

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF

ADMINISTRATIVE TRIBUNAL

**Appeal Nos. 464 and 465/2010 (Giovanni PALMIERI and Virginia PALMIERI
v. Secretary General)**

The Administrative Tribunal, composed of:

Mr. Luzius WILDHABER, Chair,
Mr. Angelo CLARIZIA
Mr. Hans G. KNITEL, Judges,

assisted by:

Mr. Sergio SANSOTTA, Registrar,

has delivered the following decision after due deliberation.

PROCEEDINGS

1. The appellants, Mr Giovanni Palmieri and Ms Virginia Palmieri, lodged their appeals on 11 January 2010, and these were registered on that day as Nos. 464/2010 and 465/2010.
2. On 11 February 2010, each of the appellants submitted a supplementary memorial.
3. On 11 March 2010, the Secretary General submitted his observations on the two appeals.

The appellants submitted a single memorial in reply on 12 April 2010.

4. Provisionally scheduled for 21 April 2010, the public hearing on the two appeals was initially postponed, and finally held in the Administrative Tribunal's hearing room in Strasbourg on 17 June 2010. The appellants were represented by Ms Mélodie Vandebussche and Ms Laure Levi, of the Brussels Bar, and the Secretary General was represented by Ms Bridget O'Loughlin, Deputy Head of the Legal Advice Department, assisted by Ms Sania Ivedi and Ms Maija Junker-Schreckenber, assistants in that department.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A) Appeal No. 464/2010

5. The appellant is a permanent staff member of the Council of Europe. He is an Italian national, and holds an A5 post in the Directorate General of Human Rights and Legal Affairs.

His appeal concerns the decision of the Directorate of Human Resources to cease paying him the dependent children's allowance.

6. The appellant had previously received an education allowance and a dependent children's allowance for his daughter, Virginia Palmieri. On 11 January 2010, the latter lodged a separate appeal, complaining of the decision to terminate the orphan's pension which she had received following the death of her mother, also a staff member of the Council of Europe.

7. On 22 July 2008, the appellant contacted the Directorate of Human Resources concerning continued payment of the dependent children's allowance.

On 8 July 2008, a staff member of that Directorate wrote to him as follows:

“As agreed, we shall be suspending the dependent children's allowance with effect from 1 October 2008, when we shall also be obliged to suspend Virginia's orphan's pension”.

8. On 29 July 2008, the appellant replied that his daughter had just been informed that the European Commission had accepted her for a five-month traineeship, starting on 1 October 2008. He added that, under Article 5.1.iii Appendix IV of the Regulations governing staff salaries and allowances (paragraph 29 below), payment of the allowance could continue up to age 26 for a child in full-time vocational training, who was not receiving a salary properly so called. He stated that the training in question constituted vocational training, and that the training grant which accompanied it was in no sense a salary. This being so, he requested that payment of the dependent children's allowance and orphan's pension be continued. He stated that he would be absent from the office in August, but would be reading his e-mails.

9. In July 2008, the appellant wrote as follows to the Directorate of Human Resources:

“I hereby wish to inform you that my daughter Virginia will be starting a period of training with the European Commission on 1 October 2008. In principle, this will end on 28 February 2009.

I enclose the Commission's offer of a traineeship and her letter of acceptance.

It follows that payment of the dependent children's allowance should continue in accordance with Article 5, paragraph 1 iii of the Regulations governing staff salaries and allowances (Appendix IV to the Staff Regulations). A traineeship with the European Commission is indeed ‘vocational training which does not carry a wage or salary properly so called’.

I should be grateful if you would kindly confirm that payment of the said allowance and the orphan's pension will continue, insofar as my daughter Virginia satisfies ‘the conditions for entitlement to the allowance for a dependent child [...] under the Staff Rules and Regulations of the Organisation’ (Article 26 of the Pension Scheme Rules).”

10. On 29 August 2008, a staff member of the Directorate of Human Resources wrote to the appellant as follows:

“Further to your memorandum of 31 July 2007, we are studying your request, and have sought legal advice, with a view to taking a decision. In the meantime, we can suggest two solutions:

1. Payment of the dependent children’s allowance and orphan’s pension to cease on 1 October 2008. If the decision is favourable to you, you will again be able to claim the allowance and pension with retroactive effect.
2. Payment of the dependent children’s allowance and orphan’s pension to continue. If the decision is unfavourable to you, we shall ask you to refund the sums unduly paid.

Please let us know which you prefer.”

11. On 8 October 2008, the Head of the Department for the Administrative, Social and Financial Management of Staff sent the appellant the following memorandum:

“In your memorandum of 31 July, you asked us whether your daughter Virginia, at present a trainee with the European Commission, might continue to receive the dependent children’s allowance in pursuance of Article 5, paragraph 1 iii of the Regulations governing staff salaries and allowances.

First of all, my apologies for our delay in replying.

In support of your request, you sent us a copy of the European Commission’s letter to your daughter, offering her a traineeship. I note from this that the monthly stipend, €1003, is less than 50% of the Belgian scale for grade C1/1 (Rule No. 1129, Article 1).

I also note, however, that you did not supply us with a certificate confirming that your daughter is continuing her studies during the present academic year, and that the said offer of a traineeship makes no mention of any agreement concluded with an educational establishment.

In these circumstances, I regret that I am unable to agree to your request.”

12. On 23 October 2008, the appellant lodged an administrative complaint under Article 59, paragraph 1 of the Staff Regulations.

On 17 November 2008, the Secretary General referred this administrative complaint to the Advisory Committee on Disputes (paragraph 4 of the said Article 59). The 30-day period allowed him for giving a decision on the complaint would thus run from the day on which he received the Committee’s opinion.

13. On 5 October 2009, the Advisory Committee on Disputes gave its opinion, which was transmitted to the Secretary General on 3 November 2009. In this opinion, from which one member dissented, the Committee held that Ms Palmieri’s traineeship at the European Commission did not constitute vocational training, since the appellant had not shown that she needed it to exercise a given profession.

14. On 3 December 2009, the Secretary General decided that the administrative complaint was ill-founded and rejected it accordingly.

15. On 11 January 2010, the appellant submitted the present appeal.

B) Appeal No. 465/2010

16. The appellant is the daughter of the author of appeal No. 464/2010. She was born in 1984 and is an Italian national.

Her appeal concerns the decision of the Directorate of Human Resources to terminate payment of an orphan's pension.

