

therefore not fulfilled unless the training period is regarded by the university as constituting an integral part of the programme for the purpose of obtaining the final diploma. The mere consent of the educational establishment or any support on its part, on the other hand, is not sufficient to justify the grant of the allowance.

2. The words 'patently such' which characterize the fact of overpayment giving rise to recovery under Article 85 of the Staff Regulations do not mean that the official need make no effort to reflect or check.

The condition concerning the patent nature of the fact of overpayment of an education allowance, the award of which is liable to be modified on the basis of information which only the official is in a position to notify, is fulfilled where, instead of checking with the competent authorities, he merely relies on a questionable personal interpretation of the

Staff Regulations and, in breach of his express undertaking to notify the administration of any change liable to affect his entitlement to the allowance, on the understanding that any sum wrongly received will be deducted from his salary, omits to inform the competent department forthwith of the undeniably important change in his family circumstances.

3. An official's submissions based on infringement both of Article 85 of the Staff Regulations and of the principle of the protection of legitimate expectations, a principle of which Article 85 is itself a reflection, cannot be upheld as against a decision ordering, within a reasonable time, the recovery of an improperly granted education allowance, where it is by reason of the official's failure to fulfil his obligation to give immediate and proper notice of the change in his family circumstances that the administration had decided to award the education allowance giving rise to recovery.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)

13 March 1990 *

In Joined Cases T-34/89 and T-67/89

Mario Costacurta, an official of the Commission of the European Communities, residing in Luxembourg, represented by **Nicolas Decker**, of the Luxembourg Bar,

* Language of the case: French.

with an address for service in Luxembourg at his Chambers, 16, avenue Marie-Thérèse,

applicant,

v

Commission of the European Communities, represented by J. Griesmar, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of its Legal Department, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of the Commission's decisions of 30 October 1987 and 26 April 1988 withdrawing the dependent child allowance and the education allowance in favour of the applicant's daughter,

THE COURT OF FIRST INSTANCE (Third Chamber)

composed of: A. Saggio, President of Chamber, B. Vesterdorf and K. Lenaerts, Judges,

Registrar: H. Jung

after considering the written procedure and further to the oral proceedings on 14 February 1990,

gives the following

Judgment

Facts and procedure

- 1 The applicant, Mr Mario Costacurta, an official of the Commission of the European Communities employed in Luxembourg, is the father of Nadia Costacurta on whose behalf he submitted in the autumn of 1986 an application for the grant of an education allowance in respect of the university year 1986/87. On the basis of the supporting evidence produced, the defendant paid him a dependent child allowance and an education allowance in respect of his daughter Nadia who was studying at the University of Paris.

- 2 During the university year 1986/87, Nadia Costacurta followed courses at the University of Paris-I (Panthéon-Sorbonne) leading to a DEA (Diplôme d'études approfondies — Diploma of Further Studies) in private international law. Those courses, according to information supplied by the university authorities, were due to terminate on 16 May 1987. In respect of the university year 1987/88, Nadia Costacurta submitted on 30 June 1987 an application for enrolment for courses in preparation for a further diploma at the same university. In reply to that application she received permission from the university to enrol for the courses on 13 November 1987.

- 3 After spending a period of paid training (BFR 22 000 per month) at the Commission in Brussels from 16 March 1987 to 31 July 1987, Nadia Costacurta was offered employment as a member of the auxiliary staff for a period of six months. On 30 July she informed the 'Careers Division' that she would be able to commence her employment on 1 September 1987, as a result of which her contract of employment as a member of the auxiliary staff was drawn up and signed by both parties. Subsequently, Nadia Costacurta, after successfully taking part in an open competition, was appointed as an official of the Commission and assigned to a post in Brussels.

- 4 By letter of 10 September 1987 the applicant informed the Personnel Division of the Commission in Luxembourg that his daughter Nadia had ceased to be a dependent child from 1 September 1987, having just been engaged by the Commission for a six-month period as a member of the auxiliary staff.

