JUDGMENT OF THE COURT (First Chamber)

15 April 2010 *

In Case C-485/08 P,

APPEAL pursuant to Article 56 of the Statute of the Court of Justice, brought on 11 November 2008,

Claudia Gualtieri, residing in Brussels (Belgium), represented by P. Gualtieri and M. Gualtieri, avvocati,

appellant,

the other party to the proceedings being:

European Commission, represented by J. Currall, acting as Agent, with an address for service in Luxembourg,

defendant at first instance,

* Language of the case: Italian.

THE COURT (First Chamber),

composed of A. Tizzano, President of Chamber, E. Levits (Rapporteur), M. Ilešič, J.-J. Kasel and M. Safjan, Judges,

Advocate General: Y. Bot,
Registrar: R. Grass,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 By her appeal, Ms Gualtieri seeks to have set aside the judgment of the Court of First Instance of the European Communities (now 'the General Court') of 10 September

2008 in Case T-284/06 *Gualtieri* v *Commission* ('the judgment under appeal'), by which that court dismissed her claim that it should:

— annul the decision of the Commission of the European Communities of 5 September 2005, refusing to pay her a daily allowance of EUR 107,10 and a monthly allowance of EUR 321,30;

— annul the decision of 30 January 2006 by which the Commission rejected her complaint against the decision of 5 September 2005;

— annul all the monthly notices from the Commission relating to the calculation of the subsistence allowances payable to her;

— principally, order the Commission to pay her the allowances which she claims are payable to her, as from 1 January 2004, taking into consideration the increase in the amounts of those allowances following the entry into force of Commission Decision C(2004) 577 of 27 February 2004 laying down the rules applicable to national experts on secondment to the Commission, and subsequently of Decision C(2005) 872 of 22 March 2005 amending that decision;

— in the alternative, order the Commission to pay her the allowances which she claims are payable to her as from 2 February 2005, or in the further alternative as from 4 July 2005, to 31 December 2005;

— order the Commission to pay the costs.

I — Legal framework

2 Article 1(1) and (2) of Commission Decision C(2002) 1559 of 30 April 2002 laying down the rules applicable to national experts on secondment to the Commission, as amended by Decision C(2003) 406 of 31 January 2003 ('the SNE decision'), provided:

'1. These Rules are applicable to national experts seconded to the Commission (referred to below as SNEs …) by a national, regional or local public authority …

2. The persons covered by these Rules shall remain in the service of their employer throughout the period of secondment and shall continue to be paid by that employer.'

3 In accordance with the first paragraph of Article 17(1) of the SNE decision:

'An SNE shall be entitled, throughout the period of secondment, to a daily subsistence allowance. Where the distance between the place of deemed residence and the place of secondment is 150 km or less, the daily allowance shall be EUR 26,78; where the distance is more than 150 km, the daily allowance shall be EUR 107,10.'

4 The second paragraph of Article 17(1) of the SNE decision provided for the payment of a monthly allowance which varied in accordance with the distance between the place of recruitment and the place of secondment.

5 Article 20 of the SNE decision was worded as follows:

'1. For the purposes of these Rules, the place of the deemed residence shall be the place where the SNE performed his or her duties for the employer immediately prior to the secondment. The place of secondment shall be the place where the Commission department to which the SNE is assigned is located. Both places shall be identified in the exchange of letters mentioned in Article 1(5).

...

3. The deemed residence shall be the place of secondment [in the following cases]:

...

(b) where at the time of the Commission's request for the secondment, the place of secondment is the principal residence of the SNE's spouse or of any or his or her dependent children.

For the purposes of this provision, residence at 150 km or less of the place of secondment is to be treated as residence at that place.'

6 The SNE decision was subsequently amended by Commission Decisions C(2004) 577 of 27 February 2004, C(2005) 872 of 22 March 2005, and C(2005) 3608 of 21 September 2005. It was repealed by Commission Decision C(2006) 2033 of 1 June 2006 laying down the rules applicable to national experts on secondment to the Commission.

II — Factual background to the dispute

7 The factual background to the dispute is set out as follows in paragraphs 6 to 13 of the judgment under appeal:

'6 The applicant, Ms Claudia Gualtieri, a judge in Italy, worked at the Commission as an SNE from 1 January 2004 to 31 December 2005.

7 After receiving documentation from the Permanent Representation of the Italian Republic to the European Union that was necessary for the secondment, the Commission sent a letter to the permanent representative, which reached its addressee on 11 November 2003, informing him that the provisions of the [SNE decision] would be applicable to the applicant and that she would therefore receive a daily allowance of EUR 107,10 and also, under the conditions laid down in Article 17 of that decision, a monthly allowance of EUR 321,30.

8 Several days after the applicant had taken up her duties as an SNE, by letter of 9 January 2004 the Directorate-General for Personnel and Administration informed the Permanent Representation of the Italian Republic that she would receive only a daily allowance of EUR 26,78 instead of the EUR 107,10 previously stated, since Brussels was her spouse's place of residence for the purposes of Article 20(3) of the SNE decision.

