# ORDER OF THE COURT (First Chamber)
6 March 1997 *

In Case C-150/96 P,

**Roberto Galtieri**, a member of the temporary staff of the European Parliament, residing in Brussels, represented by Pietro Cuomo, of the Naples Bar, with an address for service in Luxembourg at the Chambers of Stef Oostvogels, 13 Rue Aldringen, Boîte 221,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (First Chamber) of 27 February 1996 in Case T-235/94 *Galtieri* v *Parliament* [1996] ECR-SC II-129, seeking to have that judgment set aside,

the other party to the proceedings being:

**European Parliament**, represented by Manfred Peter, Head of Division in the Legal Service, acting as Agent, with an address for service in Luxembourg at the Secretariat-General of the European Parliament, Kirchberg,

THE COURT (First Chamber),

composed of: L. Sevón, President of the Chamber (Rapporteur), D. A. O. Edward and P. Jann, Judges,

* Language of the case: French.

Advocate General: G. Cosmas,
Registrar: R. Grass,

after hearing the Opinion of the Advocate General,

makes the following

## Order

1 By a document entitled 'Application for an appeal', lodged at the Registry of the Court of Justice on 3 May 1996, Mr Galtieri declared that he was 'initiating appeal proceedings' against the judgment of the Court of First Instance of 27 February 1996 in Case T-235/94 *Galtieri* v *Parliament* [1996] ECR-SC II-129 (hereinafter 'the contested judgment'), in which the Court of First Instance dismissed his application seeking *inter alia* annulment of the Parliament's decision, notified by letter of 19 January 1994, to recover the sums unduly paid to him by way of household allowance.

2 As regards the legal and factual background to the dispute between Mr Galtieri and the Parliament, the Court of First Instance found:

'1. Pursuant to Article 1 of Annex VII to the Staff Regulations of Officials of the European Communities (hereinafter, "Annex VII" and "the Staff Regulations", respectively), in conjunction with Article 21 of the Conditions of employment of other servants of the European Communities (hereinafter "the Conditions of employment of other servants"), a member of the temporary staff who is married is in principle entitled to a household allowance equal to 5% of that person's basic salary. However, if the spouse is gainfully employed with an income before deduction of tax which is higher than the basic annual salary of an official in the third step of grade C 3, the person concerned is not to receive the household allowance save by special decision of the appointing authority.

2. Article 85 of the Staff Regulations provides that any sum overpaid is to be recovered if the recipient was aware that there was no due reason for the payment or if the fact of the overpayment was patently such that he could not have been unaware of it. Pursuant to Article 45 of the Conditions of employment of other servants, Article 85 of the Staff Regulations applies to members of the temporary staff.

3. Mr Galtieri is a member of the Parliament's temporary staff. In July 1980 he was classified in grade B 2. Since January 1990 he has occupied a post as administrator with the Green Group. Since July 1984 he has been married to Mrs P, who is also a member of the staff of the Community institutions.

4. Mr Galtieri was in receipt of the household allowance, pursuant to Article 1 of Annex VII, from 1 July 1984 until 30 November 1993 inclusive.

5. As from 1 November 1992, Mr Galtieri's wife, who worked for the Council, was classified in grade C 4, step 4. By decision of the Parliament of 26 November 1992, she was transferred to that institution with effect from 16 November 1992 without prejudice to her grade or step. By decision of the Council of 8 December 1992, she was promoted to grade C 3, step 1, with retroactive effect as from 1 January 1992. By decision of the Parliament of 1 February 1993, cancelling and replacing the decision of 26 November 1992, she was transferred to the Parliament and classified in grade C 3, step 1. Lastly, following the communication to the Parliament administration of the calculation of her seniority in step, her classification was amended and, by decision of the Parliament of 17 February 1993, she was placed in grade C 3, step 2.

