OPINION OF MR ADVOCATE GENERAL MISCHO
delivered on 15 May 1986 *

Mr President,
Members of the Court,

In this application the Commission seeks a declaration from the Court that, by providing that the family benefits payable under Belgian legislation are to be reduced by the amount of the family benefits which may be claimed under the Staff Regulations of Officials of the European Communities ('the Staff Regulations') or the Conditions of Employment of Other Servants of the European Communities ('the Conditions of Employment'), the Kingdom of Belgium has failed to fulfil its obligations under Article 67 (2) and the second paragraph of Article 68 of the Staff Regulations, Article 20 of the Conditions of Employment, Article 5 of the EEC Treaty and Articles 15 and 19 of the Protocol on the Privileges and Immunities of the European Communities ('the Protocol').

I — The *facts* may be summarized by setting out in the order in which they were adopted the relevant provisions of Community and national law and the manner in which they have been applied.

1. *Article 67 (2) of the Staff Regulations* provides 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' (that is to say the household, dependent child and education allowances).

The *second paragraph of Article 68 of the Staff Regulations* extends that provision to officials who have non-active status, who have been retired in the interests of the service or who are entitled to the allowance provided for by Articles 34 and 42 of the former Staff Regulations of the European Coal and Steel Community.

Article 20 of the Conditions of Employment extends the same rule to members of the temporary staff.

2. The main Belgian provision at issue is Article 60 of the *laws consolidated by the Royal Decree of 19 December 1939 on family allowances for employed persons.*

Until July 1982 that article was worded as follows: 'Nor shall the provisions of this law apply to children in respect of whom family allowances are payable under other laws or regulations . . . '.

At the time (and prior to the entry into force of the present Staff Regulations and Conditions of Employment, that is to say whilst the provisions formerly applicable to officials and other servants of the European Economic Community, the European Atomic Energy Community and the European Coal and Steel Community were still in force), Belgium considered that Article 60 was inapplicable where the 'other laws or regulations' described the benefits to which they conferred entitlement as supplementary, and it agreed that Belgian family allowances should be paid first so that they could be deducted from the allowances of like nature payable under the Staff Regulations and the Conditions of Employment.

* Translated from the French.

3. *Royal Decree No 54 of 15 July 1982* amended the aforesaid Article 60, which now reads as follows: 'The amount of the family benefits shall be reduced by the amount of the benefits of like nature which may be claimed in respect of a child who is eligible pursuant to other laws or regulations in force in another country or by virtue of the rules applicable to the staff of an institution governed by public international law, even if the award of those benefits is described by the aforesaid provisions and rules as supplementary to the family benefits awarded pursuant to these laws'.

The *Royal Decree of 19 November 1982* amended along the same lines Article 29 of the Royal Decree of 8 April 1976 governing family benefits for self-employed persons.

Hence family allowances formerly paid by Belgian institutions have since 1982 been borne by the European Communities.

4. Before considering the Commission's complaints, a preliminary remark is called for concerning the subject-matter of the dispute.

The dispute is concerned with the situation of an official of the European Communities whose spouse is employed otherwise than as a Community official and with the situation of a Community official who carries on a subsidiary activity, for instance teaching at a university.

In this case, in any event, the Commission is not contending that family allowances for a Community official whose spouse is not gainfully employed and who does not himself carry on a subsidiary activity should, at least in principle, be borne primarily by the host country, whilst the Communities would merely pay a supplement.

In my view, it would be impossible to derive any such rule from the Protocol, or from Article 67 or any other article of the Staff Regulations.

Admittedly, the Court held in its judgment of 13 July 1983 in Case 152/82 *Forcheri* v *Belgium* [1983] ECR 2323 at p. 2334 that 'the legal position of officials of the Community in the Member States in which they are employed comes within the scope of the Treaty on a dual basis by reason of their post with the Community and because they must enjoy all the benefits flowing from Community law for the nationals of Member States in relation to freedom of movement, freedom of establishment and social security' (paragraph 9 of the decision).

