

JUDGMENT OF THE CIVIL SERVICE TRIBUNAL
(First Chamber)
9 December 2008

Case F-144/07

Spyridon Efstathopoulos
v
European Parliament

(Civil service — Former members of the temporary staff — Regulation (EC, Euratom, ECSC) No 2689/95 — Termination of service allowance — Inclusion of a productivity bonus in the calculation of the amount of gross income received in the context of new duties)

Full text in the language of the case (Greek) II-A-1 - 2359

Application: brought under Articles 236 EC and 152 EA, in which Mr Efstathopoulos, the recipient of an allowance pursuant to Council Regulation (EC, Euratom, ECSC) No 2689/95 of 17 November 1995 introducing special measures to terminate the service of temporary staff of the European Communities as a result of the accession of Austria, Finland and Sweden (OJ 1995 L 280, p. 4), essentially seeks, first, annulment of the decision of the Parliament of 18 April 2007 by which the productivity bonus he

received in the context of his new employment at the Ministry of Development in Greece was taken into account for determining the amount of his gross income, for the purpose of the above regulation, in that employment, resulting in a reduction in the allowance he received pursuant to that regulation, and by which it was decided to recover the overpayment, and, second, annulment of the decision of 14 September 2007 rejecting the complaint lodged on 9 May 2007 against the decision of 18 April 2007.

Held: The action is dismissed. Each party is to bear its own costs.

Summary

- 1. Officials — Members of the temporary staff — Special measures to terminate the service of temporary staff — Regulation No 2689/95 — Allowance on termination of service (Council Regulation No 2689/95, Art. 4(1) and (4))*
- 2. Officials — Actions — Prior administrative complaint — Subject-matter (Staff Regulations, Arts 90 and 91)*
- 3. Officials — Recovery of undue payments — Conditions (Staff Regulations, Art. 85)*

1. In interpreting a provision of Community law, it is necessary to consider not only its wording but also the context in which it occurs and the objects of the rules of which it is part. According to a literal interpretation, the term 'gross income' within the meaning of Article 4(4) of Regulation No 2689/95 introducing special measures to terminate the service of temporary staff of the European Communities as a result of the accession of Austria, Finland and Sweden includes a financial benefit which a person performing duties within a national administration receives every month precisely on account of the performance of those duties. That is *a fortiori* the case if that benefit is subject to 'income' tax.

The interpretation of a concept of Community law such as 'gross income' which a recipient of the termination of service allowance receives in his 'new employment', as provided for in Regulation No 2689/95, cannot depend on how the national legal systems classify any of the financial benefits which a person receives on account of the performance of his duties in that new post. Otherwise there would be a risk of infringing the principle of the uniformity of Community law as well as the principle of equal treatment for officials.

(see paras 33, 35, 37)

See:

F-10/06 *André v Commission* [2006] ECR-SC I-A-1-183 and II-A-1-755, para. 35 and the case-law cited therein

2. Since the admissibility of actions by officials is subject to compliance with the pre-litigation procedure, any claim which has not been raised in the pre-litigation complaint and cannot in any way be regarded as based on the same heads of claim as those formulated in that complaint or as an amplification of the arguments developed in that complaint must be dismissed as inadmissible for infringement of the rule of harmony between a complaint and the action which follows.

(see para. 43)

See:

T-242/97 *Z v Parliament* [1999] ECR-SC I-A-77 and II-401, para. 58; T-144/00 *Tirelli v Parliament* [2001] ECR-SC I-A-45 and II-171, para. 25

F-60/07 *Martin Bermejo v Council* [2007] ECR-SC I-A-1-407 and II-A-1-2259, para. 34

3. Although the lawfulness of a decision to recover an undue payment is subject to the requirement either that the official or staff member concerned must have known that the payment was improper, or that the improper nature of the payment was obvious, the Community judicature can, however, review fulfilment of either condition only if the person concerned puts forward a plea of infringement of Article 85 of the Staff Regulations or if, at the very least, he does not merely dispute the undue nature of the payments which the institution seeks to recover, but argues either that he did not know that the payments were improper, or that he could not know that they were. At the risk of misconstruing the purpose of Article 85 of the Staff Regulations and disturbing the balance of rights and obligations which it establishes between the institution and its officials

or staff, if the official or staff member concerned merely disputes the improper nature of a payment, that cannot, in the absence of any specific reference to (actual or presumed) knowledge of that improper nature, be interpreted as implying the contention that the person concerned was not or could not be aware of the improper nature of the payment.

(see para. 45)