9 From 2 February 2005, the applicant lived apart from her husband and transferred her domicile to a new address in Brussels … The divorce agreement, drawn up by mutual consent in accordance with Belgian law, was lodged at the Tribunal de première instance de Bruxelles (Court of First Instance, Brussels) on 4 July 2005, and a divorce was granted by judgment of 13 January 2006.

10 By request submitted on 6 July 2005, the applicant, referring to her separation from her husband, applied to the Commission for payment of the daily allowances of EUR 107,10 and the monthly allowance, which she claimed were payable to her as from at least 2 February 2005.

11 On 5 September 2005, the Commission rejected that request, on the basis that the applicant's place of deemed residence, within the meaning of Article 20(3)(b) of the SNE decision, had been fixed as Brussels at the time of its request for secondment.

12 By note of 17 October 2005, the applicant submitted a complaint under Article 27 of the SNE decision, as amended by [Commission] Decision C(2005) 872 of 22 March 2005.

13 By decision of 30 January 2006, the Commission found that the complaint had been submitted in accordance with Article 90(2) of the Staff Regulations of

Officials of the European Communities, but rejected it on the basis in particular that "[since] Ms Gualtieri's place of recruitment [had been fixed as] her place of deemed residence at the time of the request for secondment [to] the Commission, there [was] no need to reconsider that decision further to any changes in [her] personal circumstances …"

III — Procedure before the General Court and the judgment under appeal

8 By application lodged at the Registry of the Civil Service Tribunal on 30 April 2006, the applicant brought an action claiming that the tribunal should grant the form of order sought referred to in paragraph 1 of this judgment.

9 By order of 9 October 2006, the Civil Service Tribunal (First Chamber) held that, in her capacity as an SNE, the applicant was not a servant of the European Communities for the purposes of Article 236 EC. Consequently, it held that it lacked jurisdiction *ratione personae* to hear the case and, pursuant to Article 8(2) of Annex I to the Statute of the Court of Justice, referred the action to the General Court for a ruling.

10 After observing that, in the Commission's submission, the action was admissible only in so far as it seeks annulment of the decision of 30 January 2006 and relates to the refusal to pay the full subsistence allowances under Article 17 of the SNE decision for the period from 17 August to 31 December 2005 (or from 6 May to 31 December 2005), the General Court considered it appropriate, for reasons of procedural economy, to rule at the outset on the substantive issues. Accordingly, it dismissed the action on its merits, and thus did not have to examine the questions concerning the action's admissibility.

11 First of all, the General Court rejected the applicant's first plea alleging infringement of the principle of equal treatment in the application of the SNE decision.

12 Thus, in response to the applicant's argument that the Commission infringed Article 141 EC by refusing to pay her, after her separation, the full amount of the allowances provided for under Article 17 of the SNE decision on the ground that at the time of the request for secondment she was married to a person resident in Brussels, the General Court observed, at paragraph 29 of the judgment under appeal, that the SNE decision does not draw any distinction between male and female SNEs, and that its application cannot give rise to any form of sex discrimination.

13 At paragraph 30 of the judgment under appeal, the General Court held that, moreover and in any event, the allowances at issue do not constitute pay, as indeed the applicant herself acknowledged at the hearing.

14 At paragraph 31 of the judgment under appeal, the General Court rejected the applicant's argument alleging infringement of the principle of equal treatment on the basis of marital status, holding that '[t]he mechanism under Article 20(3)(b) of the SNE decision is to be applied once and once only to every SNE, whether single or married' and that '[t]he Commission was right to find that, at the time the request for secondment was made, the applicant had not been discriminated against compared with a single SNE, since her matrimonial legal status, that is to say as a married woman, was different from that of a single person'. After recalling that 'the Court of Justice and the [General Court] have consistently held that, as a rule, marriage is not comparable to cohabitation or to other *de facto* situations, since one of the essential characteristics of marriage is that it creates specific legal obligations different from those of any other status', the Court also noted that, 'according to the file, the applicant remained married throughout the period of her secondment, since the divorce was granted only in January 2006'.

15 Next, the General Court examined the applicant's second plea, raised under Article 241 EC, alleging the illegality of Article 20(3)(b) of the SNE decision. It rejected that plea, observing, at paragraphs 36 and 37 of the judgment under appeal, that the applicant merely set out that plea in a very abstract manner in her pleadings, without indicating precisely the nature of the alleged infringement of the principle of equality, and without developing the plea further at the hearing, despite being invited to do so by the Court.

16 Lastly, the General Court rejected the applicant's third plea, alleging infringement by the Commission of the principle of the protection of legitimate expectations, observing, at paragraphs 42 and 43 of the judgment under appeal, that the information given by the Commission to the applicant, through the Permanent Representation of the Italian Republic, was contrary to the actual wording of the SNE decision, and failed to take into consideration her status, that is to say as a woman married to a person resident at the place of secondment when the request for secondment was made. The Court observed that the SNE decision was enclosed with the letters sent to the applicant and held, moreover, that, as a serving judge, she was able to assess the factual and legal context of the situation.