17. The appellant had been receiving an orphan's pension since June 2007, following the death of her mother, who had also been a staff member of the Organisation.

18. Having completed her legal studies, the appellant was awarded a Master's degree (LL.M), with the law of intellectual property as special subject, at Queen Mary, University of London, on 9 December 2008. In spring of that year, she had applied for a traineeship within the European Commission's Intellectual Property Unit.

19. On 22 July 2008, the appellant's father contacted the Directorate of Human Resources concerning continued payment of the dependent children's allowance.

On 8 July 2008, a staff member of the Directorate of Human Resources wrote to him as follows:

“As agreed, we shall be suspending the dependent children's allowance with effect from 1 October 2008, when we shall also be obliged to suspend payment of Virginia's orphan's pension”.

20. On 29 July 2008, the appellant replied that his daughter had just been informed that the European Commission had accepted her for a five-month in-service training course, starting on 1 October 2008. He added that, under Article 5.1.iii Appendix IV of the Regulations governing staff salaries and allowances (paragraph 29 below), payment of the allowance could continue up to age 26 for a child in full-time vocational training, who was not receiving a salary properly so called. He stated that the training in question constituted vocational training, and that the training grant which accompanied it was in no sense a salary. This being so, he requested that payment of the dependent children's allowance and orphan's allowance be continued. He stated that he would be absent from the office in August, but would be reading his e-mails.

21. On 31 July 2008, he wrote as follows to the Directorate of Human Resources:

“I hereby wish to inform you that my daughter Virginia will be starting a period of training with the European Commission on 1 October 2008. In principle, this will end on 28 February 2009.

I enclose the Commission's offer of a traineeship and her letter of acceptance.

It follows that payment of the dependent children's allowance should continue in accordance with Article 5, paragraph 1 iii of the Regulations governing staff salaries and allowances (Appendix IV to the Staff Regulations). A traineeship with the European Commission is indeed ‘vocational training which does not carry a wage or salary properly so called’.

I should be grateful if you would kindly confirm that payment of the said allowance and the orphan's pension will continue, insofar as my daughter Virginia satisfies ‘the conditions for

entitlement to the allowance for a dependent child [...] under the Staff Rules and Regulations of the Organisation' (Article 26 of the Pension Scheme Rules)."

22. On 29 August 2008, a staff member of the Directorate of Human Resources wrote to the appellant as follows:

"Further to your memorandum of 31 July 2007, we are studying your request, and have sought legal advice, with a view to taking a decision. In the meantime, we can suggest two solutions:

1. Payment of the dependent children's allowance and orphan's pension to cease on 1 October 2008. If the decision is favourable to you, you will again be able to claim the allowance and pension with retroactive effect.

2. Payment of the dependent children's allowance and orphan's pension to continue. If the decision is unfavourable to you, we shall ask you to refund the sums unduly paid.

Please let us know which you prefer."

23. Not having received payment of her pension, the appellant, Ms Palmieri, wrote to the Joint Pension Administration Section (JPAS) on 2 November 2008, asking whether this was merely an oversight, or whether payment had been suspended for reasons unknown to her.

24. On 5 November 2008, the Head of the Section replied as follows:

"In your letter of 2 November 2008, sent by registered mail with acknowledgement of receipt, you ask for explanations concerning your entitlement under the Council of Europe's Pension Scheme.

It appears from your file that the Pension Section has, on instructions from the Council of Europe, terminated the orphan's pension which you received up to 30 September 2008.

The Council of Europe decided, following an exchange of letters between your father and its administration, that your situation since 1 October 2008 no longer allows you to satisfy the conditions for payment of the dependent children's allowance. Under Article 25, paragraph 2 sub-paragraph ii, the orphan's pension is conditional on payment of that allowance.

It appears that you were not personally informed of that decision before it took effect, and I would ask you to accept the Pension Section's apologies for that oversight.

I take this opportunity of informing you that, should you again satisfy the conditions for payment of the dependent children's allowance, the Council of Europe will instruct the JPAS to restore your pension rights."

25. On 4 December 2008, the appellant lodged an administrative complaint under Article 59, paragraph 1 of the Staff Regulations.

On 17 November 2008, the Secretary General referred this administrative complaint to the Advisory Committee on Disputes (paragraph 4 of the said Article 59). This meant that the 30-day period allowed him for giving a decision on the complaint would begin on the day on which he received the Committee's opinion.

26. On 5 October 2009, the Advisory Committee on Disputes gave its opinion, which was transmitted to the Secretary General on 3 November 2009. In this opinion, from which one member dissented, the Committee held that Ms Palmieri's traineeship at the European Commission did not constitute vocational training, since the appellant had not shown that she needed it to exercise a given profession.
27. On 3 December 2009, the Secretary General decided that the administrative complaint was ill-founded and rejected it accordingly.
28. On 11 January 2010, the appellant submitted the present appeal.

II. THE LAW

A) Provisions relevant to both appeals.

29. Article 5 of Appendix IV (Regulations governing staff salaries and allowances) of the Staff Regulations reads as follows:

“Article 5 – Allowance in respect of dependent children or other dependants

1. i. A monthly allowance shall be paid in respect of each dependent child under 18 years of age, in accordance with the appended scale.
 - ii. By dependent child is meant any legitimate, natural, adopted or otherwise dependent child who depends on the staff member's household or on the staff member alone for main and continuing support. An “otherwise dependent” child shall be taken as meaning:
 - a. child for whom adoption procedure has been initiated;
 - b. an orphan dependent on the staff member.
 - iii. The allowance shall continue to be payable until the dependent child reaches the age of 26 if he or she is receiving, on a full-time basis, school or university education or vocational training which does not carry a wage or salary properly so called.
 - iv. The allowance shall continue to be payable without any age-limit if the dependent child cannot support himself or herself owing to permanent disablement certified by a doctor approved by the Secretary General.
 - v. If a staff member or the spouse of a staff member receives under his or her country's laws or regulations an allowance whose purpose is the same as that of the allowance provided for in this article, the amount of that allowance shall be deducted from the allowance payable by the Council.
 - vi. In the case of two staff members employed by the Council or by the Council and another Co-ordinated Organisation, the allowance in respect of dependent children shall be paid to the official who receives the household allowance.
2. An allowance equal in amount to the allowance payable in respect of a dependent child shall, by decision of the Secretary General for cause shown, be payable to a staff member in respect of any ascendant of himself or herself or his or her spouse, where such ascendant is dependent on him or on her for main and continuing support and in respect of any relative by blood or marriage whom he or she is under a legal obligation to provide with main and continuing support.”