However, the principle that the rules in force in the country of employment apply in matters of social security is applicable only in so far as no special rules are laid down by the Staff Regulations.

With regard to sickness insurance, accident insurance and the pension scheme, Community officials are clearly subject to special rules and not to those in force in the country in which they perform their duties.

It would therefore be incomprehensible if, under the family allowance scheme, which was also established by the Staff Regulations, Community officials were regarded as eligible for benefits primarily under the scheme in force in the host country, particularly since the provisions of the Staff Regulations concerning family allowances are set out in the section headed 'Remuneration'.

That consideration is reinforced by the fact that Regulation No 1408/71 on social security for migrant workers expressly lays down specific rules applicable to members of the auxiliary staff of the European Communities. Article 16 (3) of that regulation provides that 'auxiliary staff of the European Communities may opt to be subject to the legislation of the Member State in whose territory they are employed, to the legislation of the Member State to which they were last subject or to the legislation of the Member State whose nationals they are, in respect of provisions other than those relating to family allowances, the granting of which is governed by the conditions of employment applicable to such staff'.

That provision may be explained by the fact that under Article 65 of the Conditions of Employment the provisions of the Staff Regulations concerning family allowances (excluding those relating to the education allowance) are applicable to auxiliary staff but those relating to social security are not (see Article 70 of the Conditions of Employment).

This seems to confirm that, since a special scheme is provided for by the Staff Regulations, it takes precedence over the 'ordinary' provisions of Community law.

I considered it necessary to make that point as a result of certain arguments that were made in a parallel case, Case 189/85 (in which the written procedure is still in progress).

II — In support of its conclusions, the Commission has relied principally on three *submissions*, namely:

A. infringement of Article 67 (2) of the Staff Regulations;

B. lack of prior consultation, as provided for by Articles 15 and 19 of the Protocol and Article 5 of the EEC Treaty;

C. breach of the principle of equal treatment.

A — *Infringement of Article 67 (2) of the Staff Regulations*

The *Commission* considers that it is clear from Article 67 (2) of the Staff Regulations that the Community legislature intended to limit the Community's financial burden by the deduction of family allowances 'paid from other sources', including Belgian institutions, from any supplementary allowances payable under the Staff Regulations. By incorporating in the contested royal decrees a provision of the same kind, but having precisely the opposite effect, the Belgian Government disregarded the primacy of Community law and, more particularly, the fact that the provisions of the Staff Regulations are directly applicable.

The *defendant* challenges the Commission's interpretation of Article 67 (2). In its view, that provision merely excludes the overlapping of benefits and is entirely without prejudice to the supplementary effect of allowances paid under certain provisions in relation to those paid under other provisions. In this case, the Belgian legislation, as amended by Royal Decree No 54, does not confer entitlement to the payment of family allowances. Accordingly, the condition that allowances of like nature should be paid from other sources is not fulfilled and the Community should pay in full the allowances provided for by the Staff Regulations. If the Council's intention had been, by means of Article 67 (2) of the Staff Regulations, to relieve the strain on the Community's finances by transferring responsibility for those allowances to the Member States, it should have imposed an obligation on the Member States to amend their rules on the award of family allowances so as to ensure that the primary responsibility for paying those allowances rested with them.

Let me say at once that the defendant has made it quite clear that it is not challenging either the direct applicability of the Staff Regulations or the primacy of Community law. It therefore draws the appropriate conclusions from the judgment of 20 October 1981 in Case 137/80,[1] in which the Court recalled that 'the Staff Regulations of Officials were laid down by Council Regulation No 259/68 of 29 February 1968, which possesses all the characteristics set out in the second paragraph of Article 189 of the EEC Treaty under which a regulation has general application. It is binding in its entirety and is directly applicable in all Member States' (paragraph 7 of the decision).