IV — Forms of order sought by the parties before the Court of Justice

17 By her appeal, the appellant claims that the Court should:

— set aside, in whole or in part, the judgment under appeal;

— uphold and grant, in whole or in part, the claims and forms of order sought at first instance and on appeal;

— in the alternative, refer the case back to the General Court for it to make all necessary decisions on the merits; and

— order the Commission to pay the costs of both sets of proceedings or, in the alternative, to pay the entire costs of the proceedings at first instance.

18 The Commission contends that the Court should dismiss the appeal and order the appellant to pay the costs of the present proceedings.

V — The appeal

A – *The appeal in so far as it seeks to have set aside the judgment under appeal*

19 In support of this head of claim, the appellant relies on two grounds of appeal, alleging, respectively, errors of law and defects in reasoning on the part of the General Court, which resulted in the principle of equal pay for equal work being infringed, and inadequate grounds for the rejection of the plea of illegality of Article 20(3)(b) of the SNE decision.

20 By a letter lodged at the Court Registry on 12 October 2009, the appellant made an application to introduce a new plea in law, in accordance with Articles 42(2) and 118 of the Rules of Procedure.

1. The application to introduce a new plea in law

(a) Arguments of the parties

21 The appellant submits that, after lodging her appeal, on 12 November 2008 the Commission adopted Decision C(2008) 6866 final laying down the rules applicable to the secondment to the Commission of national experts and national experts in professional training ('the 2008 SNE decision').

22 That new decision provides additional evidence in support of the argument put forward in the appeal that an employment relationship of employer and employee was established between the SNE and the Commission, and that the allowances received by the SNE in that context are in the nature of pay. In addition, the 2008 SNE decision no longer contains a provision for the reduction in the daily allowance where, at the time of the request for secondment, the place of secondment is the same as the principal residence of the SNE's spouse or of any or his or her dependent children.

23 The Commission, which in accordance with the second subparagraph of Article 42(2) of the Rules of Procedure was invited to answer on the plea raised by the appellant, contends that the application to introduce a new plea is inadmissible, since the Court of Justice may assess the appeal only on the basis of the factual and legal situation taken into consideration by the General Court. In addition, if the appellant took the view that the adoption of the 2008 SNE decision was relevant for the purposes of assessing her case before the General Court, she ought to have made an application to the General Court for revision, pursuant to Article 44 of the Statute of the Court of Justice and Articles 125 and 126 of the Rules of Procedure of the General Court.

24 In the alternative, the Commission contends that Article 42 of the Rules of Procedure should be interpreted as containing an implied condition that the matter relied on must be relevant. The 2008 SNE decision cannot have the slightest effect on the situation that developed under the SNE decision, adopted in 2002. In addition, the appellant's argument has no factual basis, since the 2008 SNE decision preserves entirely the distinction between SNEs, on the one hand, and officials and servants of the Commission, on the other.

(b) Findings of the Court

25 The first subparagraph of Article 42(2) of the Rules of Procedure of the Court, which applies to appeal proceedings by virtue of Article 118 of those rules, provides that no new plea in law may be introduced in the course of proceedings unless it is based on matters of law or of fact which come to light in the course of the procedure.

26 In the present case, the plea in law based on the adoption of the 2008 SNE decision, which occurred in the course of the proceedings before the Court of Justice, is in any event ineffective, since the legality of a Community measure must be assessed on the basis of the facts and the law as they stood at the time when the measure was adopted (see Joined Cases 15/76 and 16/76 *France* v *Commission* [1979] ECR 321, paragraph 7; Case C-449/98 P *IECC* v *Commission* [2001] ECR I-3875, paragraph 87; and Case C-443/07 P *Centeno Mediavilla and Others* v *Commission* [2008] ECR I-10945, paragraphs 110 and 111).

27 Indeed, the 2008 SNE decision, which entered into force only on 1 January 2009, is not a measure which is applicable to the appellant's period of secondment. Therefore, that decision is not a relevant factor in the context of examining the appeal against the judgment at first instance by which the General Court assessed the legality of the Commission's decisions concerning that secondment.

2. The first ground of appeal, alleging infringement of the principle of equality

28 The appellant's first ground of appeal is divided into four parts.

(a) The first part of the first ground of appeal

(i) Arguments of the parties

29 By the first part of the first ground of appeal, the appellant complains that the General Court failed to fulfil its obligation to state reasons, by not ruling on the legal position of SNEs, which was, however, raised before it.

30 The appellant further submits that the relationship of employer and employee between the Commission and an SNE cannot be called into question, since an SNE's link with his administration of origin was to be regarded as suspended throughout the secondment. An SNE is fully integrated into the Commission's organisation and performs his duties solely in its interests.

31 The Commission contends that the first part of the first ground of appeal is inadmissible. First, the appellant's argument that she ought to have been regarded as a servant of the Commission necessarily implies that the legitimacy of the SNE decision as a whole is called into question and, in particular, the provisions establishing that an SNE remains in the service of his original employer. Those provisions were not, however, challenged in the proceedings at first instance. Second, the General Court was not asked to give a decision on the legal characterisation of an SNE's employment status in relation to the Commission.

