

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)  
24 February 1994

Case T-38/93

**Axel Michael Stahlschmidt**  
v  
**European Parliament**

(Officials – Recovery of undue payment)

Full text in French . . . . . II - 227

**Application for:** the annulment of the Parliament's decision of 9 October 1992 requiring reimbursement of sums wrongly paid by way of expatriation allowance from 1 October 1987 to 1 July 1992.

**Decision:** Application dismissed.

**Abstract of the Judgment**

The applicant, an official of the European Parliament since 1964, was at the material time a Head of Division in Grade A 3. Originally German by nationality, he acquired Luxembourg nationality on 22 September 1987. He notified the administration of his change of nationality and sent to it a copy of the certificate of naturalization.

By memorandum of 26 October 1987, which was not communicated to the applicant, the ‘Staff Regulations and Personnel Management’ department requested the division responsible for calculating salaries and allowances to discontinue payment to the applicant of expatriation allowance with effect from 1 October 1987.

By memorandum of 25 June 1992, to which the memorandum of 26 October 1987 was attached, the administration informed the applicant that he would no longer be receiving the allowance with effect from 1 June 1992. It requested the applicant, by memorandum of 9 October 1992, to repay pursuant to Article 85 of the Staff Regulations the amounts paid to him in respect of expatriation allowance since 1 October 1987, a total of BFR 3 447 326.

**The sole plea in law based on infringement of Article 85 of the Staff Regulations defining the conditions for recovery of undue payments**

The Court points out that to justify recovery of undue payment it is sufficient that one of the conditions required by Article 85 of the Staff Regulations be satisfied – awareness on the part of the person concerned or the patent nature of the fact of overpayment (paragraph 17).

As the Parliament acknowledges that it is not in a position to prove that the applicant was actually aware of the fact of the overpayment, the Court considers that the first of those alternative conditions has not been satisfied (paragraph 18).

The Court points out that the second condition is satisfied if an official exercising ordinary care could not have been unaware that the administration had made a mistake, account being taken in each case of the ability of the official concerned to make the necessary checks (paragraph 19).

See: 252/78 *Broe v Commission* [1979] ECR 2393, paras 13 and 14; 310/87 *Stempels v Commission* [1989] ECR 43, paras 10 and 11; T-124/89 *Kormeier v Commission* [1991] ECR II-125, paras 17 and 18

According to the Court, it is clear from Article 4(1)(a) of Annex VII to the Staff Regulations that the expatriation allowance is not payable to an official who is a national of the State in whose territory the place where he is employed is situated. The Court accordingly finds that there was patently no due reason for the payment of the allowance for the period of approximately five years from the time when the applicant acquired the nationality of the State in whose territory the place where he is employed is situated, in view of the fact that, having worked for the institution for almost 30 years and being a Head of Division, the applicant was in a position, by exercising ordinary care, to become aware of the error committed by the administration (paragraphs 20 and 21).

The Court regards as immaterial the negligence or mistake on the part of the administration, which hesitated on the interpretation to be given to the provision in question, in view of the fact that the application of Article 85 of the Staff Regulations presupposes precisely that the administration has committed an error in making the undue payment (paragraph 23).

**Operative part:**

**The application is dismissed.**