 Mr W. Meinhardt, a servant of the Commission, contracted a marriage with the applicant which was dissolved by a decree of the Landgericht (Regional Court) Wiesbaden of 27 February 1962 which found him solely to blame. On 4 February 1963 he contracted a second marriage with Miss Prange. He died on 22 September 1969.

2. The applicant, to whom, since the divorce, Mr Meinhardt had intermittently paid a monthly allowance of DM 200, requested the Commission to grant her a share in the survivor's pension provided for by Article 79 of the Staff Regulations of Officials.

In support of her request the applicant relies, in particular, on Article 28 of Annex VIII to the Staff Regulations of Officials, according to which: 'Where a divorced official who has remarried leaves a widow entitled to a survivor's pension, that pension shall be divided, in proportion to the duration of the marriages, between the divorced wife if she has not remarried and the widow, if the court which pronounced the decree of divorce found that the official was solely to blame. The amount to which the divorced wife is entitled if she has not remarried shall not be more than the amount of the maintenance awarded to her under the decree'.

3. By letter dated 18 February 1971 signed by a Director-General of the Commission of the European Communities and received by the applicant on 9 March 1971 the applicant was informed that she 'could not claim pension rights from the Commission under the provisions of Article 28 of Annex VIII to the Staff Regulations' (Schedule I, statement of defence).

4. By an application lodged on 1 June

1971 the applicant brought the present action against the decision of 18 February 1971.

By an application lodged at the Registry on 14 July 1971 the former Miss Prange, Mr Meinhardt's widow by the second marriage, applied to intervene in support of the defendant's conclusions. The Court allowed the intervention by order of 22 September 1971.

Upon hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General the Court decided that there was no need to hold any preparatory inquiry.

The parties presented oral argument at the hearing on 26 January 1972.

The Advocate-General delivered his opinion at the hearing on 16 March 1972.

II — Conclusions

In her application the *applicant* claims that the Court should:

'Annul the decision of the Commission and rule that the applicant is entitled to a half share in the survivor's pension which is payable in law to the widow of Mr W. Meinhardt'.

The *defendant* contends that the Court should:

- '1. dismiss the application as unfounded;
2. alternatively, dismiss the application as unfounded to the extent to which the applicant seeks a survivor's pension of an amount greater than the monthly payments of DM 200 made by Mr Willy Meinhardt until his death;
3. order the applicant to pay the costs.'

In her reply the *applicant* amends the conclusions set out in her application of 27 May 1971 and claims that the Court should:

'Annul the defendant's decision and rule that the applicant shall share to the extent of DM 200 in the widow's pension to which the widow of Mr Willy Meinhardt is entitled in law'.

In its rejoinder the *defendant* adheres to the conclusions set out in its statement of defence under Nos 1 and 3 and states that the alternative conclusion set out therein under No 2 has become irrelevant as a result of the amendments made to the conclusions in the reply.

During the oral procedure the applicant repeated her conclusions set out in the application.

For its part the defendant submitted anew the alternative conclusions set out in the statement of defence.

III — Submissions and arguments of the parties

The submissions and arguments of the parties may be summarized as follows:

1. The *applicant* maintains that the question to be settled in this action is whether a right to maintenance, the amount of which was not fixed by the decree of divorce itself, falls within the concept of 'maintenance awarded ... under the decree' referred to in the first paragraph of Article 28 of Annex VIII to the Staff Regulations.

An affirmative answer should be given to this question. In the law of at least one Member State, that is, German law, a decree of divorce never rules on maintenance or the amount thereof but merely sets in motion the consequences which, as regards maintenance, stem from the apportionment of blame in the decree of divorce. Therefore, the abovementioned Article 28, which could not lay down a final and exclusive rule in contradiction with the national legislation, was drafted in terms sufficiently general to include those cases in which the right to maintenance is founded on the decree of divorce.

The specific question whether the applicant is entitled to maintenance must be considered in the light of internal law, which is, in this instance, German law.

In the present case under Article 58 of the Ehegesetz (Marriage Law) the applicant acquired a right to the payment of maintenance. Although there was no document or agreement establishing this right she received a monthly allowance of DM 200; the uninterrupted payment of the maintenance is evidence of the existence of an implied maintenance agreement within the meaning of Article 72 of the Ehegesetz.

The applicant has therefore become entitled to maintenance under the decree of divorce and the legal position must be assessed as if a judgment delivered after the divorce had conferred on her the right to maintenance. It is therefore reasonable to deduce from Article 28 of Annex XIII to the Staff Regulations that the applicant was entitled to one half of the pension paid by the Communities.

