

ORDER OF THE COURT OF FIRST INSTANCE (Second Chamber)
24 March 1998

Case T-181/97

Huguette Meyer and Others
v
Court of Justice of the European Communities

(Officials – Actions for annulment – Pay slip – Admissibility – Time-limits –
New and material fact – Time-barred)

Full text in French II - 481

Application for: annulment of the express decisions rejecting the applicants' claims for the repayment of amounts deducted from their household allowance pursuant to Article 67(2) of the Staff Regulations of Officials of the European Communities in respect of the household grant received by their spouses under the collective agreement of Luxembourg bank employees, and, so far as necessary, annulment of the decisions of 17 March 1997 expressly rejecting their complaints.

Decision: Application dismissed.

Abstract of the Order

The third paragraph of Article 62 of the Staff Regulations of Officials of the European Communities ('the Staff Regulations') provides that officials' remuneration is to include family allowances. Under Article 67(1) of the Staff Regulations, these include the household allowance. Article 67(2) provides that '[o]fficials in receipt of family allowances ... shall declare allowances of like nature paid from other sources'. Such latter allowances are to be deducted from those paid under the Staff Regulations.

On the strength of the anti-overlapping rule contained in Article 67(2), until June 1996 the Court of Justice deducted from the household allowance to which each of the applicants was entitled under the Staff Regulations the household grant paid to their husbands working in the Luxembourg banking sector under the collective agreement in force for that sector.

In its judgment of 11 June 1996 in Case T-147/95 *Pavan v Parliament* [1996] ECR-SC II-861, the Court of First Instance found that the household grant awarded to employees of Luxembourg breweries under their collective labour agreement was not an 'allowance of like nature' within the meaning of Article 67(2) of the Staff Regulations. Acting together with the other Community institutions in Luxembourg, the Court of Justice informed the applicants by letters of 19 July 1996 that, applying the *Pavan* judgment and having read the conditions for awarding the household grant under the Luxembourg bank employees' collective agreement, it had found that 'this grant can no longer be regarded as being of like nature with the household allowance' and that it had therefore decided to discontinue the deduction from the household allowance as from 1 July 1996.

Between 5 August and 22 November 1996, the applicants made identically-worded requests under Article 90(1) of the Staff Regulations for repayment of all sums deducted from their household allowance by virtue of the household grant awarded to their husbands, together with default interest. Those requests, and the complaints which followed them under Article 90(2) of the Staff Regulations, were rejected by express decisions of the Court of Justice on the ground, essentially, that the applicants had not challenged the measures adversely affecting them, namely the pay slips in which the deductions had been carried out, within the time-limits prescribed by the Staff Regulations, and that the submission by them of a retrospective request for repayment under Article 90(1) of the Staff Regulations was not sufficient to open a new period for making a complaint.

Admissibility

Under the system of remedies established by Articles 90 and 91 of the Staff Regulations, an action for damages, which constitutes an autonomous remedy, separate from the action for annulment, is admissible only if it has been preceded by a pre-litigation procedure in accordance with the provisions of the Staff Regulations. That procedure differs according to whether the damage for which reparation is sought results from an act having adverse effects within the meaning of Article 90(2) of the Staff Regulations or from conduct on the part of the administration which contains nothing in the nature of a decision. In the first case it is for the person concerned to submit to the appointing authority, within the prescribed time-limit, a complaint directed against the act in question. In the second case, on the other hand, the administrative procedure must commence with the submission of a request, within the meaning of Article 90(1) of the Staff Regulations, for compensation and continue, where appropriate, with a complaint against the decision rejecting that request (paragraphs 21 and 22).