The Court added, in paragraphs 8 and 9 of its decision, that 'it follows that the Staff Regulations, in addition to having effects in the internal order of the Community administration, are binding on Member States in so far as their cooperation is necessary in order to give effect to those regulations', and that 'consequently, where a provision of the Staff Regulations requires national measures for its application, the Member States are bound under Article 5 of the EEC Treaty to adopt all appropriate measures, whether they be general or particular'.

Belgium, like all the other Member States, is therefore under a duty to comply with the relevant provisions of the Staff Regulations and the Conditions of Employment, that is to say, it must refrain from adopting any measure which may jeopardize their application and, what is more, it must adopt all the appropriate measures needed to give full effect to those provisions.

That principle has been established and the question which now arises concerns the meaning and purpose of Article 67 (2) of the Staff Regulations — is it exclusively a rule against the overlapping of benefits, as the defendant claims, or is its purpose to make the family benefits payable by the Community supplementary to national benefits, which are to be paid first in order to limit the financial burden of the Communities?

In its judgments concerning Article 67 the Court has held that 'the *manifest objective* of Article 67 (2) is to prevent a couple from receiving family allowances twice in respect of the same children'[2] and 'that the *aim* of Article 67 is to enable each family to receive only one household allowance'.[3]

At the time, moreover, the Commission itself took the view that 'the provisions of the Staff Regulations against overlapping benefits are *solely* concerned to prevent a couple from receiving family allowances twice in respect of the same children'.[4]

In my view the interpretation to the effect that the purpose of the provision in question is to limit the financial burden of the Communities is not convincing.

Article 67 (2) scarcely displays the features which might be expected in a provision of this kind.

1. The direct addressees of Article 67 (2) are in the first place officials who are required to 'declare allowances of like nature paid from other sources', and secondly the Community institutions which

1 — *Commission* v *Belgium* [1981] ECR 2393.

2 — Judgments of 13 October 1977 in Case 106/76 *Deboeck* v *Commission* [1977] ECR 1623 and in Case 14/77 *Emer* v *Commission* [1977] ECR 1683.

3 — Judgment of 11 October 1979 in Case 142/78 *Exner* v *Commission* [1979] ECR 3125.

4 — See the 'Facts and Issues' part of the *Deboeck* judgment, at p. 1629.

are to deduct such allowances from those paid under the Staff Regulations. No rule of conduct is imposed on the Member States.

2. The *wording* of the provision is couched in practical rather than legal terms. It would have been more usual for the provision to be worded as follows: 'This article shall confer entitlement to family allowances only in so far as allowances of like nature may not be claimed under national legislation ... ' (see Article 2 (6) of Annex VII to the Staff Regulations).

3. As I have already pointed out, the provisions on family allowances are set out in Section 1, Chapter 1, Title V of the Staff Regulations, which is headed 'Remuneration', and not in Chapter 2 on social security. Could the European Communities conceivably be seeking to transfer to the Member States responsibility for part of the remuneration of their officials?

4. Article 1 (3) of Annex VII to the Staff Regulations provides that where the spouse of an official is gainfully employed, with an annual income of a specified amount, the official is not entitled to the household allowance provided for by the Staff Regulations.

There is no such provision with regard either to family allowances in general or to the dependent child allowance in particular, hence — *a contrario* — the Staff Regulations did not intend to limit the Community's financial burden in that respect.

5. Article 16 (3) of Regulation No 1408/71 and Article 70 of the Conditions of Employment provide that auxiliary staff are to be affiliated to a national social security scheme providing cover for sickness, accident, invalidity and death and for the purposes of the retirement pension, whilst as regards family allowances they are covered by Article 67 of the Staff Regulations. If the aim had been to limit the Community's financial burden, would it not have made sense to have auxiliary staff covered by a national scheme in that respect too?