6. On being informed of Mr Galtieri's domestic circumstances for 1993, the Parliament formed the view that he was no longer entitled to the household allowance as from 1 January 1992 by reason of his wife's retroactive promotion to grade C 3

on that date. The Parliament decided to recover the sums which it regarded as having been unduly paid to Mr Galtieri, which amounted in total to BFR 267 628. Mr Galtieri was first informed of that decision when he was sent a copy of a note, dated 22 November 1993, from the "Staff Regulations and personnel management" service to the "payments and allowances" service, stating that as from 1 January 1992 he was "no longer entitled to the household allowance" because of the "promotion of his spouse to grade C 3/2". Subsequently, Mrs Puech, Head of the "Staff Regulations and personnel management" service, sent a letter dated 19 January 1994 to Mr Galtieri, explaining that the negative entry of BFR 267 628 on his December 1993 salary slip represented the household allowance to which he had no longer been entitled as of January 1992. In her letter, Mrs Puech stated that recovery of that sum would be spread over nine months — with BFR 30 000 per month being deducted for the first eight months — and called on Mr Galtieri, should that arrangement prove difficult to reconcile with his personal circumstances, to contact her.

7. By letter of 25 January 1994, addressed to Mrs Puech, Mr Galtieri challenged that decision. The Parliament confirmed its position in a reasoned letter of 4 February 1994, whereupon Mr Galtieri submitted, by letter of 22 February 1994, a formal complaint under Article 90 of the Staff Regulations against the decision set out in the letter of 19 January 1994. He sought annulment of the decision and compensation for the damage it had caused him.

8. For five successive months as from February 1994, the sum of BFR 30 000 was deducted monthly from Mr Galtieri's salary.'

3 The appeal concerns only the manner in which the Court of First Instance applied Article 85 of the Staff Regulations. Accordingly, only that aspect of the contested judgment will be considered.

## Application of Article 85 of the Staff Regulations in the contested judgment

4 Article 85 of the Staff Regulations provides that:

'Any sum overpaid shall be recovered if the recipient was aware that there was no due reason for the payment or if the fact of the overpayment was patently such that he could not have been unaware of it.'

5 In paragraph 46 of the contested judgment, the Court of First Instance pointed out that, according to established case-law, the expression 'patently such' in that provision does not mean that an official who receives undue payments need make no effort to reflect or check, but rather that recovery is appropriate where the error is one which would not escape the notice of an official exercising ordinary care, who is deemed to know the rules governing his salary (see Case T-93/92 *Burck* v *Commission* [1994] ECR-SC II-201, paragraph 29, Case T-107/92 *White* v *Commission* [1994] ECR-SC II-143, paragraph 33). The Court also recalled that, in order to determine whether the official concerned showed due care, account should be taken of his ability to make the necessary checks (Case T-38/93 *Stahlschmidt* v *Parliament* [1994] ECR-SC II-227, paragraph 19).

6 Subsequently, in paragraph 47 of the contested judgment, the Court of First Instance identified the provision governing the award of the allowance in question, namely Article 1(3) of Annex VII to the Staff Regulations, which provides that an official is not to receive the household allowance, save by special decision of the appointing authority, if the spouse is gainfully employed 'with an annual income before deduction of tax of more than the basic salary of an official in the third step of grade C 3'. In paragraph 48, the Court concluded that that rule must be

regarded as sufficiently clear to enable an official in category A, who has been working in the Community institutions since 1980, to identify the upper limit beyond which he ceases to be entitled to the household allowance, save by special decision of the appointing authority. On that point, the Court noted that Mr Galtieri did not object to the fact that he was deemed to know his wife's salary.

7 The Court of First Instance also referred, in paragraph 49 of the contested judgment, to the case-law establishing that an official who delays in notifying the authorities of his institution of changes in his domestic circumstances places himself in an irregular situation by reason of his own conduct and cannot plead that he acted in good faith in order to be released from the obligation to return an allowance which he has wrongly continued to receive (see *White* v *Commission*, cited above, paragraph 50). The Court concluded that Mr Galtieri should at least have advised the administration of the change in his domestic circumstances, since those determine entitlement to the household allowance. However, he omitted to inform the Parliament that the Council had promoted his wife to grade C 4, step 4, with effect from 1 November 1992.

