

JUDGMENT OF THE COURT OF FIRST INSTANCE (Single Judge)
30 May 2001

Case T-348/00

Artin Barth
v
Commission of the European Communities

(Officials – Household allowance – Recovery of sums overpaid)

Full text in Dutch II - 557

Application for: annulment of the Commission's decision of 17 August 2000 withdrawing, with effect from 1 October 1998, the household allowance of which the applicant had been in receipt until then and recovering sums overpaid in respect of that allowance during the period from 1 October 1998 to 28 February 2000.

Held: The application is dismissed. The parties are ordered to bear their own costs.

Summary

*1. Officials – Recovery of sums overpaid – Conditions – Patent absence of due reason for the payment – Criteria
(Staff Regulations, Art. 85)*

*2. Officials – Remuneration – Family allowances – Household allowance – Conditions for grant – Family responsibilities – Definition – Financial costs incurred by a former official no longer capable of running a household – Not included
(Staff Regulations, Art. 76; Annex VII, Art. 1(2)(c))*

1. According to Article 85 of the Staff Regulations, any sum overpaid is to be recovered if the recipient was aware that there was no due reason for the payment or if the fact of the overpayment was patently such that he could not have been unaware of it. The words ‘patently such’ are to be interpreted as meaning that the question is not whether the error was patent to the administration but whether it was patent to the recipient. Far from not needing to make any effort to reflect or check, the recipient is required to effect repayment where the error is one which does not escape the notice of an official exercising ordinary care, who is deemed to know the rules governing his salary. The factors taken into consideration in assessing the ability of the official concerned to make the necessary checks concern his level of responsibility, grade and seniority, the degree of clarity of the provisions of the Staff Regulations setting out the conditions for grant of the benefit at issue and the significance of the changes in his personal or family circumstances where payment of the sum in issue is linked to an assessment of such circumstances by the administration.

In that regard, it is not necessary for the official concerned, in the exercise of his duty of diligence, to be able to determine the precise extent of the error made by the administration. On the contrary, the fact that he has doubts about the validity of the payments in question is sufficient for him to be obliged to contact the administration so that it can carry out the necessary checks. A former official who was last in the relatively high Grade B1 and who has spent more than 25 years in the Community civil service must be prompted to suspect that his entitlement to the household allowance which he received as a married pensioner has become doubtful after the death of his spouse. He was in a position, by exercising normal care, to realise that the administration had made an error as from the time of his spouse's death.

Moreover, the fact that an official or pensioner has duly informed the administration of the change in his family circumstances cannot exempt him from his obligation to repay sums overpaid where, despite his declarations, the administration has continued to pay him allowances which are clearly incompatible with the relevant provisions of the Staff Regulations. That is especially true in the light of the clarity of Article 1(2) of Annex VII to the Staff Regulations and of the fact that the household allowance was the only family allowance which the person concerned was receiving at the time of the declaration of his spouse's death to the administration.

(see paras 27, 29, 30, 33-36)

See: T-93/92 *Burck v Commission* [1994] ECR-SC I-A-55 and II-201, paras 27 and 28; T-122/95 *Chabert v Commission* [1996] ECR-SC I-A-19 and II-63, paras 35, 41 and 42; T-92/94 *Maslias v Parliament* [1996] ECR-SC I-A-249 and II-713, para. 61; T-14/99 *Kraus v Commission* [2001] ECR-SC I-A-7 and II-39, para. 38 and the case-law cited therein, and para. 41

2. The financial costs relating to domestic help and eating out incurred by a former official who is no longer capable of running a household cannot be regarded as family responsibilities actually assumed by the official and falling within the scope *ratione materiae* of Article 1(2)(c) of Annex VII to the Staff Regulations. Such costs fall within the scope of Article 76 of the Staff Regulations which provides that exceptional relief (gifts, loans or advances) may be granted to officials or former officials who are in a particularly difficult position as a result *inter alia* of serious or protracted illness or by reason of family circumstances.

(see para. 43)