6. Family allowances paid from other sources are not necessarily paid by a Member State.

For instance, the spouse may be an official of another international organization (for example, Eurocontrol, as in Case 142/78 *Exner* v *Commission* [1979] ECR 3125) to which all, or at any rate some of the Member States of the Community may belong and whose budget would bear the burden accordingly. Why should such expenditure be borne by that organization rather than by the Communities?

7. Moreover, is such relief conceivable:

(i) if its extent is left to the discretion of the countries in question which are free to determine the level of their national family allowances or even to abolish them altogether?

(ii) if it depends on an individual decision, which is within the discretion of an official's spouse, whether or not to take up employment in the host country?

(iii) or if it would have to be borne primarily by the Member States in which the Community institutions provisionally have their seats?

Hence, although the reduction of the Community's financial burden may be a consequence of Article 67 (2), that is not the aim of the provision.

Article 67 (2) cannot be construed as imposing an obligation upon the Member States.

It may therefore be tempting to draw the conclusion that the Member States remain entirely free to regulate, in whatever manner they may consider appropriate, entitlement to family allowances for the spouses of Community officials.

An argument which supports that view may be derived from the Court's judgment of 23 April 1986 in Case 153/84 *Ferraioli* v *Deutsche Bundespost* [1986] ECR 1401. That judgment itself refers to the judgment of 13 November 1984 in Case 191/83 *Salzano* [1984] ECR 3741.

Those cases were concerned with the interpretation of Article 76 of Regulation No 1408/71, which provides that entitlement to family allowances in the migrant worker's country of employment is to be suspended if, by reason of the pursuit of a professional or trade activity, family benefits or family allowances are also payable under the legislation of the Member State in whose territory the members of the family are residing. In those cases the Court held that there is no suspension of entitlement to family allowances in the country of employment of one of the parents when the other parent resides with the children in another Member State and pursues there a professional or trade activity, but does receive family allowances for the children because not all the conditions of substance and of form laid down by the legislation of that Member State for the receipt of such allowances are satisfied.

Let me point out at once that there is a considerable difference between *Ferraioli* and this case inasmuch as the Commission is not refusing to pay the full amount of the family allowances payable under the Staff Regulations to Community officials whose spouses are gainfully employed in Belgium, if no family allowances are paid to them under one of the Belgian schemes.

However, the *Ferraioli* case raises three interesting points which have a bearing on this case:

(i) the Court did not attach any importance to the phrase 'allowances ... also payable' and interpreted it as meaning 'actually paid';

(ii) it even acknowledged that a subjective act, namely the spouse's failure to apply for payment of the allowances to which she was entitled, could prevent the application of Article 76;

(iii) finally, the Court simply referred to the conditions of form and of substance laid down by the legislation of the country in which the spouse and the children are residing.

Clearly the Treaty was not intended to harmonize the social security schemes of the various Member States, and the family allowance scheme reflects the Member States' freedom of action in social security matters. Neither the social provisions of the EEC Treaty, that is to say Articles 117 to 122, nor Article 51 of the Treaty nor, as I have just demonstrated, the Staff Regulations or the Conditions of Employment impose any obligation to amend national legislation on family allowances in any particular manner.

Is it necessary, therefore, under Article 67 (2), merely to take cognizance of the relevant national rules? If those rules do not provide for the payment of family allowances for the spouses of Community officials or if they provide that the family allowances payable under national legislation are to be reduced by the amount of the family allowances payable under the Staff Regulations, have the Community institutions no option but to conclude that in that case it is the family allowances provided for by the Staff Regulations that are to be paid?

It must be acknowledged that at first sight that approach holds a certain appeal. However, I propose to examine a number of arguments which militate against it.

1. In *Forcheri*, cited earlier, the Court held that Community officials, including members of the family, must enjoy all the benefits flowing from Community law for the nationals of Member States in relation to freedom of movement, freedom of establishment and social security. In other words, Community officials, including members of the family, must remain subject to the ordinary rules of law in the country in which they reside, except where Community law provides otherwise.