32 In the alternative, the Commission submits that the first part of the first ground of appeal is ineffective, given that it is not necessary to know whether an SNE is a servant of the Commission in order to ascertain whether Article 20(3)(b) of the SNE decision or the manner in which that article was applied constitutes a breach of Article 141 EC or of the general principle of non-discrimination.

(ii) Findings of the Court

33 As regards the first plea of inadmissibility raised by the Commission, the Court finds that, by the first part of the first ground of appeal the appellant alleges an error of reasoning on the part of the General Court, in so far as that court failed to address the arguments raised by her concerning the legal status of an SNE, and does not call into question the legitimacy of the SNE decision. Consequently, that plea of inadmissibility must be rejected.

34 Inasmuch as the Commission argues, second, that the first part of the first ground of appeal is inadmissible on the ground that the General Court was not asked to give a decision on an SNE's legal status, it is clear from the reply lodged by the appellant before the General Court that the arguments concerning the legal status of an SNE were indeed raised before it.

35 Admittedly, the first subparagraph of Article 48(2) of the Rules of Procedure of the General Court provides that no new plea in law may be introduced in the course of proceedings unless it is based on matters of law or of fact which come to light in the course of the procedure.

36 However, although the appellant raised the arguments concerning the legal status of an SNE only at the reply stage, it was then a matter of her responding to the

Commission's argument, contained in its defence, that the allowances could not be construed as pay, given that the Commission is not the SNE's employer. In other words, it was a question of the appellant showing that the employment relationship between the parties is one of employer and employee and that, consequently, the allowances received by an SNE must be regarded as pay within the meaning of Article 141 EC.

37 Thus, the arguments relating to the legal status of an SNE may be regarded as amplifying the plea raised by the appellant before the General Court concerning infringement of the principle of equality in the application of the SNE decision. It is clear from the case-law that a plea which may be regarded as amplifying a plea made previously, whether directly or by implication, in the original application must be considered admissible (see, inter alia, Case 306/81 *Verros* v *Parliament* [1983] ECR 1755, paragraph 9; Case C-412/05 P *Alcon* v *OHIM* [2007] ECR I-3569, paragraphs 38 to 40; and Case C-71/07 P *Campoli* v *Commission* [2008] ECR I-5887, paragraph 63).

38 Consequently, the Commission cannot claim that the issue of the legal characterisation of an SNE's employment status in relation to the Commission was not raised before the General Court. Therefore, its second plea of inadmissibility must also be rejected.

39 As regards the substance, the question whether the grounds of a judgment of the General Court are contradictory or inadequate is a question of law which is amenable, as such, to review on appeal (see, in particular, judgment of 11 January 2007 in Case C-404/04 P *Technische Glaswerke Ilmenau* v *Commission*, paragraph 90, and Joined Cases C-120/06 P and C-121/06 P *FIAMM et FIAMM Technologies* v *Council and Commission* [2008] ECR I-6513, paragraph 90).

40 In the context of an appeal, the purpose of review by the Court of Justice is, inter alia, to consider whether the General Court responded to the requisite legal standard to all the arguments raised by the appellant (see, to that effect, Case C-185/95 P *Baustahlgewebe* v *Commission* [1998] ECR I-8417, paragraph 128; Case C-359/01 P *British Sugar* v *Commission* [2004] ECR I-4933, paragraph 47; and Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P *Dansk Rørindustri and Others* v *Commission* [2005] ECR I-5425, paragraph 244).

41 However, as the Court of Justice has consistently held, the requirement that the General Court give reasons for its decisions cannot be interpreted as meaning that it is obliged to respond in detail to every single argument advanced by the appellant, particularly if the argument is not sufficiently clear and precise (see, in particular, Case C-274/99 P *Connolly* v *Commission* [2001] ECR I-1611, paragraph 121; Case C-197/99 P *Belgium* v *Commission* [2003] ECR I-8461, paragraph 81; *Technische Glaswerke Ilmenau* v *Commission*, paragraph 90; and *FIAMM et FIAMM Technologies* v *Council and Commission*, paragraph 91).

42 In the present case, as was observed at paragraph 37 of this judgment, the argument concerning the legal status of an SNE was raised in the context of the plea alleging infringement of the principle of equality as referred to in Article 141 EC.

43 It is common ground that at paragraph 29 of the judgment under appeal the General Court addressed the argument alleging infringement of Article 141 EC, holding that the SNE decision does not draw any distinction between male and female SNEs and that, therefore, the application of that decision cannot give rise to any form of sex discrimination.

44 In those circumstances, the question relating to the status of an SNE, and, therefore, the possibility of construing the allowance received by an SNE as pay, was no longer decisive.

45 Indeed, it was only for the sake of completeness that, at paragraph 30 of the judgment under appeal, the General Court held that, moreover and in any event, the allowances at issue do not constitute pay.