30. Rule No. 1129 of 17 March 2003 on eligibility for the allowance in respect of dependent children (Article 5.1 of Appendix IV to the Staff Regulations) reads:

“The Secretary General of the Council of Europe,

HAVING REGARD to Article 5.1 of the Regulations governing Staff Salaries and Allowances, which provides for the payment of an allowance in respect of dependent children for each child who depends on the staff member alone for main and continuing support;

HAVING REGARD to paragraph iii of Article 5.1, which provides that the allowance shall continue to be payable until the dependent child reaches the age of 26 if he or she is receiving full-time school or university education or vocational training which does not carry a wage or salary proper;

HAVING REGARD to paragraph iv of Article 5.1, which further provides that the allowance shall continue to be payable without any age-limit if the dependent child cannot support himself or herself owing to permanent disablement certified by a doctor approved by the Secretary General;

HAVING REGARD to the established administrative practice of applying an upper limit on the child’s resources equivalent to 50% of the basic salary for grade C1, step 1, as a condition of eligibility for the allowance in respect of dependent children;

CONSIDERING that it is necessary to clarify the conditions for considering a child as “dependent on the staff member”;

HAVING CONSULTED the Staff Committee in accordance with Article 5, paragraph 3 of the Regulations on Staff Participation (Appendix I to the Staff Regulations);

DECIDES:

Article 1

No child undergoing school or university education or vocational training shall be considered as dependent if and for as long as he or she is in receipt of average monthly net income (of any kind) at least equivalent to 50% of the basic salary of a staff member at grade C1, step 1 assigned to a duty station in the child’s country of residence.

Should the child be resident in a country for which there is neither a Co-ordinated salary scale nor one established by the Council of Europe, reference shall be made to the scale for grade 1, step 1 (General Service Category) determined for that country by the United Nations.

Article 2

1. The situation of children with disabilities, covered by Article 5.1 iv of Appendix IV to the Staff Regulations, shall be examined on a case-by-case basis taking account of:

A. the child’s own income, if any, including:

- net income from salaried employment or self-employment;
- allowances or benefits received under a national scheme;
- income from assets, net of expenses;
- annuities paid under an insurance policy;
- an allowance paid by the parent who is not a Council of Europe staff member.

This income shall be increased by a flat-rate amount equivalent to 20% of the basic salary for grade C1, step 1 where the child owns or has the usufruct of his or her home.

B. expenses relating to the disability, where these are not covered by one or more sickness insurance schemes.

2. An allowance in respect of dependent children shall be payable where the child's net income does not permit him or her to support himself or herself, that is to say where it is less than 50% of the basic salary of a staff member at grade C1, step 1, plus 100% of the expenses referred to in paragraph 1B, which must be substantiated by vouchers.

Article 3

1. Decisions to grant an allowance shall be reviewed annually.
2. The staff member shall immediately inform the Directorate of Human Resources of any change in the circumstances which justified the granting of the allowance.
3. The allowance shall be withdrawn, if need be with retroactive effect, where the conditions for its payment are no longer met. Staff members shall be required to reimburse any amounts received after the effective date of such withdrawal.

Article 4

The provisions of this rule shall apply (*mutatis mutandis*) for the granting of orphans' pensions under the Pension Scheme Rules or the New Pension Scheme Rules, depending on the circumstances."

B) Provisions specifically relevant to appeal No. 465/2010

31. Article 25, paragraph 2 of the Pension Scheme Rules (Appendix V to the Staff Regulations) reads as follows:

“Article 25 – Rate of orphan’s pension

1. Where a staff member or former staff member drawing a retirement or invalidity pension or entitled to a deferred pension dies, his children shall be entitled to an orphan’s pension if they fulfil the conditions laid down in paragraph 2.
2. The legitimate, natural or adopted children of a staff member or former staff member who has died shall be entitled to an orphan’s pension:
 - i) when the deceased or his household provided their main and continuing support at the time of death; and

ii) when they satisfy the conditions of age, education or handicap required for the granting of the allowance for a dependent child.

The legitimate or natural children of a deceased staff member or former staff member who were born not more than 300 days after his death shall also be entitled to an orphan's pension.

3. Where there are one or more persons entitled to a survivor's or reversion pension, the amount of the orphan's pension shall correspond to the higher of the following amounts:

i) 40 % of the survivor's or reversion pension, no account being taken of reductions pursuant to Article 20; or

ii) 50 % of the salary for grade C1, step 1, according to the scale in force when the former staff member's pension was assessed, this amount being updated in accordance with the provisions of Article 36, or, if he was not drawing a retirement or invalidity pension, according to the scale in force at the time of death.

The orphan's pension shall be increased, in respect of the second and every further beneficiary, by an amount equal to the allowance for a dependent child.

The orphan's pension shall be brought up to the level provided for in paragraph 4 in the event of the beneficiaries of a survivor's or reversion pension dying or remarrying or losing the right to that pension.

4. Where there are no beneficiaries of a survivor's or reversion pension, the orphan's pension shall correspond to the higher of the following amounts:

i. 80% of the survivor's or reversion pension, no account being taken of reductions pursuant to Article 20; or

ii. 100% of the salary for grade C1, step 1, according to the scale in force when the former staff member's pension was assessed, this amount being updated in accordance with the provisions of Article 36, or, if he was not drawing a retirement or invalidity pension, according to the scale in force at the time of death.

The orphan's pension shall be increased, in respect of the second and every further beneficiary, by an amount equal to twice the allowance for a dependent child.

5. The total amount of the orphan's pension shall be divided equally among all the orphans."

32. Cessation of pension entitlement is covered by Article 26 of the same text:

"Article 26 – Commencement and cessation of entitlement

1. The pensions provided for under Articles 25 and 25 bis shall be payable as from the first day of the month following that in which the staff member or former staff member died.

2. The pensions under Articles 25 and 25 bis shall cease to be payable at the end of the month in which the child or other dependant ceases to satisfy the conditions for entitlement to the allowance for a dependent child or dependent person under the Staff Rules and Regulations of the Organisation."