It is clear, however, that in this case the contested provisions of Belgian legislation are applicable without distinction to Belgian citizens and to the citizens of other Member States. What those provisions take into consideration is not a person's nationality but the fact that that person may receive family allowances from another source. Unlike *Forcheri*, this case is not concerned with the prohibition of discrimination laid down in Article 7 of the Treaty.

Accordingly the counter-argument based on *Forcheri* is not relevant.

2. There is, however, another consideration which in my view is decisive in this case. It may be summarized as follows:

The Member States' freedom to organize in whatever manner they may consider appropriate their national family allowance scheme does not include the right to adopt unilaterally specific provisions which are applicable to Community officials or to their spouses as such.

By unilaterally adopting such provisions Belgium has failed to fulfil its obligations under Article 5 of the EEC Treaty.

According to that article, the Member States are to facilitate the achievement of the Community's tasks. [5] It follows that they have a duty to cooperate with and to assist the Community diligently, which finds expression in the Protocol. [6]

Article 15 of the Protocol provides that 'the Council shall ... lay down the scheme of social security benefits for officials and other servants of the Communities'. Article 19 of the Protocol provides that 'the institutions of the Communities shall, for the purpose of applying this Protocol, cooperate with the responsible authorities of the Member States concerned'. Since Belgium has adopted the measures complained of without cooperating either with the Community institutions or with the other Member States, those two provisions of the Protocol and Article 5 of the Treaty must have been infringed.

The meaning ascribed to Article 67 (2) of the Staff Regulations and to the rules applied to the spouses of Community officials who are gainfully employed must be the same throughout the Community.

5 — The obligations imposed by that article also apply in relation to the Staff Regulations and the Conditions of Employment, which were adopted pursuant to Article 24 of the Treaty of 8 April 1965 establishing a single Council and a single Commission of the European Communities.

6 — According to Article 239 of the EEC Treaty, the Protocol forms an integral part of the Treaty.

The infringement of Article 5 of the Treaty and Articles 15 and 19 of the Protocol is particularly blatant as Belgium appears to have taken the view that the allowances payable under the Staff Regulations were in fact merely supplementary to those payable under Belgian legislation since Article 60, as it now stands, states that Belgian allowances must be reduced 'even if the award of those benefits [that is to say the benefits payable under the Staff Regulations] is described as supplementary'.

Clearly it is not permissible for a Member State to decide unilaterally that, so far as it is concerned, a provision of the Staff Regulations ceases to have a supplementary effect (even if in reality, as I have just explained, that provision has no such effect).

There is a further argument which may be advanced.

The Court has just ruled in its 'European School' judgment of 15 January 1986 in Case 44/84 *Hurd* v *Jones* [1986] ECR 29 that conduct on the part of a Member State 'the result [of which] would be an effective transfer of funds from the Community budget to the national budget, and the financial consequences [of which] would be directly detrimental to the Community' is contrary to the obligations imposed on the Member States by Article 5 of the Treaty (paragraphs 44 and 45 of the decision).

That is undoubtedly the case in this instance. The amendments to the Belgian legislation had not only as their effect but also as their purpose to increase the Community's financial burden to the advantage of Belgian institutions.

It is clear from the 'Report to the King', submitted in support of Royal Decree No 54, that the decree was adopted pursuant to the Law of 2 February 1982 'which empowers the King to adopt all the measures necessary to ensure the financial stability of all social security schemes for employed and self-employed persons'.

In those circumstances it makes no difference whether or not the purpose of Article 67 (2) of the Staff Regulations and of the corresponding provision in the Conditions of Employment is to limit the Community's financial burden.

The mere fact that the new measures adopted by Belgium may have had, and did have, the effect of burdening the Community with the payment of family allowances which were formerly paid by Belgian institutions should certainly have restrained the Belgian Government from adopting them without the assent of the Community institutions and the other Member States.