46 The first part of the first ground of appeal must therefore be rejected as unfounded.

(b) The second part of the first ground of appeal

(i) Arguments of the parties

47 By the second part of the first ground of appeal, the appellant complains that the General Court failed to fulfil its obligation to state reasons and erred in law, in holding, at paragraph 30 of the judgment under appeal, that '[m]oreover and in any event, as indeed the applicant herself acknowledged at the hearing, the allowances at issue do not constitute pay'.

48 First, the appellant adopted a more nuanced position, pointing out that, although Article 17(9) of Decision C(2006) 2033 states that allowances must not be construed as remuneration, the possibility that they are at least in part in the nature of remuneration cannot, however, be ruled out.

49 Second, the General Court accepted that allowances are not the same as pay without conducting any further analysis as required, and without having regard to other legal

provisions, in particular, Article 141(2) EC, Article 63(3) of the Staff Regulations of Officials of the European Communities or Article 19 of the Conditions of Employment of Other Servants of the European Communities.

50 The Commission contends, first, that the question of the appellant's statements at the hearing is a matter of fact which cannot be called into question in the context of an appeal, unless distortion of the facts is alleged. However, such a distortion was neither relied on nor proved, since the argument based on the incomplete nature of the statements in the judgment under appeal does not go that far.

51 Second, the appellant expressly acknowledged, at paragraph 77 of her appeal, that she had made the statement referred to at paragraph 30 of the judgment under appeal by which she herself conceded at the hearing that the allowances at issue did not constitute pay. The appellant's arguments in that regard show that she did not place much value on what she conceded before the General Court and made her other comments as mere hypothesis.

(ii) Findings of the Court

52 It should be recalled that, according to settled case-law, a complaint directed against a ground included in a decision of the General Court purely for the sake of completeness cannot lead to the decision being set aside and is therefore nugatory (*Dansk Rørindustri and Others* v *Commission*, paragraph 148, and orders of 23 February 2006 in Case C-171/05 P *Piau* v *Commission*, paragraph 86, and of 9 March 2007 in Case C-188/06 P *Schneider Electric* v *Commission*, paragraph 64).

53 As has been observed at paragraph 45 of the present judgment, it was for the sake of completeness with regard to what it had held at paragraph 29 of the judgment under appeal that, at paragraph 30 of that judgment, the General Court made the finding contested by the appellant. That is also apparent from the use of the word 'moreover' at the beginning of paragraph 30.

54 Therefore, the second part of the first ground of appeal appears to be directed against a ground included in the judgment under appeal for the sake of completeness and, therefore, even if well founded, cannot lead to that judgment being set aside.

55 Consequently, the second part of the first ground of appeal must be rejected as ineffective.

(c) The third part of the first ground of appeal

(i) Arguments of the parties

56 By the third part of the first ground of appeal, the appellant complains that, firstly, the General Court examined whether there was any form of sex discrimination, whereas the appellant did not allege discrimination of that kind, but sought to establish, by referring to the body of provisions in force, that there was a general principle of Community law that equal pay must be awarded for equal work.

57 Secondly, the interpretation adopted by the General Court results in discrimination against the legally recognised family, because it applies only to marriages, and not to *de facto* unions, regardless of their degree of stability over time.

58 First, matrimonial status is insufficient to justify the difference in treatment applied. On the contrary, regard should be had to the actual situation of each couple, a situation which is the same for married couples and those in *de facto* unions, since in both cases there is reciprocal and joint financial support and an equal contribution towards the cost of living together.

59 Second, there is now a strong tendency to place *de facto* unions on the same footing as marriage in the laws of the various Member States. Consequently, since it does not recognise that marriage and *de facto* unions are equal, the case-law of the Court should be reconsidered, at the very least in the field of employment, in the light of the provisions of Community law, in particular the second subparagraph of paragraph 1 of Article 1d of the Staff Regulations of Officials of the European Communities, and having regard to the case-law of the European Court of Human Rights, which affords enjoyment of the protection of family life, referred to in Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950, also to *de facto* families.

60 Third, the discriminatory nature of the difference in pay based on matrimonial status stems from the fact that the Commission does not reduce the allowances where, after taking up his duties, an SNE marries a person resident in Brussels, or where the spouse of an SNE transfers his place of residence to Brussels after the SNE has been seconded.

61 Fourth and lastly, the appellant seeks to establish that the position taken by the Commission before the General Court was inconsistent, in so far as the Commission stated that an SNE's matrimonial status was the only genuine and definite criterion which might be taken into consideration for the purposes of assessing the amount of the daily allowances to be paid, since it would be contrary to the principle of simplified procedures to examine specific situations, including those of *de facto* unions, whereas, at the same time, the Commission also argued, in a manner inconsistent with that principle of simplified procedures, that the appellant ought to have challenged all the monthly payments.

62 The Commission contends that the General Court was correct to observe, in response to the appellant's reference to Article 141 EC, that no sex discrimination was apparent from an analysis of the SNE decision.

63 The Commission maintains that the argument relating to the alleged equivalence between marriage and *de facto* unions is put forward for the first time in the appeal proceedings, and should therefore be declared inadmissible.