III. TRAINEESHIPS AT THE EUROPEAN COMMISSION

33. On its website, the European Commission defines the aims of in-service training as follows:

“The aims of the official in-service training with the Commission of the European Union are:

- to provide young university graduates with a unique, first-hand experience of the workings of the European Commission, in particular, and of the EU institutions in general. The training also aims to provide an understanding of the objectives and goals of the EU integration processes and policies.

- to give trainees an opportunity to acquire practical experience and knowledge of the day-to-day work of the Commission departments and services. They will have an opportunity to work in a multicultural, multilingual and multi-ethnic environment, contributing to the development of mutual understanding, trust and tolerance. European integration will be promoted within the spirit of new governance and through active participation - creating an awareness of true European citizenship;

- to give young university graduates the opportunity to put into practice knowledge acquired during their studies, particularly in their specific areas of competence. To introduce these graduates to the professional world and its constraints, duties and opportunities.

The European Commission, through its official traineeships scheme:

- benefits from the input of young enthusiastic graduates, who can give a fresh point of view and up-to-date academic knowledge, enriching the everyday work of the European Commission;

- creates a pool of young people with first-hand experience of and trained in European Commission procedures, who will be better prepared to collaborate and co-operate with the European Commission in the future;

- creates long-term “goodwill ambassadors” for European ideas and values, both within the European Union and outside.

34. The European Commission has this to say on the duties of trainees:

“Overall purpose of the in-service training

- To contribute to the work of the unit/service by applying his/her specific skills linked to his/her educational and university background.

- To acquire specialised knowledge and practical experience of EU policies and the mission, rules, procedures and activities of the Commission, especially within the field of the DG/Service assigned.

- To participate in meetings at different levels and assist with organisational, information, documentation and logistic tasks of value to the Service and to the trainee.

General tasks

- Assisting with high-level administrative and logistical tasks, such as organising working groups, forums, public hearings and meetings, compiling information and documentation,

preparing reports and answering queries, etc. (excluding any responsibility for financial management, official negotiations and representation).

- Carrying out tasks similar to those which any “Administrator”-category official performs as part of his/her daily office work in order to deliver results, such as participating in unit or team meetings, document handling, word processing, data searching, filing, following up tenders, checking texts, etc.

Additional tasks specific to the assigned Service/Department

- A draft description of additional tasks specific to the assigned Service/Department will be given to the trainees either with the placement offer or at the beginning of the traineeship.

- During the first days of work, the trainee and his/her advisor will finalise the description of the tasks and duties to be completed by the trainee during the in-service period.”

THE LAW

I. ON JOINDER OF THE APPEALS

35. In view of the close connection between appeals Nos. 464/2010 and 465/2010, the Administrative Tribunal has decided to consider them together, in accordance with Rule 14 of its Rules of Procedure.

II. THE ARGUMENTS OF THE PARTIES

36. The first appellant asks the Tribunal to set aside the Secretary General’s decision not to grant him the dependent children’s allowance for the period from 1 October 2008 to 31 March 2009.

37. The second appellant asks the Tribunal to set aside the Secretary General’s decision, notified to her by letter from the JPAS, to terminate her orphan’s pension from October 2008.

38. The appellants request reimbursement of the sum of €6000 to cover their costs in the proceedings.

39. The Secretary General, for his part, asks the Tribunal to declare the appeals ill-founded and reject them accordingly.

40. The parties’ arguments may be summarised as follows.

The appellants

41. The first appellant alleges:

a) violation of Article 5, paragraph 1 iii of the Regulations governing staff salaries and allowances, and Article 1 of Rule No. 1129 of 17 March 2003, and

b) violation of the general principles of law: legal security and non-retroactivity, sound administration and regard to the interests of officials, the principle that authorities are bound by their own rules (*tu patere legem quam ipse fecisti*) and, finally, the reasonable time requirement.

42. The second appellant alleges:

a) violation of Article 25, paragraph 2 ii), of the Pension Scheme Rules, Article 5, paragraph 1 iii, of the Regulations governing staff salaries and allowances, and Article 1 of Rule No. 1129 of 17 March 2003, and

b) violation of the obligation to give reasons, and the general principles of law: legal security and non-retroactivity, sound administration and regard to the interests of officials (and those entitled through them), the principle that authorities are bound by their own rules (*tu patere legem quam ipse fecisti*) and, finally, the reasonable time requirement.

A. FIRST GROUND OF EACH APPELLANT

43. In support of her first ground (violation of Article 25 of the Pension Scheme Rules), the second appellant states that Article 25, paragraph 2 of the Rules treats the orphan's pension as a subjective entitlement. She argues that entitlement begins as soon as the conditions for receipt of that pension are fulfilled (Article 25), lasts as long as they remain fulfilled, and lapses only when that is no longer the case (Article 26). For that reason, she describes payment of the orphan's pension, in her administrative complaint, as "an act, performance of which is mandatory, not discretionary". The Secretary General is mistaken in arguing, on the basis of Article 5, paragraph 1 of the Regulations governing staff salaries and allowances, that the orphan's pension is not a subjective entitlement.

She further argues that the Secretary General bases his attempt to disallow vocational training received outside school or university on sub-paragraph 2 of Article 25, paragraph 2 of the Pension Scheme Rules. That provision covers payment of orphan's pensions, whereas article 26 of the Rules deals with cessation of entitlement and is thus more relevant here. In particular, under Article 26, paragraph 2, "the pensions under Articles 25 and 25 bis shall cease to be payable at the end of the month in which the child or other dependant ceases to satisfy the conditions for entitlement to the allowance for a dependent child or dependent person under the Staff Rules and Regulations of the Organisation" (underlined by the appellant).

In the appellant's view, Articles 25 and 26 of the Pension Scheme Rules do not supersede the "applicable rules", but simply refer to them for definition of the conditions governing payment of the dependent children's allowance - conditions which are therefore determined by the relevant sections of those rules (Article 5. 1 iii of Appendix IV to the Staff Regulations) and of Rule No. 1129 of 17 March 2003.

44. In the remainder of their first ground, which concerns a shared complaint, the appellants employ the same arguments, which centre on two concepts: "vocational training" and "salary properly so called".