- 5 By letter of 30 October 1987 the Head of the Personnel Division in Luxembourg informed the applicant that the dependent child allowance and the education allowance for his daughter Nadia were withdrawn with effect from 1 July 1987. As indicated both in that letter and in a further letter of 16 November 1987, the decision was based on the fact that Nadia Costacurta had taken up gainful employment on 1 September 1987 and had therefore interrupted her studies on 16 May 1987 — the date on which the university year 1986/87 ended. The allowances paid to the applicant in respect of his daughter Nadia for the period after 1 July 1987 were to be recovered.
- 6 By letter of 24 November 1987, lodged at the General Secretariat of the Commission on 3 December 1987, the applicant submitted to the defendant a complaint under Article 90(2) of the Staff Regulations of officials of the European Communities (hereinafter referred to as 'the Staff Regulations'). He challenged the withdrawal of the allowances in respect of the period before 1 September 1987 on the ground that Nadia had enrolled at an establishment of higher education for the year 1987/88 and was therefore a student on vacation and a dependent child of the applicant until she took up employment with the Commission. He further claimed that Article 85 of the Staff Regulations did not permit the recovery the allowances paid for the period after 1 July 1987 because at the time of their payment he had been unaware of any irregularity and Nadia was at that time still a student and dependent on him.
- 7 Since the complaint did not elicit a reply within the period laid down in Article 90(2) of the Staff Regulations, the applicant brought a first action before the Court of Justice on 20 May 1988, seeking the annulment of the Commission's decision contained in the memoranda of 30 October and 16 November 1987 (Case T-34/89).
- 8 The complaint lodged by the applicant nevertheless gave rise to a reconsideration of his rights by the officials of the Commission, as a result of which the Director-General of Personnel and Administration, by letter of 26 April 1988 amending the decision which had been the subject of the complaint, informed Mr Costacurta
 - (i) that his entitlement to the dependent child allowance for his daughter Nadia was reinstated until 31 August 1987; and

- (ii) that it was with effect from 31 March 1987, and not from 1 July 1987 as stated in the decision complained of, that he was no longer entitled to receive the education allowance.
- 9 As far as the dependent child allowance was concerned, the reason given for the amendment of the decision of 30 October 1987 was that the term 'vocational training' in Article 2(3)(b) of Annex VII to the Staff Regulations had been interpreted since 1 March 1981 as covering vocational training qualifying for the payment of the dependent child allowance provided that the remuneration received by the person concerned was lower than the 'minimum subsistence figure'. Since the training period completed by Nadia Costacurta could be regarded as vocational training and the remuneration received by her had been lower than the minimum subsistence figure, the applicant continued to be entitled to the dependent child allowance for his daughter until 31 August 1987.
- 10 As far as the education allowance was concerned, the Director of Personnel and Administration made the following observations: '... Nadia Costacurta was your dependent child for the purposes of Article 2(2) of Annex VII to the Staff Regulations. The documents on her personal file (the student's card for the university year 1986/87) indicate that she regularly attended the University of Paris on a full-time basis until 16 March 1987. On that date she began a training period with the Commission in Brussels. Since that training period ended on 31 July 1987 and her employment with the Commission as a member of the auxiliary staff commenced on 1 September 1987, Miss Costacurta ceased to attend an educational establishment after 16 March 1987. Under the second subparagraph of Article 2(1) of the General Implementing Provisions for Granting the Education Allowance (which have been applied since 1 March 1975) you were therefore entitled to the education allowance until 31 March 1987.'
- 11 In the same letter the Director-General announced that he had decided that the education allowances paid for April, May and June were to be recovered. He added:
- 'In those circumstances, since a fresh decision on the recovery of the amounts overpaid in respect of the education allowance has supervened, there are no grounds submitting your current complaint to the Commission.'

12 It appears from the documents before the Court that the Head of the Personnel Division had told the Head of the 'Staff Regulations' Division of the Commission on 13 April 1988 that at the time of adopting his decision of 13 October 1987 he had been unaware that Nadia Costacurta had completed a training period with the Commission in Brussels.

13 On 31 May 1988 the applicant lodged a further complaint against the decision of 26 April 1988, but on 18 November 1988 it was rejected by a decision of the defendant. In the complaint the applicant contended *inter alia* that the training period with the Commission in Brussels was related to the studies of his daughter Nadia, so that she remained a full-time student during that period.

14 In its decision rejecting the complaint the defendant stated in reply to the applicant's arguments that 'by 1987 Miss Costacurta had already completed her special higher studies in common market law (the diploma having been obtained in November 1986). It was as part of that course — and only as such — that she had been required to undergo a period of training to supplement the theoretical instruction and the practical seminars. She had completed that period in the Lefebvre Cabinet in the summer of 1986'.

15 As regards the nature of the studies pursued by Nadia Costacurta from the winter semester 1986/87 onwards, the defendant made the following observations: 'From the winter semester 1986/87 until the beginning of her training period with the European Communities, Miss Costacurta was following a course in private international law in preparation for the relevant DEA. Leaving aside the question of the usefulness of a training period with the Commission in the context of such a course, it must be pointed out that, for the purposes of the award of the diploma, the studies in question did not require a compulsory training period of any description during the courses'.