2. The *defendant* and the *intervener* reply that the following conditions must be satisfied before the survivor's pension can be divided between the widow and the deceased servant's divorced wife, if the latter has not remarried:

- the decree of divorce must have been on the ground that the official was solely to blame;
- the deceased official must actually have been obliged under national law to pay maintenance to his divorced wife;
- the maintenance obligation must have been imposed by judicial decision.

The last two conditions are not satisfied in this instance.

In the alternative, they reply that even if it were accepted that the applicant is entitled to a pension, it could not exceed the sum of DM 200 previously paid as maintenance every month.

(a) *The need for a judicial decision*

The *Commission* accepts that the abovementioned Article 28 refers principally to those legal systems in which maintenance is awarded in the decree of divorce itself. This provision must be interpreted in the

light of those legislative systems, such as the German system, in which the decree of divorce makes no ruling on maintenance.

Although it is, therefore, true that it is impossible to require the decree of divorce to provide in every case for the payment of maintenance (as the wording of Article 28 may suggest) evidence, in the form of a judicial decision, of the existence of an obligation to pay a certain sum by way of maintenance cannot be dispensed with. In support of this contention the defendant refers to the difficulties inherent in a system in which, in fulfilling the obligations set out in Article 28, the institution is unable to refer to any specific decision from a national court on the existence and extent of the deceased servant's obligation to pay maintenance.

A written agreement — and, *a fortiori* an implied agreement — are not sufficient to justify a right to a share in a pension. Therefore, although Mr Meinhardt did not dispute his obligation to pay maintenance, the applicant should have obtained an award of maintenance from a German court.

This apparent severity towards the applicant is in accordance with the underlying principles of the Staff Regulations which accord to the widow a privileged position as against the divorced wife. Simply to accept any form of evidence of the obligation to pay maintenance would put the widow — who is in this instance the intervener — who has not been able to have the situation clarified before a German court, into an unfavourable position.

Finally, the defendant adds that in practice a decision by the Court dismissing the application would not affect the applicant adversely. She could still assert her rights to maintenance against the heirs of the deceased (Article 70 of the Ehegesetz), which would, if need be, entitle her to have execution levied on the amount of the pension to be paid to the widow by the Community.

On the other hand, when questioned on this point during the oral proceedings, the defendant maintained that in its opinion the applicant can no longer at the present time seek a declaration (paragraph 256 ZPO) recognizing her claim against Mr

Meinhardt in respect of the period preceding his death and that this denies her any possibility of a direct claim against the Community.

The *intervener* espouses the interpretation of Article 28 suggested by the Commission and accepts that a maintenance order following the divorce or, in certain circumstances, a judicially authenticated maintenance agreement, may replace the decree which is required by Article 28.

In addition, she puts forward the following points:

- A maintenance agreement concluded in accordance with Article 72 of the Ehegesetz can in no way replace the 'maintenance awarded ... under the decree' required by Article 28. It is not for the Commission or the Court to make good the defects in the applicant's title by ruling, in place of the competent courts, that a title acquired under a private agreement—which is in any case not proved—may, under the national provisions in force when the divorce was granted, take the place of a decree awarding maintenance.

Furthermore, under Article 70(2) of the Ehegesetz, in conjunction with Article 58 thereof, the applicant may even now bring a claim for maintenance against the heirs of the deceased (in this instance, the intervener and her son, who is a minor) and obtain in this way a title which recognizes her claim and which, in appropriate circumstances, combined with Article 28, may give her a right against the Community.

- During the lifetime of her husband there had been nothing to prevent the applicant bringing an action to obtain an enforceable right in which she would have had an interest, even if an amicable agreement had existed concerning the amount to be paid.

- (b) *The de facto obligation on the divorced spouse to pay maintenance to the applicant*

The Commission claims that even supposing —*quod non*—that an agreement made

before or after the divorce may constitute a sufficient title for the purposes of the application of Article 28, it would still have to be shown that the applicant had a right to maintenance under the German law applicable at the time of the divorce (paragraph 58 of the Ehegesetz) which the agreement was designed to enforce. The unconditional payments of DM 200 per month over a period of eight years are not sufficient to establish the existence of such an obligation within the meaning of Article 58 of the Ehegesetz.

Article 58 only gives rise to a right to maintenance if certain conditions concerning the income of the spouses are fulfilled and if the husband is held to be to blame.