45. Concerning the first, they maintain that neither the Staff Regulations nor Rule No. 1129 make payment of the dependent children's allowance for a child in vocational training conditional on the recipient's showing that the child in question is attending school or university, or that an agreement on training has been concluded with an educational establishment. They argue that both texts provide for payment of the allowance for a child who is at school, at university or in vocational training. Although a school or university education is necessarily provided within an institution, which the child must therefore attend, this is by no means the case with "vocational training". The fact that the said provisions refer to three situations ("school or university education or vocational training") shows sufficiently that the author is thinking of "vocational training" as such, and does not consider that it must be linked with a school or university. In their view, the concept of "training" does not necessarily involve attendance at an educational establishment.

Moreover, the Advisory Committee on Disputes did not, as the Secretary General states, give a ruling on this question; nor does the Joint Pensions Administration Section (JPAS) of the Co-ordinated Organisations tell retired staff that, to qualify for the dependent children's allowance, they must simply show proof of the amount of the stipend received. They then refer to the case-law of the Court of First Instance of the European Communities.

46. Finally, the appellants attempt to dispel the doubts expressed by the Advisory Committee on Disputes concerning the vocational nature of the traineeship undertaken by the second appellant, and deny that a practice of the kind alleged by the Secretary General exists within the Co-ordinated Organisations.

47. Concerning the concept of a "salary properly so called", the appellants point out that Article 1 of Rule No. 1129 objectively quantifies the meaning of that term. They then contest the Secretary General's view that a traineeship with the European Commission may be regarded as approximating to a salaried professional activity.

48. They maintain that the provisions in question (the said Article 1 and also Article 5 of Appendix IV) apply to vocational training, and do not consider that the latter must be linked with school or university education, let alone via a training agreement.

B. SECOND GROUND

49. The second appellant argues, secondly, that the obligation to give reasons has been violated, and both appellants then argue that several general principles of law have been violated: legal security and non-retroactivity, sound administration and regard to the interests of officials (and those entitled through them), the principle that authorities are bound by their own rules, and, finally, the reasonable time requirement. Their arguments may be summarised as follows.

a) "Legal security" and non-retroactivity

50. The two appellants insist that the principle of legal security requires that the law be certain and its application foreseeable by those whom it affects, and that any official action which produces legal effects must be clear, precise and notified to the persons concerned, so that they can know with certainty when that action will be taken and produce effects in law.

51. In support of his complaint, the first appellant emphasises that, when he applied for payment of the dependent children's allowance on 28 July 2008, the Organisation had no precedents for a decision. It accordingly sought a legal opinion from the Jurisconsult and, on the basis of that opinion, decided that a certificate of attendance at school or university and an agreement on training were needed to qualify for the said allowance. He adds that this theory, formulated after he had lodged his application, involves claiming that the relevant parts of Appendix IV and the Rule require that these conditions be satisfied. Postdating his application of 28 July 2008, this interpretation is substituted for the literal interpretation on which that application was based. He argues that, if these two conditions – production of a certificate of school or university attendance, and existence of an agreement on training – had existed previously, they would have been stipulated in the said Appendix and Rule. This shows that they were inserted after the event and applied retroactively. Moreover, a third condition (the woolly "reinterpretation" of the income threshold clearly defined in the Rule) was subsequently added in January 2009. He adds that the memorandum requiring staff who wish to continue receiving the dependent children's allowance to produce a certificate of school or university attendance applies only to children who are studying full-time - and so cannot be seen as superseding the Regulations and the Rule, which leave the door

open to receipt of an allowance for a child who is undergoing vocational training outside school or university.

52. The appellant adds that, if the said memorandum reflected a constant practice, he should have been informed in July 2008 that he would have to enrol his daughter at university, which he did in spring 2009 for the academic year 2008-2009, obtaining an agreement on training at the same time. He claims that the Organisation, by remaining silent from 20 July to 8 October 2008, prevented him from fulfilling its conditions.

53. Finally, he states that those conditions either existed already – in which case, he should have been informed of them at once, so that he could fulfil them – or were introduced later. He regards the latter as probable, and argues that the principles of security and non-retroactivity were violated to his detriment.

54. In support of her complaint, the second appellant argues that the Secretary General is not respecting the requirements highlighted by the Tribunal regarding use of his power in the matter of allowances. Specifically, she makes the point that, in its decision of 27 November 2008 (ATCE, Appeal No. 401/2007 – Gorey v. Secretary General), the Tribunal insisted that he must take individual decisions on the basis of texts known in advance to those concerned (*ibid.*, paragraph 32), and must also act in a “fully transparent” manner (*ibid.*, paragraph 29). She maintains that, in this case, the applicable regulation make no mention of the requirements stated by the Secretary General in his decision rejecting the appeal (certificate of school or university attendance; agreement on training). This being so, the conditions referred to by the Tribunal were clearly not satisfied.

b) *“Sound administration and regard to the interests of officials (and those entitled through them)”*

55. The appellants contend that the general principles of sound administration and regard to the interests of officials (and those entitled through them) have been violated, since the decision complained of clearly took no account of their interests. On the contrary, the Administration decided against them without giving them any opportunity to satisfy the conditions regarded as necessary (insofar as they were indeed necessary) and, the first appellant adds, “in spite of his previous requests for information”.

56. The first appellant also argues that this decision violates his contractual relationship with the Organisation, which is based on confidence, regard to the interests of officials, and good faith, and entitles him to the benefits specified, *inter alia*, in the Staff Regulations, when the conditions for obtaining them are satisfied, which they were in this case.

57. The second appellant further insists that she was given no prior notice of the decision to terminate her orphan’s pension. She notes that the Secretary General defends this manner of proceeding, whereas the head of the JPAS apologises for it, and feels that the former’s approach reflects a total lack of consideration for her. In particular, she emphasises that her entitlement to that pension derives from the legal situation, not of her father, but of her deceased mother. She contests the Secretary General’s claim, in his decision rejecting her administrative complaint, that she knew why the pension had been terminated, and considers that a re-reading of her complaint suffices to show that she uses a straightforward argument, based on the regulations governing payment and termination of pensions within the Council of Europe’s internal legal system. It is obviously untrue that, in this complaint, she was replying to explanations supposedly given to her father, but not to her.

58. In her view, there can be no doubt that these explanations came to her notice only when the Advisory Committee on Disputes sent her the Administration's observations of 17 February 2009.

