

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
1 February 1996

Case T-122/95

Daniel Chabert
v
Commission of the European Communities

(Officials – Household allowance – Recovery of amounts paid in error)

Full text in French II - 63

Application for: annulment of the Commission's decision of 6 October 1994 requiring the applicant to reimburse BFR 215 354 paid to him in error as household allowance, and for an order that the Commission repay him the sums withheld from his remuneration since November 1994, together with interest at 8% per annum.

Decision: Application dismissed.

Abstract of the Judgment

Until his divorce in February 1984, the applicant was married to Ms C., also an official with the Commission.

By memorandum of 1 February 1984, the applicant asked the head of the Financial and Administrative Rights Division to pay Ms C., as from 15 March 1984, part of the head-of-household allowance, amounting to the sum to which she would receive if she were entitled to the allowance, that is to say 5% of her basic salary, and the remainder to him.

As from March 1984, the Commission divided up the household allowance, so that the applicant's former wife received a household allowance equivalent to 5% of her basic salary and the applicant a household allowance equivalent to 5% of his basic salary, minus the amount paid to his former wife.

From that month on, therefore, the applicant's monthly salary statements included two specific references to the household allowance, one for the allowance received in his own name and the other for the allowance paid out, which showed the deduction made in respect of the allowance received by his former wife. From April 1984, the amount shown under that heading was BFR 4 266, and it remained unchanged until April 1994.

When a check was carried out in early 1994, it appeared that the amount of BFR 4 266, which had been deducted unchanged for over ten years, no longer corresponded to the amount which should have been withheld in respect of 'household allowance paid out'. The allowance received by the applicant's former wife had increased to reflect the successive increases in her basic salary, from BFR 4 266 in April 1984 to BFR 7 451 in January 1994. A recalculation of the sums

payable from March 1984 onwards showed that a total of BFR 215 354 had been overpaid in error to the applicant over the above period.

By memorandum of 6 October 1994, concerning the 'regularization' of the household allowance paid out, the Commission informed the applicant of the outcome of that recalculation and notified him of its decision to recover the sums paid in error in accordance with a schedule of payments to be made between November 1994 and September 1996.

On 11 November 1994, the applicant lodged a complaint against that decision under Article 90(2) of the Staff Regulations, in which he denied that he had been aware of the irregularity of the payments and of the amount paid in error. On 22 February 1995, the Commission rejected that complaint.

Substance

Breach of Article 85 of the Staff Regulations

The applicant does not deny that the payments in issue were irregular and the Commission does not allege that the applicant was in fact aware of the irregularity. The question therefore arises whether, in the second hypothesis envisaged in Article 85 of the Staff Regulations, the fact of the overpayment made to the applicant was patently such that he could not have been unaware of it. To answer that question, the circumstances in which the payment was made must be examined (paragraph 31).

See: 71/72 *Kuhl v Council* [1973] ECR 705, para. 11

Article 85 of the Staff Regulations must be interpreted as meaning that the official concerned, far from being exonerated from any effort to reflect or check, is under a duty to make 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.

See: 252/78 *Broe v Commission* [1979] ECR 2393, para. 13; 310/87 *Stempels v Commission* [1989] ECR 43, para. 10; T-34/89 and T-67/89 *Costacurta v Commission* [1990] ECR II-93, para. 39; T-107/92 *White v Commission* [1994] ECR-SC II-143, para. 33

Negligence or mistake on the part of the administration in determining an official's pecuniary rights is immaterial as regards the application of Article 85 of the Staff Regulations, which presupposes precisely that the administration has committed an error in making the undue payment (paragraph 34).

See: T-38/93 *Stahlschmidt v Parliament* [1994] ECR-SC II-227, para. 23

It is not necessary that the official should be able to determine, when exercising the duty of care incumbent upon him, the precise extent of the error made by the administration. The fact that he feels doubt as to the calculation of the payments in question is enough to place him under an obligation to bring the matter to the attention of the administration so that it can carry out the necessary checks (paragraph 35).

See: *White v Commission*, cited above, para. 42

Even if the applicant was unable to determine the exact amount involved in the erroneous payment, the fact that the amount withheld under the heading 'household allowance paid out' remained the same over a period of more than ten years should have caused him to entertain doubts and thus to ask the competent service to check the figures (paragraph 36).

The applicant must have been aware that his former wife's salary, like his own, was subject to increases reflecting annual adaptations, regular advancement to a higher step and possible promotions, even if she did not inform him of those increases. The fact that the amount of household allowance withheld under 'household allowance paid out' had remained the same while the amount of household allowance which the applicant received in his own name had progressively doubled over the same period should have caused him to doubt the calculation of the payments he received, even if he had no precise, detailed knowledge of the amount of his ex-wife's remuneration (paragraph 37).

The decisive factor in deciding whether the payments in question were patently irregular is not the amount of the overpayment but the fact that the amounts withheld under 'household allowance paid out' remained the same over more than ten years. The applicant was aware, moreover, that the household allowance he received was of a residual nature (paragraph 38).

Salary statements are not illegible or incomprehensible documents. They are relatively simple to read, as there are a limited number of figures and the headings used are easy to understand, a fact which was not denied by the applicant's counsel at the hearing (paragraph 39).

As regards the intellectual demands that may be made on an official in receipt of payments made in error, it has consistently been held that account must be taken in each case of the individual official's ability to make the necessary verifications (paragraph 40).

See: T-117/89 *Sens v Commission* [1990] ECR II-185, para. 14; T-124/89 *Kormeier v Commission* [1991] ECR II-125, para. 18; *Stahlschmidt v Parliament*, cited above, para. 19

The factors to be taken into consideration in that regard relate to the official's level of responsibility, training, grade and seniority and to his professional knowledge of the way in which the Community civil service is administered (paragraph 40).

See: *White v Commission*, cited above, para. 43; T-545/93 *Kschwendt v Commission* [1995] ECR-SC II-565, para. 104

The applicant, a principal administrative assistant in Grade B 1, has a relatively senior position and considerable seniority of service. Furthermore, from the outset of his career, covering more than 30 years in the Community civil service, he has worked almost exclusively in the Commission's administrative services, in charge of personnel management (paragraph 41).

He was therefore in a position, by exercising normal care, to realize that the administration had made an error (paragraph 42).

Operative part:

The application is dismissed.