The defendant maintains that the facts referred to by the applicant in order to justify her claim to maintenance—which are, moreover, submitted out of time in the light of Article 42(2) of the Rules of Procedure—cannot justify such a claim within the meaning of Article 58. At the time of the divorce Mr Meinhardt's income only amounted to approximately DM 1500 whereas at the same period the applicant's income exceeded DM 500. The applicant must take into account the new burdens imposed on Mr Meinhardt through his marriage with Miss Prange and the birth of a child, burdens which would have justified an application for the variation of the maintenance agreement and reduced the amount due to the divorced wife. It is therefore clear that the applicant could never have claimed maintenance under Article 58.

For this reason, the payments of DM 200 were not in the nature of maintenance or, at least, it is not proved that they were. The *intervener* adds that the applicant had no claim to maintenance after her divorce. When they were divorced the incomes of the spouses were not such as to qualify her for maintenance under paragraph 58 of the Ehegesetz.

— Before his divorce Mr Meinhardt's net income was DM 1575; thereafter it was DM 1490.

— Moreover, the standard of living must

be considered in relation to Mr Meinhardt's income at the time of their *de facto* separation, that is, in 1960. This standard of living was relatively modest as it was only in 1961, some months before his divorce, that Mr Meinhardt became an official of the European Communities.

— Finally, the applicant's gross income is at present at least DM 1300 (and not DM 580 as the applicant claims and should have proved).

In the alternative, the *intervener* states that even if it were shown that the applicant was entitled to DM 200 per month by way of maintenance before Mr Meinhardt's death, under Article 70(2) of the Ehegesetz, which requires the maintenance to be fixed at a fair and reasonable amount after the death of the spouse liable to pay it, this claim must be considerably reduced.

(c) *Conditions of division of the pension*

As regard the possible division of the pension the *defendant* and the *intervener* maintain that the application contains nothing to support a claim to a greater share in the survivor's pension than the DM 200 which represent the amount paid by Mr Meinhardt until his death. They add that after the applicant withdrew this head of claim in the reply she could not in her oral submissions to the Court, restore her original head of claim on this point.

3. The *applicant* replies as follows:

(a) *The need for a judicial decision*

The applicant observes that under Articles 58 and 72 of the Ehegesetz the divorced spouses are perfectly free to come to an agreement concerning the consequences of divorce from the point of view of maintenance. It is unreasonable to require, as does the Commission, that the wife have the question decided by the court when in fact there was an agreement between the parties as to maintenance. Article 28 of Annex VIII to the Staff Regulations must

therefore be interpreted as meaning that the divorced wife is entitled to maintenance in the sum awarded by the decree of divorce, but that where it is implied or required by the national legal system of the parties concerned, the existence and the amount of maintenance due under law may be proved by other means.

(b) *The de facto obligation to pay maintenance and the payments of DM 200 seen as maintenance*

The applicant maintains that under paragraph 58 of the Ehegesetz, which is the conclusive provision in this matter, Mr Meinhardt was obliged to make monthly payments of DM 200.

In principle this obligation stems from the decree of divorce and its specific content is derived from a correct application of the principles contained in paragraph 58 of the Ehegesetz.

According to this paragraph, for the purposes of determining the amount of the maintenance to be paid, it is necessary to take into account the financial resources, at the time when the divorce was granted,

of the party required to pay it, the income of the wife entitled thereto and the normal standard of living of the spouses at the time of their separation. In the light of her earned income of 580 DM per month and Mr Meinhardt's income, which amounted to DM 2200 at the time of the divorce, the applicant considers that a sum of DM 200 would give her the one third part of her husband's income which was the sum usually granted to the innocent wife.

The applicant therefore concludes that the sum of DM 200 is clearly in the nature of a maintenance payment.

(c) *The manner of payment of the pension*

In the reply the applicant withdrew her claim to a share in the survivor's pension in excess of DM 200 but in her oral address to the Court she repeated her original claim contained in her application, and seeks the payment of one half of the widow's pension. She makes this claim on the ground that the deterioration in her state of health justifies an increased payment.

