

Case T-111/89

Robert Scheiber

v

Council of the European Communities

(Official — Retirement pension —
Overlap with salary received as an employee of the EAC —
Recovery of amount unduly paid)

Judgment of the Court (Fourth Chamber), 12 July 1990 430

Summary of the Judgment

1. *Officials — Pensions — Prohibition of concurrent payment with a Community salary — Purpose — Conditions of application — Salary paid out of the budget of an institution — Employment relationship between the employee and the institution — Not a necessary condition*
(*Staff Regulations of Officials, Annex VIII, Art. 40, second paragraph*)
2. *Officials — Pensions — Prohibition of concurrent payment with a Community salary — Official benefiting from a special measure definitively terminating his service — Term authorizing the concurrent payment of the allowance paid upon the definitive termination of service and income accruing later — Not applicable to concurrent payment of a retirement pension and a Community salary*
(*Staff Regulations of Officials, Annex VIII, Art. 40, second paragraph; Regulation No 2530/72 of the Council, Art. 5(3)*)
3. *Officials — Recovery of undue payments — Conditions — Irregularity of the payment patently evident — Criteria*
(*Staff Regulations of Officials, Art. 85*)

1. Since the rule prohibiting the concurrent payment of a pension and a salary which is contained in Article 40 of Annex VIII to the Staff Regulations finds its justification in the need to protect the

Community's resources, it must be applied whenever a pension paid by one of the institutions is concurrent with the payment of a salary that is also covered by an institution of the European

Communities. For the rule against concurrent payment to be applicable, it is sufficient that the salary paid by an institution of the European Communities should be financed entirely from the appropriations contained in the estimates of expenditure of one of the institutions mentioned in the general budget of the European Communities. The existence of an employment relationship between the official being paid and the institution bearing the cost entailed by his remuneration is not an essential condition in that respect for the application of the abovementioned provision.

2. The provisions of Regulation No 2530/72, introducing special and temporary measures applicable to, *inter alia*, the termination of service of officials of the Communities in consequence of the accession of new Member States, contain no exception to rule against concurrent payments of a retirement pension and a Community salary laid down in the second paragraph of Article 40 of Annex VIII to the Staff Regulations. An official who has had the benefit of a measure terminating his service under the said regulation cannot

therefore claim that since Article 5(3) of the regulation authorizes concurrent payment of the termination-of-service allowance and of income accruing after termination, that provision must be regarded as of equal standing with the rule against concurrent payments cited above and conclude that there is no legal obstacle to his retirement pension being paid concurrently with the salary paid out of the budget of a Community institution as a Commission delegate with the European Association for Cooperation.

3. An irregularity affecting retirement pension payments which was not ascertained by the person concerned notwithstanding the high grade he had held and his long period of service, could not have been patently evident within the meaning of Article 85 where conflicting legal opinions were expressed on the question at issue by two Community institutions with departments thoroughly versed in the matter of the calculation and payment of pensions and it has not been shown that, by virtue of his training or his activities, the person concerned had any special knowledge of the question at issue.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
12 July 1990 *

In Case T-111/89,

Robert Scheiber, a former official of the Council of the European Communities, residing in Mauritius, represented by Georges Vandersanden, of the Brussels Bar,

* Language of the case: French.