64 In addition, while the importance of the principle of equal pay for equal work must obviously be recognised, that principle is not relevant in the present case and was not infringed by the judgment under appeal. In any event, the only effect of placing marriage and *de facto* unions on the same footing in the context of the system of allowances paid to SNEs would be to extend also to SNEs in *de facto* unions the presumption underlying Article 20(3)(b) of the SNE decision – which is that an SNE faces fewer disadvantages when married to a person resident at the place of secondment – and, therefore, also to pay those SNEs reduced allowances.

65 Furthermore, the fact that legally recognised unions are expressly placed on the same footing as *de facto* unions under certain provisions of the Community legal order does not give rise to any general obligation to treat them in the same way, especially where the reasons for such equal treatment under those provisions, in particular the protection of family life, are unconnected with the rationale for the allowances under Article 17 of the SNE decision.

66 The Commission points out that, where a system is based on specific and precise criteria, applied objectively, the existence of borderline situations is acceptable in so far as more important factors may be invoked, such as the rational use of the Community's resources and, in the present case, the reduction in the Commission's bureaucratic burden with regard to persons temporarily seconded by the national authorities.

(ii) Findings of the Court

67 As regards the argument that the General Court erred in law in examining whether there was any form of sex discrimination, it is sufficient to observe, as is also evidenced by paragraph 22 of the appeal, that the appellant expressly raised infringement of Article 141 EC before that court. That provision is a specific expression of the general principle of equality of the sexes (see Case C-277/04 P *Lindorfer* v *Council* [2007] ECR I-6767, paragraph 50).

68 The General Court was therefore correct to examine whether the application of the SNE decision may give rise to any form of sex discrimination.

69 Next, as regards the appellant's argument that the General Court's interpretation discriminates against the legally recognised family, compared with *de facto* unions, that argument is admissible. First, as is clear from the application lodged at first instance, in particular from paragraph 33 thereof, the appellant did indeed raise the comparability of legally recognised unions, such as marriage, and *de facto* unions and, second, the General Court expressly took a view in that respect at paragraph 31 of the judgment under appeal.

70 In that connection, it should be recalled that the principle of equal treatment or non-discrimination requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (Case C-344/04 *IATA and ELFAA* [2006] ECR I-403, paragraph 95; Case C-300/04 *Eman and Sevinger* [2006] ECR I-8055, paragraph 57; and *Lindorfer* v *Council*, paragraph 63).

71 By holding, at paragraph 31 of the judgment under appeal, that there was no discrimination between the appellant, who was married at the time the request for secondment was made, and an SNE who was a single person, since their marital statuses were different, the General Court implicitly validated marital status as one of the correct and appropriate criteria for the purposes of determining the amount of the daily allowance to be received.

72 It must be noted that setting the conditions for the payment of the allowances to SNEs involves the exercise of discretion on the part of the Commission. In addition, the principle of non-discrimination or equal treatment would be disregarded only if Article 20(3)(b) of the SNE decision entailed a difference of treatment which was arbitrary or manifestly inappropriate in relation to the purpose of that provision.

73 In that connection, it should be said that the allowance is paid by the Commission, as it explains, in order to make up for the disadvantages and costs incurred by an SNE as a result of being away from his place of residence. Article 20(3)(b) of the SNE decision is based on a presumption that an SNE faces fewer disadvantages when, at the time the secondment is requested, his spouse resides at the place of secondment.

74 The appellant does not call into question that presumption as such, but submits that marital status is not the only relevant and appropriate criterion which may be taken into consideration in that respect, and that cohabitation might place the members of a *de facto* union in the same situation as married couples.

75 However, it must be observed that, although *de facto* unions and legally recognised unions, such as marriage, may display similarities in certain respects, those similarities do not necessarily mean that those two types of union must be treated in the same way.

76 In those circumstances, the decision to apply the criterion of matrimonial legal status appears neither arbitrary nor manifestly inappropriate in relation to the objective of reducing the allowances paid to SNEs when they are in a situation in which it can be assumed that they bear fewer costs and disadvantages on account of their matrimonial status.

77 It is relevant, moreover, to note that neither before the General Court nor before this Court did the appellant specifically argue that married persons were treated differently from persons cohabiting in the context of a registered partnership or refer to the Commission's practice in that respect.

78 It follows that the General Court did not discriminate against married persons compared with single persons in a *de facto* union by validating the criterion of matrimonial status and by holding, at paragraph 31 of the judgment under appeal, that, when the request for secondment was made, the appellant had not been discriminated against compared with a single SNE, since her legal status as a married women was different from that of a single person.

79 Consequently, that argument of the appellant must be rejected as unfounded.

80 The reference by the appellant to the various situations in which the allowance is not reduced following the subsequent changes in the SNE's situation cannot call into question that finding.

81 The Court has already held that although in borderline cases fortuitous problems must arise from the introduction of any general and abstract system of rules, there are no grounds for taking exception to the fact that the legislature has resorted to categorisation, provided that it is not in essence discriminatory having regard to the objective which it pursues (Case 147/79 *Hochstrass* v *Court of Justice* [1980] ECR 3005, paragraph 14). The same conclusion applies *a fortiori* where those borderline cases give rise to fortuitous advantages.