Grounds of judgment

- 1 The application seeks in the first place the annulment of the decision contained in the letter dated 18 February 1971 and addressed to the applicant by the Director-General for Personnel of the Commission. By this decision the defendant refused to award to the applicant a share in the survivor's pension which, under Articles 27 and 28 of Annex VIII to the Staff Regulations of Officials, is payable in certain circumstances to the divorced wife of a deceased official who also leaves a widow.
- 2 Under Article 79 of the Staff Regulations, the widow of an official is entitled to a survivor's pension under the conditions laid down in Annex VIII to these Regulations. Article 17 of this Annex governs the entitlement to a pension of the widow of a deceased official. Article 27 of this Annex states that the divorced wife of an official shall be entitled on his death to a survivor's pension provided that the decree of divorce found that the official was solely to blame and that the divorced wife has not remarried before the death of her former husband. Article 28 of Annex VIII governs the award of the survivor's pension where the deceased

official leaves a widow and a divorced wife. In such a case the survivor's pension is in principle divided in proportion to the duration of each marriage.

- 3 These provisions are not intended to preserve in a different form, for the benefit of a widow or divorced wife, an obligation to pay maintenance which stems from the marriage or the divorce, but establish a right which the parties concerned hold directly under the Staff Regulations in their capacity as the widow or the divorced wife who has not remarried. However, under Article 28 the amount to which the divorced wife is entitled if she has not remarried shall not be more than the amount of the maintenance awarded to her under the decree of divorce.
- 4 The reasons for the Commission's rejection of the applicant's claim are, on the one hand that the applicant has not shown that the monthly maintenance payments of DM 200 made by her husband were due to her by way of 'maintenance as a result of [their] divorce' and on the other hand that under Article 28 of the above-mentioned Annex the maintenance had to be awarded and its amount fixed by the decree of divorce, which was not so in the present case.
- 5 Article 28 does not concern the existence of the right to the survivor's pension, but how the share to be paid to the divorced wife is to be determined where her right is in competition with that of the widow. This is confirmed by the second paragraph of this provision which states that if any of the persons entitled to pension dies, her share shall accrue to the share of the other person. Moreover, the defendant acknowledges that the provision in dispute cannot be construed literally in so far as it requires that the amount of the pension must be determined by the decree of divorce itself, but maintains that, at all events, the production of a judicial decision is necessary.
- 6 The existence and extent of the obligation on the part of the official to pay maintenance to his divorced wife must in principle be determined in accordance with the law which governs the consequences of divorce. In many States, and in certain Member States in particular, the maintenance payable by a spouse as a result of divorce need not, and even in certain cases cannot, be fixed by the decree of divorce or by a subsequent judicial decision, but may, *inter alia*, be established by an agreement between the parties. To require proof of the existence and extent of the obligation to pay maintenance by a judicial decision, when the law governing the consequences of the divorce does not recognize or, at all events, does not require recourse to such a decision, would in certain cases frustrate the exercise of a right to a survivor's pension which the Staff Regulations confers on the divorced wife whose husband is found solely to blame for the divorce. This could not have been the intention of the authors of the Staff Regulations. Therefore, the final sentence of the first paragraph of Article 28 cannot be interpreted as excluding other means of proving the obligation to pay maintenance which are required or accepted by the law governing the consequences of divorce. The purpose of Article

28 is therefore to establish a reliable point of reference based on the internal law applicable to the parties concerned.

- 7 Therefore, by refusing to award the applicant the share in the pension provided for in Article 28 of Annex VIII, without having considered whether the law governing the consequences of the divorce requires a judicial decision as proof of the right to maintenance, the defendant has infringed that article.
- 8 The decision must therefore be annulled.
- 9 In the second place the application asks the Court to rule that the applicant is entitled to a share in the survivor's pension and to determine the amount of that share. The Court has jurisdiction under Article 91 of the Staff Regulations to adjudicate upon this claim.
- 10 It is established that the applicant's husband was found solely to blame for the divorce and that she has not remarried. Moreover, it is acknowledged by the parties to the action that Mr Willy Meinhardt paid the applicant DM 200 every month without fail from the divorce to his death. The applicant and the deceased official were of German nationality and the decree of divorce was pronounced in the Federal Republic of Germany.
- 11 The parties also accept that under German law, which in the present case governs the position of the divorced spouses, the maintenance which the wife is entitled to claim in the circumstances laid down in Article 58 of the German Marriage Law (Ehegesetz) may form the subject of an agreement between the parties. This agreement may even be implied and it may be proved by the circumstances surrounding its performance, and in particular those concerning payment, if they are such as to show that the payments were made by way of maintenance.
- 12 Although proof of the existence and of the amount of the maintenance payable as a result of the divorce is in the present case governed by German law, it is for the Commission and, in the case of an action before the Court of Justice, for the Court, which is charged with applying Article 28 of Annex VIII, to consider, in order to ensure the correct application of the said Article 28, whether the conditions required by the national law are satisfied. The fact that the payments extended over a long period, their regularity, the amount of the sum in relation to the salary of the official and the supposed income of the divorced wife, together with the fact that the official was found solely to blame for the divorce, constitute reasonable grounds for concluding that these payments were made in performance of an obligation to pay maintenance arising from the divorce. Furthermore, neither the defendant nor the intervener have put forward any acceptable reason which would have led Mr Meinhardt to make the payments in question if he had not considered himself bound to make them as a result of an obligation to pay maintenance. The applicant is, therefore, entitled to a share in the survivor's pension.