16 As far as the interpretation of Article 3 of Annex VII to the Staff Regulations is concerned, it should be noted that the Committee of Heads of Administration adopted the following conclusion (Conclusion 166/87) at its 160th meeting on 15 January 1987:

'(a) The Heads of Administration have decided that the condition regarding "full-time" attendance at an educational establishment, laid down by the first

paragraph of Article 3 of Annex VII to the Staff Regulations for the grant of the education allowance, is satisfied

- (i) automatically, where the establishment attended gives 16 hours of teaching and/or practical work per week to the pupil or student concerned;
 - (ii) in cases where that level of hours of attendance is not reached, only when the course followed is a complete course, that is to say, one whose purpose is recognized by the State, provided that the person concerned follows the normal timetable laid down for that type of study;
 - (iii) in such cases the time devoted to private study is deemed to make up the difference between the number of hours of teaching received and the minimum of 16 hours required in the first indent.
- (b) the Heads of Administration have decided that the condition regarding “regular” attendance at an educational establishment, laid down by the first paragraph of Article 3 of Annex VII is satisfied when an establishment is attended by a pupil or student for a minimum period of 3 months.

This conclusion will apply from 1 February 1987 onwards.’

- 17 On 6 March 1989 the applicant brought a second action, seeking the annulment of the Commission’s decision of 26 April 1988 and the Commission’s express decision of 18 November 1988 rejecting his complaint (Case T-67/89).
- 18 In both cases the written procedure was conducted entirely before the Court of Justice which, by order of 15 November 1989, referred them to the Court of First Instance pursuant to the Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities.

By order of 8 December 1989 the Court of First Instance ordered that the two cases be joined for the purposes of the oral procedure and of the judgment. Upon hearing the report of the Judge-Rapporteur the Court decided to open the oral procedure without any preparatory inquiry.

19 The parties submitted the following conclusions:

In Case T-34/89 the applicant claims that the Court should:

- (1) declare the application to be admissible and well founded;
- (2) hold that the defendant has infringed Articles 2 and 3 of Annex VII to the Staff Regulations and Article 85 thereof, and accordingly,
- (3) annul the memoranda of 30 October and 16 November 1987 of the Head of the Personnel Division of the Commission of the European Communities in Luxembourg;
- (4) order the defendant to pay the applicant the dependent child allowance and the education allowance in respect of his daughter Nadia for the months of July and August 1987 together with the interest at the rate prescribed by law running from the date of their withdrawal until final payment;
- (5) order the defendant to pay the costs.

The defendant claims that the Court should:

- (1) dismiss the application;
- (2) should the Court order the defendant to pay the applicant the education allowance for July and August 1987, dismiss as inadmissible the applicant's claim for the payment of interest on the amount concerned at the rate prescribed by law;
- (3) make an appropriate order as to costs.

20 In Case T-67/89 the applicant claims that the Court should:

- (1) declare the application admissible and well founded;

- (2) declare that the defendant is in breach of the principle of legitimate expectations and has infringed Articles 85 and 90 of the Staff Regulations and also Articles 2 and 3 of Annex VII thereto, and accordingly,
- (3a) annul the memorandum of 26 April 1988 of the Director-General for Personnel and Administration,
- (3b) in the alternative, annul the Commission's decision of 18 November 1988 rejecting the applicant's administrative complaint;
- (4) order the defendant to pay to the applicant the educational allowance for his daughter Nadia for April, May, June, July and August 1987, together with interest at the rate prescribed by law from the date of withdrawal until final payment;
- (5) order the defendant to pay the costs.

The defendant claims that the Court should:

- (1) dismiss the application;
- (2) should the Court order the defendant to pay the applicant the educational allowance for April, May and June 1987, dismiss as inadmissible the applicant's claim for the payment of interest on the amount concerned at the rate prescribed by law;
- (3) make an appropriate order as to costs.

Substance

- ²¹ It should be noted that, at the hearing, the applicant withdrew his conclusions for an order requiring the defendant to pay the dependent child allowance for July and August 1987. It is therefore unnecessary to give a decision on that claim.

22 For the rest, the applicant maintained his conclusions seeking the annulment of the two decisions of the Commission ordering the recovery of the education allowance paid for the months from April to August 1987.

