

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)  
2 July 1998

Case T-236/97

**Giovanni Ouzounoff Popoff**  
v  
**Commission of the European Communities**

(Officials – Transfer of part of emoluments in the currency of a Member State  
other than the country where the institution has its seat)

Full text in Spanish . . . . . II - 905

**Application for:** first, annulment of the Commission's decisions of 23 September 1996 refusing to increase the amount transferred to the applicant's home savings account and of 28 April 1997 rejecting his complaint; second, a declaration that the applicant is entitled to have DKK 20 000 transferred; and, third, damages.

**Decision:** Application dismissed.

### **Abstract of the Judgment**

On 22 January 1992 the applicant, a Commission official employed in Brussels, opened a home savings account with the Banco Español de Crédito (Banesto) in Brussels, into which the Commission was to pay DKK 5 000 per month. Point 5 of the general conditions of the agreement provides that withdrawals can be made or the account closed on production of documentary evidence that the amount is to be used for one of the following purposes:

- (a) the purchase of land for a family home in a Member State of the European Communities;
- (b) the purchase or conversion of a main or second home in a Member State of the European Communities.

Withdrawals for other purposes are subject to prior authorisation by the personnel division of the institution which employs the official.

Point 9 of the agreement provides that the account holder may cancel the contract at any time.

The applicant lodged a copy of the agreement with the Directorate-General for Personnel and Administration of the Commission (DG IX). From February 1992 the Commission paid into that account the sum of DKK 5 000 per month, multiplied by the weighting for Denmark.

On 13 October 1992 and 21 January 1993 the applicant amended his agreement with Banesto, by increasing the amount to be transferred from DKK 5 000 to DKK 9 800 and then from DKK 9 800 to DKK 20 000. He claims to have notified DG IX of those amendments by forwarding copies of the supplementary agreements.

The amounts transferred were not increased and on 20 August 1993 the applicant lodged a complaint under Article 90(2) of the Staff Regulations of Officials of the European Communities (Staff Regulations) against the rejection of his two 'requests' for the amount to be transferred to be increased.

The applicant received no reply to his complaint within the prescribed period and on 18 March 1994 he lodged an application for annulment with the Court of First Instance. On 11 June 1996 the Court dismissed the action as inadmissible on the ground that the applicant had failed to comply with the two-stage pre-litigation procedure (Case T-111/94 *Ouzounoff Popoff v Commission* [1996] ECR-SC II-819).

Consequently, on 28 August 1996 the applicant submitted a request to DG IX for the amount transferred to be increased from DKK 5 000 to DKK 20 000.

That request was rejected on 23 September 1996. After considering the request in the context of the internal directive determining the procedure for the application of the rules governing the transfers of part of an official's emoluments provided for in Article 17(2)(b) of Annex VII to the Staff Regulations, DG IX took the view that it follows from that directive, which entered into force on 1 August 1993, that any increase in the sum of DKK 5 000 transferred before 1 August 1993 can only be approved if it is in accordance with the rules, that is, in particular, if the costs and expenditure envisaged in his home savings agreement are to be incurred in Denmark, which is not the case here.

On 20 December 1996 the applicant lodged a complaint against that decision. On 28 April 1997 the Commission rejected the complaint by a decision notified to the applicant on 15 May 1997.

### **Admissibility of the third head of claim**

The third head of the applicant's claim, namely that the Court should recognise his right to transfer the amount of DKK 20 000, is manifestly inadmissible, since it is not for the Court, in exercising its power of review, to issue directions to a Community institution or to act in its stead (paragraph 27).

See: T-156/89 *Valverde Morde v Court of Justice* [1991] ECR II-407, para. 150; *Ouzounoff Popoff v Commission*, cited above, paras 40 and 41

## Substance

### *Application for annulment*

First plea, alleging an error of assessment of the conditions necessary to be able to increase the amount transferred

Article 17(2)(b) of Annex VII to the Staff Regulations, which provides that an official may, through the institution in which he serves, have part of his emoluments transferred outside the country in which he is employed in the currency of another Member State, at a special exchange rate and multiplied by a weighting, must be interpreted as meaning that in order to benefit therefrom an official must show that he is required to meet regular commitments in the country in whose currency he requests the transfer to be made. Otherwise the fact that the amount of the transfer is weighted would be deprived of any justification and would lead to applications contrary to the principle of equal treatment of officials (paragraphs 31 to 35).

See: 236/82 *Brautigam v Council* [1985] ECR 2401, paras 29 and 30; C-76/93 P *Scaramuzza v Commission* [1994] ECR I-5173, para. 24; T-544/93 and T-566/93 *Abello and Others v Commission* [1995] ECR-SC II-815, para. 40

Since the applicant has at no time either shown or even claimed that he had commitments amounting to DKK 20 000 outside Belgium, more specifically in Denmark, the Commission made no error of assessment in taking the view that the conditions necessary to benefit from a transfer in DKK were not met and therefore rejecting the applicant's request to 'increase' the amount transferred (paragraph 38).

Second plea, alleging an error in the assessment of the terms of the internal directive

Having regard to the hierarchy of norms, an internal directive cannot lawfully confer on an official a right contrary to the Staff Regulations and/or the rules adopted to implement them (paragraph 44).

In the light of an examination of the provisions of the internal directive, this plea must be dismissed as unfounded (paragraphs 45 to 47).

Third plea, alleging the illegality of the internal directive

The internal directive does not in any way restrict the possibility of transferring a part of an official's emoluments compared with what is provided for in the Staff Regulations. Even supposing that the Commission's previous practice was more favourable to officials, to the point of being incompatible with the Staff Regulations, the Commission is not to be criticised for restoring a practice consistent with the Staff Regulations by adopting the internal directive. Moreover, an official cannot plead in his own cause an unlawful act committed in the past in favour of others. The internal directive is not unlawful and this plea cannot be upheld (paragraphs 50 to 52).

See: *56/75 Elz v Commission* [1976] ECR 1097, para. 18; *T-30/90 Zoder v Parliament* [1991] ECR II-207, para. 26

Fourth plea, alleging a breach of the obligation to state reasons

This plea must be rejected on the basis of the consistent case-law of the Court on the obligation to state reasons (paragraphs 55 to 57).

*Claim for damages*

Although the claim for damages is admissible, it is unfounded in that it refers to alleged harm resulting from an 'incorrect classification' and the Court has held that the Commission committed no error of law or of assessment in this case (paragraphs 62 to 64).

**Operative part:**

**The application is dismissed.**