- 13 This share must be fixed at DM 200 per month, which corresponds to the amount of the pension paid to her at the time when her divorced husband died. The questions of her resources in relation to her present needs and whether she may possibly have a maintenance claim against the heirs of her divorced husband are irrelevant to the application of Articles 27 and 28 of Annex VIII to the Staff Regulations. These provisions do not govern the continuation of an obligation to pay maintenance but a right which the divorced wife and the widow hold directly under the Staff Regulations; in this connexion the claim to maintenance against the deceased official is only a factor for the purpose of calculating the division of the pension.

Costs

- 14 Under Article 69(2) of the Rules of Procedure the unsuccessful party shall be ordered to bear the costs. The defendant has failed in its submissions.

On those grounds,

Upon reading the pleadings;

Upon hearing the report of the Judge-Rapporteur;

Upon hearing the parties;

Upon hearing the opinion of the Advocate-General;

Having regard to the Staff Regulations of Officials, especially Articles 79 and 91 and Annex VIII, Articles 17, 27 and 28;

Having regard to the Protocols on the Statute of the Court of Justice;

Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Article 69,

THE COURT (First Chamber)

hereby:

- 1. Annuls the decision of the Commission contained in the letter of 18 February 1971.**
- 2. Orders the Commission of the European Communities to pay to the applicant a monthly sum of DM 200 to be deducted from the pension which it is required to pay under Article 79 of and Annex VIII to the Staff Regulations.**

3. Orders the Commission of the European Communities to bear the applicant's costs.
4. Orders the intervener to bear her own costs.

Mertens de Wilmars

Kutscher

Monaco

Delivered in open court in Luxembourg on 17 May 1972.

A. Van Houtte

J. Mertens de Wilmars

Registrar

President of the First Chamber

OPINION OF MR ADVOCATE-GENERAL ROEMER
DELIVERED ON 16 MARCH 1972¹

*Mr President,
Members of the Court,*

Under Article 27 of Annex VIII to the Staff Regulations (the so-called pension scheme) 'The divorced wife of an official shall be entitled on his death to a survivor's pension, as defined in this Chapter, provided that the court which pronounced the decree of divorce found that the official was solely to blame'. Article 28 of the pension scheme provides that 'Where a divorced official who has remarried leaves a widow entitled to a survivor's pension, that pension shall be divided, in proportion to the duration of the marriages, between the divorced wife if she has not remarried and the widow, if the court which pronounced the decree of divorce found that the official was solely to blame'. Article 28 states further 'The amount to which the divorced wife is entitled if she has not remarried shall be not more than the amount of the maintenance awarded to her under the decree'.

It is on these provisions that the applicant in the present proceedings bases her application to the Commission for the award of a share in the survivor's pension. She married on 19 May 1945 but had no children. On 1 July 1961 her husband became an official of the Commission of

the European Communities. She was divorced by a decree of 27 February 1962 of the Landgericht (Regional Court) Wiesbaden which stated that her husband was 'to blame for the divorce'. After the divorce the applicant, who did not remarry and who apparently worked both during and after the marriage, received from her former husband regular monthly payments of DM 200 which were made neither under a court order nor under a written agreement. On 4 January 1963 the divorced husband contracted a second marriage, of which there is one child. He died on 22 September 1969 when still in the service of the Commission. Until his death he continued to make the abovementioned payments to his first wife.

After the death of this official lengthy disputes arose between his first and second wives and the Commission over the question of the maintenance payments to the first wife and her share in the survivor's pension payable by the Community. The divorced wife relied on the existence of an implied maintenance agreement and claimed that the second wife must continue to make the monthly payment of DM 200. The second wife rejected this claim on the ground that, as the divorced wife had a sufficient income of her own, the payments made by the deceased official were

¹ — Translated from the German.