

JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)  
5 November 2002

Case T-205/01

**André Ronsse**  
v  
**Commission of the European Communities**

(Officials – Remuneration – Household allowance –  
Recovery of undue payment)

Full text in French ..... II - 1065

**Application for:** first, annulment of the Commission's decisions contained in the letters of 9 and 23 November 2000 and, as far as is necessary, of the letter of 15 January 2001 and the implied rejection of the complaint submitted on 8 February 2001, all relating to recovery of a sum of EUR 22 443.07 paid to the applicant by way of household allowance from 1 January 1994 to 1 November 2000, and, second, reimbursement of the sums withheld for that purpose from his pension since December 2000, together with interest at the statutory rate.

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

## Summary

*1. Officials – Decision adversely affecting an official – Obligation to state grounds – Scope  
(Staff Regulations, Art. 25)*

*2. Officials – Remuneration – Family allowances – Household allowance – Conditions for granting – Spouse’s income from employment – Concept  
(Staff Regulations, Art. 62; Annex VII, Art. 1(3))*

*3. Officials – Recovery of undue payments – Conditions – Irregularity of the payment patently evident – Criteria  
(Staff Regulations, Art. 85)*

*4. Officials – Recovery of undue payments – Reasonable period – Concept  
(Staff Regulations, Art. 85)*

*5. Officials – Principles – Protection of legitimate expectations – Recovery of undue payments – Conditions*

*6. Officials – Equal treatment – Assistance given on a one-off basis, in special cases, to officials in connection with the determination of their entitlements under the Staff Regulations – Breach – None*

1. The obligation to state grounds, laid down in Article 25 of the Staff Regulations, is satisfied where the measure against which the action is brought was adopted in circumstances known to the official concerned, which enable him to apprehend the scope of a measure which concerns him personally.

(see para. 28)

See: 36/81, 37/81 and 218/81 *Seton v Commission* [1983] ECR 1789, para. 48; C-350/88 *Delacre and Others v Commission* [1990] ECR I-395, para. 16; T-80/92 *Turner v Commission* [1993] ECR II-1465, para. 62

2. It follows from the express wording of Article 1(3) of Annex VII to the Staff Regulations that it is the spouse's entire income from employment, as denoted by the use of the plural 'revenus professionnels' in the French text of that provision, which must be taken into consideration for the purpose of granting the household allowance and compared with the upper limit, defined as the basic annual salary of an official in the third step of Grade C 3. The concept of income from employment, like that of remuneration mentioned in Article 62 of the Staff Regulations, is wider than that of basic salary, which it encompasses, and includes all income received on a regular basis in consideration of the performance of duties, including allowances subsidiary to that basic salary.

(see paras 37, 39)

See: T-107/92 *White v Commission* [1994] ECR-SC I-A-41 and II-143, para. 19

3. For a sum paid without justification to be recovered evidence must be produced to show that the recipient was actually aware that there was no due reason for the payment or that the fact of the overpayment was patently such that he could not have been unaware of it.

Where overpayment is disputed by the recipient and in the absence of evidence that he was aware that there was no due reason for the payment, the circumstances in which the payment was made must be examined in order to determine whether the overpayment was patently evident.

Indeed, the words ‘patently such’, which define undue payment in Article 85 of the Staff Regulations, do not mean that the official need make no effort to reflect or check, but mean that repayment is due where the error is one which would not escape the notice of an official exercising ordinary care, who is deemed to know the rules governing his salary. Account must also be taken in each case of the ability of the official concerned to carry out the necessary checks. The factors taken into consideration by the Community judicature in that regard concern the official’s level of responsibility, his grade and seniority, the degree of clarity of the provisions of the Staff Regulations laying down the conditions for granting the allowance and the significance of the changes which have taken place in his personal or family circumstances, when payment of the sum at issue is dependent on the administration’s assessment of such circumstances. Consequently, an official in a relatively high grade with long service in the Community civil service should be capable of recognising that he is receiving an undue payment.

(see paras 45-47)

See: 71/72 *Kuhl v Council* [1973] ECR 705, para. 1; 142/78 *Berghmans v Commission* [1979] ECR 3125, para. 9; 310/87 *Stempels v Commission* [1989] ECR 43, para. 10; *White v Commission*, cited above, paras 32 and 33; T-38/93 *Stahlschmidt v Parliament* [1994] ECR-SC I-A-65 and II-227, para. 19; T-545/93 *Kschwendt v Commission* [1995] ECR-SC I-A-185 and II-565, para. 104; T-348/00 *Barth v Commission* [2001] ECR-SC I-A-119 and II-557, para. 33

4. In the absence of any provision fixing a limitation period or time-limit in respect of the recovery of sums overpaid provided for in Article 85 of the Staff Regulations, the question of whether or not a period is reasonable must be assessed by reference to the particular circumstances of each case, in particular the degree of patency of the irregularity of the payments at issue and the occasional or continuous nature of the undue payments. Consequently, time plays a part only as a factor in assessing the justification for the exercise of the right of recovery, in the light, *inter alia*, of all the circumstances which may be taken into account, such as the total of the sums demanded, any conduct of the administration constituting a wrongful act, the official's good faith and the ordinary care which may be expected of him, having regard to his training, grade and professional experience.

(see para. 52)

See: 44/74, 46/74 and 49/74 *Acton and Others v Commission* [1975] ECR 383, para. 29;  
*White v Commission*, para. 47

5. As regards the possibility of relying on the protection of legitimate expectations in litigation relating to the recovery of undue payments, the right to claim the protection of legitimate expectations is enjoyed by any individual who has been led by the administration to entertain reasonable expectations. However, no breach of that principle may be alleged in the absence of specific assurances given by the administration, and such assurances must in any event comply with the provisions of the Staff Regulations.

(see para. 54)

See: T-235/94 *Galtieri v Parliament* [1996] ECR-SC I-A-43 and II-129, paras 63 and 65

6. The mere fact that the administration may, in certain special cases, have provided assistance on a one-off basis to officials experiencing difficulties in determining the status of their entitlement to household allowance, which does not amount to a consistent and discriminatory practice in that regard, does not prove the discrimination alleged.

(see para. 60)