In Case 44/84, cited earlier, the Court considered that a measure having the effects described above was contrary to the obligations arising under the second paragraph of Article 5 of the EEC Treaty even if it was adopted in connection with the implementation of an agreement concluded between the Member States outside the scope of the Treaties (paragraph 39 of the decision). That applies *a fortiori* in the case of national measures which have the same effects and are adopted in matters falling within the scope of the Treaties, such as the legal position of officials and other servants of the Community and of the members of their families.

I therefore feel bound to conclude that even if Belgium has not infringed Article 67 (2) and the second paragraph of Article 68 of the Staff Regulations or Article 20 of the

Conditions of Employment, it has failed to fulfil its obligations under Article 5 of the Treaty and under Article 19 of the Protocol in conjunction with Article 15 thereof.

However, that does not mean that the only solution to the problem of family allowances for the spouses of Community officials that is compatible with the Treaty or the Staff Regulations is for all the Member States simply to revert to the arrangement whereby they are primarily responsible for paying family allowances whilst the Community institutions merely pay a supplement where necessary.

If the Court were to hold, as I have suggested, that Article 67 (2) does not impose a specific obligation on the Member States and does not have as its purpose to relieve the strain on the Community's budget, other solutions could be envisaged.

It would then be necessary to attempt to resolve the problem by reference to an objective criterion based on the apportionment of financial burdens in the fairest possible manner.

Hence, for instance, it is difficult to understand why family allowances should be borne primarily by the social security scheme of the country of residence as soon as the spouse of a Community official takes up gainful employment if that official remains the principal 'breadwinner' of the family, that is to say, if he earns a higher salary than his wife.

Conversely, it seems illogical that family benefits should have to be paid by the Communities as soon as the spouse of a Belgian citizen in a high-income bracket becomes a Community official.

In those circumstances, it might be possible in my view to seek guidance from Article 1 (4) of Annex VII to the Staff Regulations, which provides that 'in cases where ... a husband and wife employed in the service of the Communities are both entitled to the household allowance, this shall be payable only to the person whose basic salary is the higher'.

That, however, is merely a suggestion *de lege ferenda* which should, if necessary, be examined in more detail by the representatives of the Community institutions and the Member States.

B — *Lack of prior consultation*

As I have just expressed the view that the obligations imposed on the Member States by Article 5 of the Treaty and Articles 15 and 19 of the Protocol go beyond a duty of consultation, it is no longer necessary to consider this complaint made by the Commission.

C — *Breach of the principle of equal treatment*

The third submission relied upon by the Commission is *inadmissible.*

As the defendant rightly points out, this submission alleging discrimination against certain persons employed in Belgium, either because their spouse is an official or servant of the Communities or because they are themselves Community officials or servants but carry on another separate activity, was relied upon for the first time in the application instituting the proceedings. There is no reference to it either in the letter constituting formal notice or in the reasoned opinion. It is consistent case-law that 'the subject-matter of an application brought under Article 169 is determined by the Commission's reasoned opinion and ... therefore the two documents must be founded on the same grounds and submissions'.[7]

7 — Judgment of 15 December 1982 in Case 211/81 *Commission* v *Denmark* [1982] ECR 4547. See also the judgment of 7 February 1984 in Case 166/82 *Commission* v *Italy* [1984] ECR 459.

Furthermore, that is implicitly acknowledged by the Commission in its reply, and the fact that Belgium agreed, in its defence, to state its views on the question whether the submission was well founded cannot nullify its primary objection of inadmissibility.

Accordingly, with regard to the *substantive aspect* of this submission, I will confine myself to a few brief remarks.

It should be noted in the first place that this submission is based, in the reply, on arguments and facts which differ from those referred to in the application and that the Commission has altered its conclusions accordingly.