23 In support of his claims the applicant asserts, in the first place, that Article 3 of Annex VII to the Staff Regulations entitles him to claim the allowance in question. As regards the allowance paid for the months from April to June 1987, the applicant argues that it was payable to him on the ground that Nadia Costacurta had completed her training period with the Commission in Brussels with the consent and support of the university, and hence that the period in question could be treated as equivalent to regular full-time attendance at an educational establishment to which Article 3 refers.

24 The applicant further maintains that the distinction drawn by the defendant between the dependent child allowance and the education allowance is mistaken in this case. He claims that his daughter Nadia received no vocational training within the meaning of Article 2 of Annex VII, since the training period with the Commission was not 'vocational training' but formed part of an 'educational' training for the purposes of that article. The provisions governing training periods with the Commission bear out that argument. Conclusion No 166/1987, adopted by the Committee of Heads of Administration, is thus applicable in Nadia Costacurta's case. On 16 March 1987 she had interrupted her attendance at the courses with the consent and support of the university in order to complete the training period in Brussels. She did not, however, terminate her studies.

25 The defendant stresses, in the first place, that not only Article 3 of Annex VII but also the General Implementing Provisions for Granting the Education Allowance (hereinafter referred to as 'the General Provisions') provide that the allowance is not payable unless the dependent child is in regular full-time attendance at an educational establishment. The defendant contends that a distinction must be drawn between the dependent child allowance and the education allowance, inasmuch as the former may be awarded beyond the age of 18 years without entailing the simultaneous award of the latter, the grant of which is subject to a further condition. Nadia Costacurta followed a vocational training course during her training period in Brussels but was not 'in attendance at an educational establishment', which is an essential condition for the grant of the education allowance.

- 26 It must be recalled that Article 3 of Annex VII to the Staff Regulations requires the child in respect of whom the allowance is requested to be 'in regular full-time attendance at an educational establishment'. Article 3 must be interpreted as meaning that the student concerned must actually follow the programme of instruction laid down by the rules of the educational establishment attended.
- 27 In the circumstances of this case, that means that the conditions for entitlement to the education allowance were not fulfilled unless the training period completed was regarded by the university as constituting an integral part of the programme for the purpose of obtaining the final diploma. The mere consent of the educational establishment or any support on its part, on the other hand, is not sufficient to justify the grant of the allowance.
- 28 The defendant has denied that the training period in question formed an integral part of Nadia Costacurta's studies, and there is nothing either in the documents before the Court or in the information given by the applicant at the hearing which has proved that that period was actually recognized by the university as an integral part of the programme of studies for the award of the DEA.
- 29 It must therefore be held that the training period cannot be treated as equivalent to regular attendance at the courses, which Nadia Costacurta interrupted on 16 March 1987 on taking up her duties with the Commission as a trainee.
- 30 It follows that, after that date, the conditions governing the grant of the education allowance were no longer fulfilled, since Nadia Costacurta did not resume her studies after the period of training. From this it clearly follows that the conditions required for the grant of that allowance during the period of the university summer vacation of 1987 have not been fulfilled either.
- 31 As regards the applicant's arguments based on the fact that the dependent child allowance was awarded to him without the education allowance being granted at the same time, it need only be observed that the defendant in fact took the view that the training period completed with the Commission constituted vocational

training within the meaning of Article 2 of Annex VII to the Staff Regulations and that the criteria used in that article differ from those applied in Article 3.

32 The applicant's submission based on infringement of Article 3 of Annex VII cannot therefore be upheld.

33 In the second place, the applicant maintains that the recovery of the contested instalments of the education allowance was ordered by the defendant contrary to Article 85 of the Staff Regulations. The applicant asserts that, whilst completing her training period with the Commission in Brussels, Nadia Costacurta was from his point of view still a student. In July and August he had regarded her as a student on vacation.

34 The applicant further claims that the recovery of the allowance paid for the months from April to June 1987 constitutes a breach of the principle of the protection of legitimate expectations and that the decision on the matter, adopted a year after payment, was out of time.

35 As a preliminary matter, the rules governing the relevant administrative scheme should be recalled to mind.

36 The application for the education allowance is made for each academic year on an application form, accompanied where necessary by supporting documents. By signing it, the official undertakes to notify the administration 'of any change liable to affect my entitlement to the allowance . . . , on the understanding that any sum wrongly received will be deducted from my salary'.

37 That declaration is based in part on Article 7 of the General Provisions, which provides that the official 'shall notify any change of circumstances which could give rise to the cessation or reduction of the education allowance'.