59. This being so, she considers that the Organisation failed in its basic duty of providing information and explanations, compliance with which is a matter of legal security, sound administration and, when all is said and done, the most basic courtesy.

c) "Tu patere legem quam ipse fecisti"

60. Having referred to international case-law rulings that this principle is violated when an international organisation fails to respect its own rules, the appellants argue that failure to respect Rule No. 1129 violated it in this case. In their view, "this interpretation of the existing rules departs so far from Article 5, paragraph 1 of Appendix IV that it blatantly violates the very letter of that provision, particularly in its assessment of the financial compensation which accompanied the traineeship". They state that the Secretary General "acted as if Rule No. 1129 of 7 March 2003 did not exist". They add that this attitude "also undermines legal security" and that "instead of applying positive law, the Secretary General has acted in a high-handed manner, consistent with neither his powers nor his prerogatives".

d) Reasonable time

61. The appellants argue that the sequence of events from 31 July 2008 (application to receive the dependent children's allowance, paragraph 9 above) for the first appellant, and from 2 November 2008 (letter requesting continued payment of the orphan's pension, paragraph 23 above) for the second appellant, to 3 December 2009 (rejection of the administrative complaints of both appellants, paragraphs 14 and 27 above) shows that a flagrant violation of the reasonable time requirement has occurred. Given that the facts of the case are straightforward, they consider the delay entirely unjustified.

62. The first appellant accordingly requests the Tribunal to condemn these violations of the general principles of law referred to in his second ground.

63. The second appellant argues that the sequence of events from 2 November 2008 (letter requesting continued payment of the orphan's pension, paragraph 23 above) to 3 December 2009 (rejection of her administrative complaint, paragraph 31 above) shows that a flagrant violation of the reasonable time requirement has occurred. Given that the facts of the case are straightforward, she considers the delay entirely unjustified.

e) Conclusion

64. In conclusion, the first appellant requests that the decision to cease paying him the dependent children's allowance from 1 October 2008 to 31 March 2009 be set aside.

He accordingly requests payment of the relevant amounts, and full restitution (*restitutio in integrum*) of the pay and reversionary pension due to him, and the orphan's pension due to his daughter for the period from 1 October 2008 to 31 March 2009.

The appellants also request payment of interest for delay on the sums in question, at the rate fixed by the European Central Bank plus 3 points.

Finally, they apply for reimbursement of their costs in the present proceedings, including lawyer's fees, which they put at €6000 for both appeals. They also request that the defending party be ordered to pay all the costs of the proceedings.

The Secretary General

65. The Secretary General first notes that Article 5, paragraph 1, of the Regulations governing staff salaries and allowances provides for continued payment of the allowance for children from age 18 to age 26 on the conditions specified in Article 1 of Rule No. 1129.

66. He also notes the terms of Article 25 of the Pension Scheme Rules (paragraph 31 above), from which it appears that entitlement to an orphan's pension depends on entitlement to the dependent children's allowance. Article 5, paragraph 1 of the Regulations governing staff salaries and allowances stipulates that the allowance may be paid for children between the ages of 18 and 26 on the conditions specified in Article 1 of Rule No. 1129.

However, the Secretary General in no way denies - as the second appellant appears to be claiming - the necessary link between these provisions in determining entitlement to the orphan's pension. He notes her assertion that payment of the orphan's pension is a subjective right, and that the decision to pay is an obligation, not an option. He feels obliged to point out that Article 5, paragraph 1 (1) of the Regulations governing staff salaries and allowances states that the dependent children's allowance (on which the orphan's pension depends) "may" be maintained if the specified conditions are fulfilled. He accordingly points out that if - as in this case - the conditions for payment of the dependent children's allowance are not fulfilled, there is no obligation to pay the orphan's pension.

67. In his view, however, the very wording of these provisions requires recipients of the said allowance to show that the child in question between the ages of 18 and 26 is pursuing school, university or vocational studies, and has no income above the specified threshold. He accordingly considers that "all staff applying for the dependent children's allowance are thus required to furnish a school attendance certificate and any other document proving their entitlement to the allowance".

68. The Secretary General denies that the appellants were given contradictory information, and points out that the first appellant received a memorandum, which is sent every year to staff with the declarations which they are required to sign on their honour. He adds that payment of the orphan's pension depends structurally and necessarily on compliance with the conditions governing payment of the dependent children's allowance. This means that the requirement that a school attendance certificate and training agreement concluded with an educational establishment be produced is not, as the appellants assert, a condition added to those already laid down in Article 5, paragraph 1 of the Regulations governing staff salaries and allowances, as clarified by Article 1 of Rule No. 1129.

69. The Secretary General finds it hard to understand the second appellant's complaint concerning the requirement that documents be produced showing that she is entitled to the orphan's pension, and her father to the dependent children's allowance. She had provided her father with these documents for every previous academic year, and did so again when she re-enrolled at university in April 2009. She cannot therefore reasonably claim, as she does, that she did not know that she was required to produce an attendance certificate, and thus to be a student, to fulfil the conditions for payment of the dependent children's allowance, and the orphan's pension.

70. In answer to the appellants' argument that the period of the traineeship completed by the second appellant constituted vocational training within the meaning of the applicable rules, the Secretary General insists that the concept of training implies that the trainee is following an official

course of study. He considers that, to qualify as “vocational training”, such traineeship must be connected with an educational establishment, be an integral part of the student’s course of study, and be necessary to obtain a diploma. This is obvious from the fact that Article 25, paragraph 2 ii) of the Pension Scheme Rules clearly states that children are entitled to an orphan’s pension “when they satisfy the conditions of age, education or handicap required for the granting of the allowance for a dependent child”. Work (even when described as “traineeship”) can in no way be considered “education” of the kind required by this provision. It is clear from the spirit and letter of this article that only school, university or vocational studies forming part of the child’s education confer entitlement to an orphan’s pension. Since the second appellant was not enrolled at any educational establishment for the academic year 2008–2009, failure to fulfil this condition is sufficient in itself to debar the appellants from receipt of, respectively, the dependent children’s allowance and the orphan’s pension.

71. Finally, concerning the rule on the average net monthly income of a dependent child, the Secretary General does not deny that the second appellant’s monthly income was less than 50% of the Belgian scale for grade C1/1. However, he makes the point that this income, amounting to €1003 a month, could reasonably be regarded as equivalent to the salary received, in a first job, by a young graduate starting out on his/her professional career. In the appellant’s case, it can only be noted that she, having reached the age of majority, not following a course of study and receiving, moreover, income corresponding to a genuine salary in connection with her work, could not be regarded as receiving vocational training and being dependent on the first appellant. The Secretary General accordingly considers that the “traineeship” in question was more akin to a salaried professional activity.