82 The reference by the appellant to the provisions of the Staff Regulations of Officials of the European Communities and to the case-law of the European Court of Human Rights is irrelevant in that connection.

83 First, the Court has already noted that SNEs who work at the Commission on an ad hoc basis are not covered by the Staff Regulations of Officials of the European Communities (see, also, judgment of 24 January 2008 in Case C-211/06 P *Adam* v *Commission*, paragraph 52).

84 Second, the appellant has failed to establish how the General Court's interpretation infringes the principle of the protection of family life, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

85 Lastly, the arguments by which the appellant criticises the position taken by the Commission before the General Court are inadmissible. As provided for in Article 225 EC and the first paragraph of Article 58 of the Statute of the Court of Justice, an appeal against a decision of the General Court is limited to points of law and must be based on the grounds of lack of competence of the General Court, breach of procedure before it which adversely affects the interests of the appellant, or infringement of Community law by the General Court (see, in particular, order in Case C-345/00 P *FNAB and Others* v *Council* [2001] ECR I-3811, paragraph 28 and case-law cited).

86 By calling into question the position taken by the Commission before the General Court, the appellant seeks merely the re-examination of the application submitted to the General Court, which the Court of Justice does not have jurisdiction to undertake (see, inter alia, Case C-352/98 P *Bergaderm and Goupil* v *Commission* [2000] ECR I-5291, paragraph 35).

87 The third part of the first ground of appeal must therefore be rejected as in part unfounded and in part inadmissible.

(d) The fourth part of the first ground of appeal

(i) Arguments of the parties

88 By the fourth part of the first ground of appeal, submitted in the alternative, the appellant complains that the General Court merely stated, at paragraph 31 of the judgment under appeal, that, according to the documents before it, the appellant remained married throughout the period of her secondment, whereas she had claimed that the allowances should be paid to her in full as from 2 February 2005, the date of her *de facto* separation, or, in the alternative, as from 4 July 2005, when the divorce agreement was lodged. The grounds of the judgment under appeal are thereby flawed, since they do not clearly indicate the logic and legal reasoning followed by the General Court.

89 In addition, the need to refer to the SNE's situation pertaining at the time of the request for secondment, for the purposes of ascertaining the amount of the allowances payable, without having regard to any subsequent changes, is not confirmed in the text of the relevant provisions.

90 The appellant submits that the Commission's position is full of contradictions, in so far as the proposal it made in respect of the appellant, namely that she should challenge all the monthly payments, is totally inconsistent since it is contrary to the principle of simplified procedures. In addition, the Commission's position of refusing to review the status of SNEs on an ongoing basis is undermined by the fact – which it concedes – that cases which are suitable for reexamination are rare.

91 The Commission replies that the fourth part of the first ground of appeal is in part inadmissible and, in any event, unfounded.

92 First, no additional reasoning has to be given in respect of a matter of fact which is beyond doubt, namely that there was no change in the appellant's legal situation during the period of secondment and, in any event, that fact serves only to support the General Court's reasoning to the effect that the appellant could not have been discriminated against compared with a single SNE, since she was married and the legal status of a married women is different from that of a single person.

93 Second, by raising a non-existent failure to give reasons in the present case, the appellant in actual fact merely seeks to have the Court re-examine the arguments already put forward and rejected at first instance concerning the need to take into account the changes in the personal situation of an SNE during his period of secondment.

94 Third and in any event, Article 20(3)(b) of the SNE decision requires that the assessment as to whether the condition for reducing the allowances has been fulfilled must be carried out at the time of the request for secondment to the Commission.

(ii) Findings of the Court

95 It should be noted, first, that in accordance with Article 20(3)(b) of the SNE decision, it is an SNE's residence at the time of the request for secondment which must be used for the purposes of determining his place of residence.

96 Therefore, the appellant's argument that there is no basis in the text of the SNE decision for the General Court's finding that the mechanism under Article 20(3)(b) of the

SNE decision is to be applied once and once only to every SNE, and that the relevant time for the purposes of determining the place of residence is when the request for secondment is made, is contradicted by the very wording of Article 20(3)(b).

97 Second, the complaints concerning breach of the obligation to state reasons by the General Court must also be rejected. Since the General Court correctly found that the SNE's situation was assessed once and once only when the request for secondment was made, that finding answered to the requisite legal standard the appellant's argument that the full amount of the allowance ought to have been paid to her from the date of her *de facto* separation or from the date of lodgment of the divorce agreement. Those changes in the appellant's legal status could not therefore be relevant.

98 It was, moreover, only for the sake of completeness that the General Court stated that the appellant remained married throughout the period of her secondment. As has been noted at paragraph 52 of this judgment, a complaint directed against a ground included in a decision of the General Court purely for the sake of completeness cannot lead to the decision being set aside and is therefore nugatory.

99 As regards, third, the appellant's arguments intended to demonstrate that the Commission's position is inconsistent, it is sufficient to note that the appellant seeks merely to have the application submitted to the General Court re-examined, which, in accordance with the case-law referred to at paragraphs 85 and 86 of this judgment, is outside the jurisdiction of the Court of Justice in the context of an appeal.