- 38 That is the context in which one must interpret Article 85 of the Staff Regulations relating to the recovery of sums the payment of which is liable to be modified on the basis of information which only the official is in a position to notify to the administration.
- 39 As the Court of Justice has held on several occasions, most recently in its judgment of 17 January 1989 in Case 310/87 *Stempels v Commission* [1989] ECR 43, the words 'patently such' in Article 85 of the Staff Regulations do not mean that an official need make no effort to reflect or check.
- 40 In this case, the applicant, who does not plead that he was unaware of the relevant provisions, should quite clearly have appreciated that his personal interpretation of Article 3 of Annex VII to the Staff Regulations and of the General Provisions for its implementation was — to say the least — doubtful and that the matter needed to be checked with the competent authorities. However, the applicant was content to base himself on his mistaken interpretation of the rules without notifying to the competent department, on or after 16 March 1987, the supervening change in his family circumstances, which was undeniably an important one.
- 41 The applicant thereby failed to comply with his obligation under the relevant provisions which he had expressly accepted by signing the form mentioned above.
- 42 In those circumstances the condition laid down by Article 85 of the Staff Regulations for the recovery of undue payment — namely that the fact of the overpayment should be patently such that the applicant could not have been unaware of it — is satisfied in this case.
- 43 With regard to the applicant's submission based on breach of the principle of protection of legitimate expectations, it should further be noted that Article 85 itself is a reflection of that principle and must be interpreted in the light of the particular circumstances of the case.

- 44 The applicant maintains that the decision of 26 April 1988 was adopted in violation of the legitimate expectations which an official must be entitled to derive from the decisions of his administration. Since May 1987 the administration had been informed of Nadia Costacurta's period of training with the Commission in Brussels. The applicant claims that he himself provided the administration in Luxembourg with the address of his daughter during her training period in Brussels. The Appointing Authority had therefore been aware of all the facts when it adopted its decision in October 1987. According to the applicant the Head of the Personnel Division in Luxembourg was also aware of Nadia Costacurta's training period.
- 45 In that connection it should be observed that it cannot escape the attention of a reasonably diligent official that notification regarding a change of family circumstances must be addressed directly to the competent department of the administration in a clear and unambiguous manner. That is, indeed, what the applicant did in September 1987.
- 46 The official may not, on the other hand, take advantage of the fact that the administration obtained the information by accident.
- 47 In this case, it was precisely because the applicant had failed to comply with his obligation to give proper notice, as early as 16 March 1987, of the supervening change in his family circumstances that the decision adopted by the administration in October 1987 did not take account of the period of training completed by Nadia Costacurta.
- 48 It was for the same reason that the decision ordering recovery of the overpaid allowances, based on information which the administration obtained after various checks, was not adopted until April 1988. In those circumstances the decision was taken within a reasonable period. It cannot therefore be said to have been out of time.
- 49 It follows from the foregoing that both the submission alleging an infringement of Article 85 and the submission based on a breach of the principle of the protection of legitimate expectations cannot be upheld.

50 Finally, in support of his application for the annulment of the decision of 26 April 1988, the applicant pleads the infringement of Article 90 of the Staff Regulations. According to him the Director-General should have forwarded the complaint lodged on 3 December 1987 to the Commission, to enable it to adopt an official decision on the recovery of the education allowance paid for July and August 1987. Such a decision would have reopened the period allowed for submitting a complaint. The fact that no express decision was adopted had compelled the applicant to bring a second action.

51 In response the defendant maintains that any express reply could not have dealt with points which had not given rise to the complaint, namely the entitlements for April, May and June. The reopening of the period for bringing an action for the annulment of the decision adopted in October 1987 would not have resulted in a sufficiently long extension for a decision — in any event implicit — rejecting the fresh complaint to have come into existence during the extended period. In any case, the submission may in no way be regarded as relating to an infringement of essential procedural requirements entailing the nullity of the measure in point.

52 In that regard it should be observed that the applicant has not established that his position would have been different if the Commission itself had adopted the first of the contested decisions. It follows that the submission must be rejected.

53 It is clear from the foregoing considerations that the two applications must be dismissed.

Costs

54 Under Article 69(2) of the Rules of Procedure, the unsuccessful party must be ordered to pay the costs. However, under Article 70 of the Rules of Procedure, institutions must bear their own costs in proceedings brought by servants of the Communities.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

- (1) Dismisses the applications;**
- (2) Orders the parties to bear their own costs.**

Saggio

Vesterdorf

Lenaerts

Delivered in open court in Luxembourg on 13 March 1990.

H. Jung
Registrar

A. Saggio
President