72. Concerning the reference to the case-law of the Court of First Instance of the European Communities, the Secretary General considers that differences in the legal rules applying to the institutions of the European Union and the Council of Europe make this inapplicable. Moreover, the aims, arrangements for payment, and even names of the various allowances differ considerably between organisations, depending on whether these belong to the UN system, the EU system or - like the Council of Europe - the Co-ordinated Organisations system.

73. The Secretary General next considers two points made separately by the appellants.

74. Firstly, the second appellant alleges that no reasons were given for the decision to terminate her orphan’s pension. In fact, an e-mail of 22 July 2008 from the Directorate of Human Resources had already informed her father that, since she was no longer enrolled at an educational establishment for the academic year 2008–2009, payment of the dependent children’s allowance would cease from 1 October 2008. In an e-mail of 28 July 2008, the Directorate of Human Resources further informed him that suspension of this allowance would also entail termination of his daughter’s orphan’s pension. Subsequently, in a decision given on 8 October 2008, his formal application for continued payment of the dependent children’s allowance was rejected, on the ground that his daughter was no longer following an official course of study.

75. Similarly, the Joint Pension Administration Section’s letter of 5 November 2008 informed the second appellant that her situation from 1 October 2008 made it impossible for her to continue drawing the orphan’s pension. This all indicates that she was fully aware of the reasons for the decision to terminate it - and this is also clear from the arguments she deploys on this point in her administrative complaint. She cannot therefore claim that no reasons were given, since she had in fact been told that her situation since 1 October 2008 no longer satisfied the conditions for payment of the dependent children’s allowance.

76. Concerning explanation of this decision, the Secretary General notes that the real issue is whether the reasons given, however transmitted, were sufficient to allow her to contest them, and request that the relevant administrative decision be rectified. Her administrative complaint, and the arguments she used in it, are ample proof that the reasons given were sufficient for that purpose.

77. Secondly, the Secretary General considers the first appellant's claim that there was a contradiction in his statement that the Organisation's constant practice makes payment of the allowance for a dependent child conditional on the child's pursuing a full-time course of study at an educational establishment.

He first makes the point that every case concerned with staff allowances is unique, and must be considered with reference to its own special circumstances. Indeed, the appellant's case had proved highly specific, since the Directorate of Human Resources had never previously been asked to pay a dependent children's allowance for a child who was undertaking a traineeship without being enrolled at an educational establishment. This was why it had proceeded cautiously and sought a legal opinion confirming that it was correct in following the long-established practice of requiring that children for whom this allowance is paid be studying full-time at an educational establishment. In this connection, the Secretary General has furnished the Tribunal with this legal opinion, which the appellant requested him to produce. He sees no reason why its content should not be communicated to the appellants, but adds that such opinions are normally confidential, and communicated only to the departments which ask for them. He accordingly requests that this document's confidential nature be respected and all necessary measures taken to protect it outside the strict context of these proceedings.

78. The Secretary General goes on to deny that his own statements are contradictory.

79. Referring to the first appellant's claim that he would have enrolled his daughter at university, if he had been informed in time of the need to do so, the Secretary General points out that the appellant himself had stated, in his e-mail of 22 July 2008, that his daughter could not enrol for the coming academic year, since her examination results would not be known until November 2008. The Secretary General accordingly regards his claim that he would have enrolled her in July, if he had known that this was a condition for receipt of the allowance, and that the Administration prevented him from satisfying that condition by not replying to his application until October 2008, as incorrect.

80. Referring to the first appellant's claim that he would have enrolled his daughter at university, if he had been informed in time, i.e. in July 2008, that he needed to do this to continue receiving the dependent children's allowance, the Secretary General points out that - apart from the fact that the Directorate of Human Resources had expressly informed him, on 22 July 2008, that the allowance would be suspended if his daughter was not enrolled at an educational establishment for the academic year 2008-2009 - the appellant himself had stated, in his e-mail of 22 July 2008, that his daughter could not enrol for the coming academic year, since her examination results would not be known until November 2008. The Secretary General accordingly regards his claim that he would have enrolled her in July, if he had known that this was a condition for receipt of the allowance, and that the Administration prevented him from satisfying that condition by not replying to his application until October 2008, as incorrect.

81. As for the appellants' complaint regarding excessive length of the proceedings, the Secretary General insists that he respected all the time limits specified in Article 59 of the Staff Regulations. Under Article 59, paragraph 4, he was entitled to submit the first appellant's administrative complaint to the Advisory Committee on Disputes, and this he chose to do. He was not entitled, however, to bring any influence to bear on that Committee, e.g. for the purpose of

expediting proceedings. He notes that the Committee gave an opinion approximately one year after the case had been referred to it - a lapse of time which cannot, in his view, be considered unreasonable. Be that as it may, there is no indication that any fault of his might have delayed the proceedings.

82. In conclusion, he considers that all of this shows that he has not violated either any regulations, or the practice and general principles of law. Similarly, no relevant considerations have been wrongly assessed, no mistaken conclusions have been reached, and there has been no abuse of power. All of this being so, he requests that the Tribunal declare the appeals ill-founded and reject them.

83. Finally, he argues that the appeal for costs should also be rejected, since the Organisation has been "very transparent" and has scrupulously respected the relevant procedures, and since the appellants have not been misled.

II. THE TRIBUNAL'S ASSESSMENT

84. The Tribunal notes that the parties are agreed that the only question which needs answering in connection with both appeals is whether the second appellant's traineeship at the European Union can be regarded as "vocational training which does not carry a wage or salary properly so called" within the meaning of Article 5, paragraph 1 iii of Appendix IV (Regulations governing staff salaries and allowances) to the Staff Regulations. If it does, the Tribunal must decide whether the rules were correctly applied to the appellants.

85. The Tribunal notes that this provision reads:

"1.i. A monthly allowance shall be paid in respect of each dependent child under 18 years of age, in accordance with the appended scale.

ii. [...]

iii. The allowance shall continue to be payable until the dependent child reaches the age of 26 if he or she is receiving, on a full-time basis, school or university education or vocational training which does not carry a wage or salary properly so called."

