

JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber)
12 November 2002

Case T-271/01

José Manuel López Cejudo
v
Commission of the European Communities

(Officials – Remuneration – Dependent child allowance and education allowance paid to the parent with custody of the child – Refusal to recognise the other parent’s entitlement to the allowances for the purpose of calculating the tax abatement and the expatriation allowance – Default interest)

Full text in French II - 1109

Application for: first, annulment of the Commission’s decision refusing to recognise, in respect of the period from October 2000 to July 2001, the applicant’s entitlement to the dependent child allowance and the education allowance for the purpose of calculating the tax abatement and the expatriation allowance, and, second, default interest on the sums unduly recovered or not paid.

Held: The Commission’s decision, which is apparent from the applicant’s salary statement for the month of October 2000, to withdraw recognition of his entitlement to dependent child allowance and education allowance, from July 1999 onwards, for the purpose of calculating the tax

abatement and the expatriation allowance, as amended by the Commission's decision of 16 July 2001, is annulled in so far as the latter decision recognises shared entitlement to the allowances at issue and the advantages resulting from that entitlement only for the future. The Commission is ordered to pay to the applicant: default interest, as from November 2000, on the sum of EUR 1 193.85 and, as from each month from December 2000 to September 2001, on each monthly instalment of EUR 1 200 until such time as those sums have been repaid to him; default interest on the applicant's share of the proceeds of the allowances at issue, as from each month from October 2000 until the date on which the decision of 16 July 2001 took effect, until the sums owed are paid in full. The rate of default interest to be applied is to be calculated on the basis of the rate set by the European Central Bank for capital refinancing operations in force during the period concerned, increased by two percentage points

Summary

1. Officials – Remuneration – Family allowances – Child of two divorced officials actually maintained by both – Simultaneous entitlement of two officials to the allowances and to the advantages resulting from entitlement – Sharing between the ex-spouses

(Staff Regulations, Art. 67(1); Annex VII, Arts 1(2)(b), 2(1), (2) and (6), and 3, first para.; Council Regulation No 260/68, Arts 3(3) and 4)

2. Officials – Actions – Prior complaint through official channels – Claim for default interest made for the first time before the Court of First Instance in the event that the contested decision is annulled – Admissibility

(Staff Regulations, Arts 90 and 91)

3. Officials – Recovery of undue payments – Unlawful recovery – Repayment – Entitlement to default interest – Point from which time starts to run

1. For the purposes of recognition of entitlement to the family allowances provided for in Article 67(1) of the Staff Regulations, a child who is actually being maintained by an official is regarded as a dependent child (Article 2(2) of Annex VII to the Staff Regulations). In this connection, there is nothing to prevent a child from being regarded as being actually maintained by a number of persons at the same time and therefore as being a dependent of two officials at the same time.

Consequently, if two divorced Community officials actually provide jointly for the basic needs of the children of their marriage dissolved by divorce, those officials are both entitled to the family allowances listed in Article 67(1) of the Staff Regulations. They are also entitled, by reason of the maintenance of the children concerned, to the advantages resulting from entitlement to those allowances, which are provided for, as regards the calculation of the expatriation allowance, in Article 4(1) of Annex VII to the Staff Regulations and, as regards tax, in Article 3(3) and (4) of Regulation No 260/68. Under the principle that only one allowance is payable per child, laid down in Article 2(6) of Annex VII to the Staff Regulations, those proceeds must be shared between the ex-spouses. However, an institution may not deny one of its officials the share of those proceeds to which he is entitled on the ground that another institution has, wrongly, granted the whole of those proceeds to his ex-spouse.

(see paras 33-39)

See: C-132/90 P *Schwedler v Parliament* [1991] ECR I-5745, para. 17; T-69/91 *Peroulakis v Commission* [1993] ECR II-185, paras 32 to 34

2. In staff cases, in order to be admissible before the Court of First Instance, a claim for default interest, made in the event that the contested decision is annulled, need not have been expressly mentioned in the prior complaint through official channels.

(see para. 52)

See: T-4/92 *Vardakas v Commission* [1993] ECR II-357, para. 50; T-15/93 *Vienne v Parliament* [1993] ECR II-1327, para. 42; T-171/99 *Corus UK v Commission* [2001] ECR II-2967, paras 50 to 54

3. Where Article 85 of the Staff Regulations, relating to the recovery of undue payments, has been unlawfully applied to an official, the official concerned is entitled not only to repayment of the sums deducted on that basis from his remuneration, but also to default interest as from the date of deduction until the date of repayment.

(see paras 55-56)