See: T-64/91 *Marcato v Commission* [1992] ECR II-243, paras 30 to 35; T-500/93 *Y v Court of Justice* [1996] ECR-SC II-977, paras 64 to 66; T-15/96 *Liao v Council* [1997] ECR-SC II-897, paras 57 and 58

The loss for which reparation is requested arises from the deduction of the household grant in question from the amount of the household allowance to which the applicants are entitled, such deduction having been made by the appointing authority from the applicants' monthly pay slips until June 1996. The pay slips constitute measures adversely affecting officials, and may be the subject of a complaint and potentially an action. Communication of the monthly pay slip has the effect of causing the period prescribed for bringing an action against an administrative decision to run where that slip clearly shows the existence and scope of that decision. That is so in the case of a pay slip which reveals to the official concerned that a retention has been made in accordance with Article 67(2) of the Staff Regulations on the basis of information supplied by that official to the appointing authority (paragraphs 23 to 26)

See: 15/73 to 33/73, 52/73, 53/73, 57/73 to 109/73, 116/73, 117/73, 123/73, 132/73 and 135/73 to 137/73 *Schots-Kortner and Others v Council, Commission and Parliament* [1974] ECR 177, para. 18; 176/83 *Allo v Commission* [1985] ECR 2155, para. 13; 159/86 *Canteris v Commission* [1988] ECR 4859, para. 6; 200/87 *Giordani v Commission* [1989] ECR 1877, para. 13; T-7/91 *Schavoir v Council* [1992] ECR II-2307, para. 34; T-98/92 and T-99/92 *Di Marzio and Lebedef v Commission* [1994] ECR-SC II-541, para. 24; T-7/94 *Adriaenssens and Others v Commission* [1997] ECR-SC II-1, para. 29

In this case, the applicants are barred through lapse of time from challenging the pay slips showing the deductions in question, since they did not do so within the time-limits prescribed by the Staff Regulations (paragraph 30).

Moreover, the possibility of making a request within the meaning of Article 90(1) of the Staff Regulations does not enable an official to set aside the time-limits laid down by Articles 90 and 91 for submitting a complaint and bringing an action by indirectly calling into question, by means of a request, a previous decision which was not challenged within the time-limits. The time-limits for bringing an action are a matter of public policy, and are not at the discretion of either the judicature or the parties. Only the existence of new and material facts may justify the submission of a request or a complaint seeking reexamination of a decision that was not challenged within the time-limits. A judgment of the Court of Justice or the Court of First Instance annulling a measure is capable of constituting such a fact

only in relation to the persons directly concerned by the annulled measure (paragraphs 31 to 36).

See: 43/64 *Müller v Councils of the EEC, EAEC and ECSC* [1965] ECR 385, 396; Opinion of Advocate General Gand in 50/64, 51/64, 53/64, 54/64 and 57/64 *Loebisch and Others v Councils of the EEC, EAEC and ECSC* [1965] ECR 825, 833; 52/64 *Pfloeschner v Commission* [1965] ECR 981, 986; *Schots-Kortmer and Others v Council, Commission and Parliament*, cited above, para. 38; 127/84 *Esly v Commission* [1985] ECR 1437, para. 10; 232/85 *Becker v Commission* [1986] ECR 3401, para. 8; 125/87 *Brown v Court of Justice* [1988] ECR 1619, para. 13; 161/87 *Muyers and Tulp v Court of Auditors* [1988] ECR 3037, para. 11; T-131/95 *Progoulis v Commission* [1995] ECR-SC II-907, para. 41; *Adriaenssens and Others v Commission*, cited above, paras 27 and 28; C-151/97 P (I) and C-157/97 P (I) *National Power and PowerGen v Commission* [1997] ECR I-3491, para. 73; T-16/97 *Chauvin v Commission* [1997] ECR-SC II-681, paras 37 and 43

In this case, the applicants were not parties to the dispute in *Pavan* and do not claim to have been directly concerned by the measure annulled in that case. The *Pavan* judgment cannot therefore be regarded as a material new fact which is capable of reopening for their benefit the period prescribed for submitting a complaint.

Operative part:

The application is dismissed as inadmissible.