The Tribunal also notes that continued payment of the orphan's pension to the second appellant is conditional on her still qualifying as a dependent child. Article 26, paragraph 2 of Appendix V (Pension Scheme Rules) to the Staff Regulations reads:

"2. The pensions under Articles 25 and 25 bis shall cease to be payable at the end of the month in which the child or other dependant ceases to satisfy the conditions for entitlement to the allowance for a dependent child or dependent person under the Staff Rules and Regulations of the Organisation."

86. Finally, the Tribunal notes that the parties are agreed that, during the period for which the appellants are seeking the dependent children's allowance or, as appropriate, the orphan's pension, the second appellant cannot be regarded as receiving a school or university education, and that the relevant question is thus whether her traineeship at the European Union constituted vocational training.

87. The answer to this question will allow the Tribunal to decide on the appellants' first ground, and also their second - apart from the question of compliance with the reasonable time requirement, which must be examined separately.

88. The Tribunal has taken note of all the arguments put to it, and of the European Commission's description of its traineeships (paragraph 33 above). It concludes that this traineeship cannot be regarded as vocational within the meaning of Article 5, paragraph 1 iii. Even without accepting the Secretary General's definition of vocational training (which he sees as involving enrolment at, or a traineeship agreement with, an educational establishment), the Tribunal considers that the training envisaged in that provision necessarily has a close, direct and structural connection with the profession aimed at, although it need not form part of a school or college curriculum. Otherwise, the reference to vocational training would be redundant, since "school or university education" - another term used - could easily cover it. The English text is undoubtedly clearer on this point, since it makes a plain distinction between school and out-of-school education. In the English version, Article 5, paragraph 1 iii. reads:

"iii. The allowance shall continue to be payable until the dependent child reaches the age of 26 if he or she is receiving, on a full-time basis, school or university education or vocational training which does not carry a wage or salary properly so called."

89. In the absence of clearer indications in the regulations, the Tribunal must now decide what "vocational training/formation professionnelle" actually means. In its view, the term necessarily applies to training which must be followed, either because a law requires this, or because it is needed in practice to exercise a given profession. These are the factors which, for the Tribunal, give training received outside school or university a close, direct and structural link with the profession aimed at. Ultimately, it must be needed to exercise, or learn to exercise, the activity the student is being trained for.

90. In the case of these two appeals, however, the Tribunal finds that this does not apply to the traineeship undertaken by the second appellant.

In fact, when it defines the aims of such training (paragraph 33 above), the European Commission specifies that the aim is to provide "a unique, first-hand experience of the workings of the European Commission, in particular, and of the EU institutions in general. [It] also aims to provide an understanding of the objectives and goals of the EU integration processes and policies". It adds that this training is designed "to give trainees an opportunity to acquire practical experience and knowledge of the day-to-day work of the Commission departments and services. [To provide] an opportunity to work in a multicultural, multilingual and multi-ethnic environment, contributing to the development of mutual understanding, trust and tolerance. [To promote] European integration within the spirit of new governance and through active participation [to create] an awareness of true European citizenship". Finally, it says that training is intended "to give young university graduates the opportunity to put into practice knowledge acquired during their studies, particularly in their specific areas of competence. To introduce these graduates to the professional world and its constraints, duties and opportunities".

91. The Tribunal concludes from all of this that the second appellant's time with the Commission was undoubtedly an instructive and enriching contribution to her training, but not a compulsory stage on the way to exercising her profession, or an indispensable part of the learning process. It cannot, therefore, be regarded as vocational training within the meaning of Article 5, paragraph 1 iii of the Regulations governing staff salaries and allowances.

92. Having reached this conclusion, the Tribunal is not required to consider the other question raised by the parties, i.e. whether the monthly stipend of €1003, which the second appellant received during her traineeship, was “income” within the meaning of Article 2, paragraph 2 of Rule No. 1129 (paragraphs 11 and 30 above).

93. Concerning the implications for the appellants’ case of its verdict on the nature of this traineeship, the Tribunal finds that their first grounds, alleging violation of Article 5, paragraph 1 iii of the Regulations governing staff salaries and allowances, and of Article 1 of Rule No. 1129, must be rejected, since there was no vocational training within the meaning of those provisions. The same applies to the second appellant’s complaint under Article 25, paragraph 2 of the Pension Scheme Rules.

94. It follows that the appellants’ second grounds, alleging violation of the general principles of law, in respect of legal security and non-retroactivity, the principle that authorities must obey their own rules, and the principles of sound administration and regard to the interests of officials, must also be rejected, since there was no vocational training within the meaning of Article 5, paragraph 1 iii of the Regulations governing staff salaries and allowances.

95. Concerning the second appellant’s complaint that no reasons were given for the decision to terminate her orphan’s pension, it is quite true that the JPAS did not directly give her reasons before that decision was taken. However, once she had asked for explanations, the JPAS clearly supplied them rapidly, three days later. Decisions of this kind should certainly be notified to those they affect as soon as they are taken and, ideally, before they are implemented (indeed, the JPAS acknowledged this and apologised for failing to do so). In this case, however, it cannot be said that the second appellant was not given reasons and/or was prevented from exercising her rights, or hindered in doing so.

96. Concerning the appellants’ complaint that the reasonable time rule was not respected, the Tribunal notes that the delay complained of essentially corresponded to the length of the proceedings before the Advisory Committee on Disputes. Regardless of other considerations, it now finds that the Committee was involved at the pre-contentious stage of the proceedings opposing the parties, and was not therefore answerable to the Secretary General. Thus, even though the Tribunal regards the Advisory Committee’s proceedings, which lasted about one year, as unduly protracted, and considers that a shorter period of time should suffice, if the purpose of consulting that committee is to be served, the fact remains that the Secretary General cannot be held responsible for the delay. However, the Tribunal takes the view - although the regulations do not provide for this - that, instead of being blamed when something of this kind occurs and an advisory opinion fails to reach him within a reasonable time, the Secretary General should be authorised to take a decision on an administrative complaint without waiting for that opinion.

It follows that this complaint by the appellants must be dismissed.

97. In conclusion, the appeals are ill-founded and must be dismissed.

For these reasons, the Administrative Tribunal:

Orders the joinder of appeals Nos. 464/2010 and 465/2010;

Declares the appeals ill-founded;

Dismisses them;

Orders each party to bear its own costs.

Delivered in Strasbourg on 4 November 2010, the French text being authentic.

The Registrar of the
Administrative Tribunal

The Chair of the
Administrative Tribunal

S. SANSOTTA

L. WILDHABER