

JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber)  
21 October 2003

Case T-302/01

**Gerhard Birkhoff**  
v  
**Commission of the European Communities**

(Officials – Article 2(5) of Annex VII to the Staff Regulations –  
Cancellation of a dependent child allowance for a child of full age  
suffering from a serious illness or disability – Legitimate expectations)

Full text in Italian . . . . . II - 1185

**Application for:** annulment of the decision of the appointing authority of 26 September 2001 rejecting the complaint brought by the applicant against the decision of the Commission of 4 July 2001 by which it cancelled payment to the applicant of the dependent child allowance in respect of his daughter and of the decision of 4 July 2001 and, secondly, a claim for compensation for material and non-material damage.

**Held:** The decision of the Commission of 4 July 2001 cancelling, with effect from 1 July 2001, payment of the dependent child allowance in respect of the applicant's daughter who has reached majority is annulled. There is no need to adjudicate on the claim for compensation for the damage arising from the loss of cover in respect of the applicant's daughter by the EC Sickness Insurance Fund, nor on the part of the claim seeking compensation for the tax consequences of the contested decision. The remainder of the claim for compensation is dismissed. The Commission is ordered to pay two thirds of the applicant's costs, including those incurred in the proceedings for interim relief in the present case.

### Summary

*1. Officials – Appeals – Action against the decision rejecting a complaint – Admissibility*

*(Staff Regulations, Arts 90 and 91)*

*2. Officials – Remuneration – Family allowances – Dependent child allowance – Right to extend the allowance irrespective of age if the child is incapable of earning a livelihood – Obligation for the administration to examine the particular circumstances of each case without being able to resort to a predetermined objective test*

*(Staff Regulations, Annex VII, Art. 2(5))*

*3. Officials – Staff Regulations – Application – Joint decision taken by the Heads of Administration – Not binding on the appointing authority*

*(Staff Regulations, Art. 110, third para.)*

1. An application for annulment of a decision rejecting a complaint against an initial decision has the effect of bringing before the Court the act adversely affecting the official against which the complaint was submitted.

(see para. 24)

See: T-82/99 *Cwik v Commission* [2000] ECR-SC I-A-155 and II-713, para. 23

2. If the child in question is prevented by serious illness or invalidity from earning a livelihood, payment of the allowance provided for in Article 2(5) of Annex VII to the Staff Regulations is extended throughout the period of that illness or invalidity, irrespective of age. That provision does not allow the competent authority any discretion as to whether or not to grant the allowance in question, but confers on it circumscribed powers, in so far as its mandatory wording makes it clear that the authority is bound to grant the dependent child allowance if it finds that the conditions listed are satisfied.

Since the Community law provisions conferring entitlement to financial benefits must be strictly interpreted, it has to be verified in each individual case, where payment has been extended solely on the strength of Article 2(5) of Annex VII to the Staff Regulations, whether the social purpose of paying the dependent child allowance has been achieved.

It follows that, for the application of that provision, it is for the administration concerned to determine in each individual case, taking account of all the particular circumstances involved and without being able to resort to a predetermined objective test, whether it is a serious illness or disability which prevents the child in question from earning a livelihood.

(see paras 37-40, 43)

See: C-70/91 P *Council v Brems* [1992] ECR I-2973, para. 5; T-498/93 *Dornonville v Commission* [1994] ECR-SC I-A-257 and II-813, paras 31 and 38

3. A conclusion adopted by the Committee of Heads of Administration as part of the process whereby ‘the administration departments of the institutions ... consult each other regularly’ pursuant to the third paragraph of Article 110 of the Staff Regulations in order to follow a uniform administrative practice with regard to the interpretation of a provision of the Staff Regulations does not have the effect of binding the appointing authority when it adopts individual measures implementing the provision in question.

(see para. 42)

See: T-48/89 *Beltrante and Others v Council* [1990] ECR II-493, para. 17; T-49/89 *Mavrakos v Council* [1990] ECR II-509, para. 17