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Judgment of the Court in Case C-137/24 P | Heßler v Commission

EU officials: entitlement to a tax abatement for a child receiving training ends at the latest on the child's 26th birthday

EU officials receive a monthly dependent child allowance for each dependent child. [1] The allowance is granted automatically until the child's 18th birthday. It is granted on application, with supporting evidence, until the child's 26th birthday [2] if the child is receiving full-time educational or vocational training.

Moreover, for each dependent child, officials are entitled to a tax abatement. [3] To that end, twice the amount of the allowance for a dependent child is to be deducted from the basic taxable amount.

A European Commission official asked the Commission [4] to extend that tax abatement for his children, who were continuing their studies, beyond their 26th birthday. Taking the view that the entitlement to the tax abatement was linked to the entitlement to the dependent child allowance, which ends at the latest on the child's 26th birthday, the Commission refused to grant such an extension.

The General Court of the European Union, before which the official brought an action, upheld the refusal, [5] and the official then brought an appeal before the Court of Justice.

However, the Court also confirmed [6] that entitlement to the tax abatement for a dependent child is linked to compliance with the conditions for entitlement to the dependent child allowance. As for the allowance, the tax abatement thus ends at the latest on the child's 26th birthday. [7] [8]

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

The full text and, as the case may be, an abstract of the judgment is published on the CURIA website on the day of delivery.

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[1] In accordance with the Staff Regulations of Officials of the European Union. Any allowance of like nature received from others sources, for example from the State of residence, are to be deducted.

[2] The allowance is granted exceptionally without any age limit if the child is prevented by serious illness or invalidity from earning a livelihood, and this continues throughout the period of that illness or invalidity, irrespective of age. In addition, a person who is neither the minor child of the official nor the official's adult child receiving educational or vocational training may, exceptionally, be treated as if that person were a dependent child where the official has to actually maintain that person and this involves heavy expenditure for the official.

[3] Under Regulation (EEC, EURATOM, ECSC) No 260/68 of the Council of 29 February 1968 laying down the conditions and procedure for applying the tax for the benefit of the European [Union].

[4] More specifically, to the Office for the Administration and Payment of Individual Entitlements (PMO), which is an internal service of the Commission.

[5] Judgment of the General Court of 20 December 2023, *Heßler* v *Commission*, T-369/22.

[6] Following an in-depth analysis of the Staff Regulations and Regulation No 260/68, and in particular of their scheme.

[7] The Court further observes that an internal Commission directive from 2004, which transposes the conclusions of the heads of administration and provides that the tax abatement may be granted even in the absence of entitlement to the dependent child allowance, cannot be applied since such an application would be contrary to Regulation No 260/68 and the Staff Regulations.

[8] Furthermore, the Court clarifies a procedural issue relating to the calculation of the three-month time limit for lodging a complaint with the PMO. It finds that, contrary to the finding of the General Court, the PMO's email to the official concerned, stating that no request for extension of the tax abatement could be accepted any longer, did not merely provide information but it constituted a decision refusing to grant that official's request. The note in that email, stating that the reply was for information purposes only and did not constitute a decision did not alter that classification. The three-month period therefore began to run from the date of notification of that decision.