In its application it regarded as discriminatory the fact that certain persons covered by the Belgian social security scheme were deprived of the benefit of family allowances whilst being required to pay the relevant contributions and even a special contribution introduced for single persons and childless families by Royal Decrees No 129 of 30 December 1982 and No 227 of 9 December 1983.

In its reply, the Commission confined itself to criticizing the fact that persons who are employed in Belgium but whose children are eligible for family allowances paid by the Community are not entitled to other special family allowances under Belgian legislation, such as the holiday allowance, which do not exist under Community law.

On the whole, I do not believe that the allegation of discrimination between workers can be upheld in this case. In the first place, I consider, and I repeat, that there is no discrimination on grounds of nationality since the relevant Belgian legislation is applicable without distinction to all persons employed in Belgium.

Moreover, the Commission itself acknowledges this in its reply (p. 5) when it states that 'the principle of solidarity on which social security is based compels all workers (under the scheme for self-employed persons) and all employers (under the scheme for employed persons) to pay contributions even if the workers concerned are not eligible for allowances'.

Finally, the position of employed persons who receive family allowances in respect of their children under provisions other than the relevant Belgian legislation is certainly different from that of their colleagues who do not receive such allowances. Their position is not objectively comparable, and consequently the distinction made between the two is not discriminatory.

It must be remembered that in several Member States different rules apply according to the socio-professional class to which an employed person belongs, which are not regarded as discriminatory. Thus certain schemes, but not others, provide for payment of a contribution by the employed person himself.

Those considerations also apply to the special contribution introduced for single persons and childless families.

Admittedly, the fact that the Belgian legislation deprives certain persons of benefits in respect of dependent children first and then requires them to pay the special contribution introduced for childless families may cause some astonishment.

However, that practice does not constitute discrimination on grounds of nationality since the Belgian spouses of Community officials are, for those purposes, in the same position as spouses of another nationality.

With regard to the allegation of discrimination in relation to certain special allowances such as the holiday allowance, I would point out that the royal decrees complained of entered into force on 1 August 1982 and that family holiday allowances were abolished as from 1 January 1983 by Royal Decree No 131 of 30 December 1982.

Moreover, family holiday allowances were as a rule paid in May each year. Accordingly, subject to any exceptions — which have not been established by the Commission — no family holiday allowances have been payable since 1 August 1982.

Finally, it is not apparent from the documents before the Court that other specific and distinct family allowances normally payable in Belgium have not been or are not being paid to those employed persons whose children are eligible for the family allowances paid by the Community.

On the contrary, the defendant is aware, as is apparent from its rejoinder, that if such allowances were payable, it would not be authorized to withhold them from persons who qualify for the family allowances paid by the Community since the Court has held in its judgments in Cases 106/76 and 14/77, cited earlier, that allowances intended to meet special requirements or *ex gratia* payments granted on extraordinary grounds are not to be regarded as allowances 'of like nature' coming within the scope of Article 67 (2) and the second paragraph of Article 68 of the Staff Regulations or Article 20 of the Conditions of Employment.

I therefore conclude that the Commission's third submission, if it were admissible, would have to be rejected as unfounded in this case.

III — Having regard to the foregoing considerations, I suggest that the Court declare that, by adopting Royal Decree No 54 of 15 July 1982 amending Article 60 of the consolidated laws on family allowances for employed persons and the Royal Decree of 19 November 1982 amending the Royal Decree of 8 April 1976 governing family benefits for self-employed persons, the Kingdom of Belgium has failed to fulfil its obligations under Article 5 of the EEC Treaty and Article 19 in conjunction with Article 15 of the Protocol on the Privileges and Immunities of the European Communities.

As I have come to the conclusion that one of the submissions put forward by the Commission is inadmissible, or alternatively unfounded, and that another of its submissions cannot be upheld, I suggest that the Commission be ordered to bear one half of its own costs and that Belgium be ordered to pay the remainder of the costs.