100 It follows that the fourth part of the first ground of appeal must be rejected as being in part unfounded and in part inadmissible.

3. The second ground of appeal, alleging that the General Court erred in law in rejecting the plea of illegality of Article 20(3)(b) of the SNE decision

(a) Arguments of the parties

101 The appellant submits that, by rejecting as inadmissible the plea of illegality raised in respect of Article 20(3)(b) of the SNE decision, under Article 241 EC, the General Court's reasoning was defective, since the appellant had set out in a detailed and immediately intelligible manner the factual and legal reasons advanced in support of her application. She stated at the hearing, before the General Court, that the plea of illegality was based on the reasons underlying the complaint of unequal treatment, which had already been set out. It is therefore clear that the purpose of the reference to Article 241 EC was to obtain a decision on the issues raised, even if the action were out of time.

102 The Commission contends that the General Court gave adequate reasons for rejecting the plea of illegality in paragraphs 35 to 37 of the judgment under appeal.

(b) Findings of the Court

103 In accordance with the wording of the second ground of appeal contained in her pleadings, the appellant complains that the General Court failed to comply with its obligation to state reasons, in rejecting the plea of illegality under Article 241 EC. However, it is apparent from paragraphs 123 to 125 of the appeal that the appellant is, in actual fact, challenging the justification for that rejection. The appellant submits

that, contrary to what was held by the General Court, her application complied with the rules of admissibility set out at paragraph 35 of the judgment under appeal.

104 The Court of Justice has already held that the General Court is obliged to reject as inadmissible a head of claim in an application brought before it if the essential matters of law and of fact on which the head of claim is based are not indicated coherently and intelligibly in the application itself, and the failure to state such matters in the application cannot be compensated for by putting them forward at the hearing (see Case C-214/05 P *Rossi* v *OHIM* [2006] ECR I-7057, paragraph 37).

105 In the present case, at paragraph 36 of the judgment under appeal, the General Court found that the appellant merely set out the plea of illegality in a very abstract manner in her pleadings, without indicating precisely the nature of the alleged infringement of the principle of equality.

106 The appellant has not put forward before this Court any argument to show that, contrary to what was held by the General Court, the application submitted to that court contained precise matters of fact and of law in support of the plea of illegality raised, since the statement made at the hearing that the matters of fact and of law underlying the first plea also form the basis of the plea of illegality is irrelevant in that regard, as is apparent from the case-law referred to at paragraph 104 of this judgment.

107 Consequently, the General Court did not err in law and the second ground of appeal must be rejected as unfounded.

B – *The appeal in so far as it seeks an order for costs*

1. Arguments of the parties

108 The appellant submits that the General Court erred in law and that its reasoning was defective in ordering her to pay the costs incurred by the Commission. First, since an SNE must be regarded as an employee of the Commission, the general provision of Article 87(2) of the Rules of Procedure of the General Court was not applicable in this case and, second, although the matter was expressly pleaded, the General Court did not set out the reasons for which the legal position of an SNE is not identical or comparable to that of officials and servants.

109 In addition, the novelty and legal complexity of the issues raised, in addition to the conduct of the Commission over a period of time, constitute exceptional circumstances which ought to have led the General Court, under the first subparagraph of Article 87(3) of its Rules of Procedure, to order the Commission to bear its own costs.

110 The Commission contends that, since the appellant was an SNE, whose situation is clearly different from that of the officials and servants of the Commission, the dispute fell within Article 230 EC and, therefore, the provisions on costs in cases concerning officials or servants of the Commission did not apply. In addition, the dispute did not disclose any exceptional circumstances to make the General Court order that costs be shared or that each party bear its own costs.

2. Findings of the Court

111 It should be recalled that, under the second paragraph of Article 58 of the Statute of the Court of Justice, '[n]o appeal shall lie regarding only the amount of the costs or the party ordered to pay them'. In addition, according to settled case-law, where all the other pleas put forward in an appeal have been rejected, any plea challenging the decision of the General Court on costs must be rejected as inadmissible by virtue of that provision (see, inter alia, Case C-396/93 P *Henrichs* v *Commission* [1995] ECR I-2611, paragraphs 65 and 66; Joined Cases C-302/99 P and C-308/99 P *Commission and France* v *TF1* [2001] ECR I-5603, paragraph 31; and Case C-301/02 P *Tralli* v *ECB* [2005] ECR I-4071, paragraph 88).

112 Accordingly, since all the other pleas put forward in the appeal brought by the appellant are rejected, the last plea concerning the allocation of costs must be declared inadmissible.

VI — Costs

113 Under Article 69(2) of the Rules of Procedure of the Court, which applies to the procedure on appeal by virtue of Article 118 thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and Ms Gualtieri has been unsuccessful, she must be ordered to pay the costs.

On those grounds, the Court (First Chamber) hereby:

1. **Dismisses the appeal.**

2. **Orders Ms Gualtieri to pay the costs.**

[Signatures]