8 In paragraphs 50 to 55 of the contested judgment, the Court of First Instance compared the amount by which the upper limit had been exceeded in Mr Galtieri's case with the overpayment in *White* v *Commission*, a case which Mr Galtieri relied on in support of his argument that he had been overpaid by such a small amount that it could not be regarded as a patent error. On establishing that the upper limit had been exceeded by BFR 87 000 per annum, the Court held that the amount in question was not negligible and could not have escaped the notice of an official exercising ordinary care.

9 In paragraph 56 of the contested judgment, the Court of First Instance concluded that, if Mr Galtieri had exercised ordinary care, he would have realized that the payments in question were patently in error. The Parliament was accordingly entitled to proceed with the recovery of the sums unduly paid by way of house-

hold allowance from 1 November 1992 to 30 November 1993. The Court also found that Mr Galtieri had placed himself in an irregular situation by reason of his own conduct — in omitting to inform the administration of his wife's promotion to grade C 3, step 4, as of 1 November 1992 — and could not therefore plead that he had acted in good faith in order to be released from the obligation to return the undue payment.

## The appeal

10 In his application, Mr Galtieri claims *inter alia* that the Court should 'declare the appeal admissible and well founded', 'reverse' the judgment of the Court of First Instance, declare the original action well founded and, consequently, annul the Parliament's decision, set out in the letter of 19 January 1994, to recover the sum of BFR 267 628.

11 Mr Galtieri relies on a single plea in law to the effect that the Court of First Instance infringed Article 85 of the Staff Regulations in finding that the 'patent' nature of the error — justifying the application of Article 85 — is demonstrated by the mere fact that the upper limit provided for in Article 1 of Annex VII to the Staff Regulations had been exceeded.

12 According to Mr Galtieri, the Court of First Instance reached that conclusion on the basis of an interpretation of the judgment in *White* v *Commission* which was both selective — the outcome in that case being determined by various factors viewed as a whole, and not by any individual factor — and arbitrarily broadened, since the factor singled out by the Court, namely payment in excess of the upper limit, appears to have been taken as the objective and definitive criterion for determining whether the application of Article 85 of the Staff Regulations in Mr Galtieri's case was justified. In his view, a decision finding that the sum of BFR 87 000 is proof *per se* of the patent nature of the error and accordingly of the need to apply Article 85, is wholly unjustified and contravenes the principles relating to the burden of proof.

13 The Parliament contends that the appeal is unfounded and must therefore be dismissed.

## Findings of the Court

14 Article 119 of the Rules of Procedure provides that where an appeal is clearly inadmissible or clearly unfounded, it may at any time be dismissed by reasoned order of the Court.

15 A straightforward comparison of the contested judgment with Mr Galtieri's account of it reveals that his understanding of the judgment is manifestly selective and incorrect. In determining whether the error was patent, the reasoning of the Court of First Instance was not based solely on the amount overpaid. The Court also took into account, on the one hand, the clarity of the rule set out in Article 1(3) of Annex VII to the Staff Regulations, the level of Mr Galtieri's responsibilities ('Category A') and the length of his professional experience with the Community institutions ('since 1980') and, on the other, the fact that Mr Galtieri had omitted to inform the Parliament of his wife's promotion.

16 In so far as Mr Galtieri asserts that the contested judgment is based on a single factor, when it is quite apparent from that judgment that the Court of First Instance took into account a series of circumstances in arriving at its decision, the appeal must be dismissed as clearly unfounded.

## Costs

17 Under Article 69(2) of the Rules of Procedure, which applies to the appeal procedure by virtue of Article 118, the unsuccessful party is to be ordered to pay

the costs if they have been applied for in the successful party's pleadings. The European Parliament has asked for Mr Galtieri to be ordered to pay the costs. Since Mr Galtieri has been unsuccessful, he must be ordered to pay the costs of these proceedings.

On those grounds,

THE COURT (First Chamber)

hereby orders:

**1. The appeal is dismissed.**

**2. The appellant is ordered to pay the costs.**

Luxembourg, 6 March 1997.

R. Grass — Registrar

L. Sevón — President of the First Chamber