Reports of Cases

JUDGMENT OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL
(First Chamber)

7 July 2015 *

(Civil service — Remuneration — Family allowances — Dependent child allowance — Article 2(4) of Annex VII to the Staff Regulations — Person treated as a dependent child — Person whom the official has a legal responsibility to maintain and whose maintenance involves heavy expenditure — Conditions for granting — Withdrawal of entitlement to the allowance — Recovery of overpayments under Article 85 of the Staff Regulations)

In Case F-53/14,

ACTION brought under Article 270 TFEU, applicable to the EAEC Treaty pursuant to Article 106a thereof,

WR, represented by V. Simeons, lawyer,

applicant,

v

European Commission, represented by T.S. Bohr and A.-C. Simon, acting as Agents,

defendant,

THE CIVIL SERVICE TRIBUNAL (First Chamber)

composed of R. Barents (Rapporteur), President, E. Perillo and J. Svenningsen, Judges,

Registrar: X. Lopez Bancalari, Administrator,

having regard to the written procedure and further to the hearing on 10 February 2015,

gives the following

Judgment

1 By application lodged at the Registry of the Tribunal on 12 June 2014, WR brought the present action seeking annulment of the three decisions of the European Commission of 20 August 2013 withdrawing her entitlement to a dependent person allowance for the maintenance of her mother for the period from 1 March 2010 to 28 February 2013, of the Commission decision of 25 September 2013

* Language of the case: English.

withdrawing her mother's entitlement to cover under the Joint Sickness Insurance Scheme (JSIS) and of the Commission decision of 23 October 2013 claiming recovery from the applicant of the overpaid sums.

Legal context

2 The present case arises in the legal context of Article 72 of the Staff Regulations of Officials of the European Union in the version in force at the time the decisions referred to in the above paragraph were made ('the Staff Regulations') and the Joint Rules on sickness insurance for officials [of the European Union] ('the JSIS rules'), established by that article, Article 85 of the Staff Regulations and Article 2(4) of Annex VII to the Staff Regulations.

3 Article 17, entitled 'Other dependent persons', of the JSIS rules states:

'Persons recognised as dependent on the member within the meaning of Article 2(4) of Annex VII to the Staff Regulations may be covered by this Scheme provided they cannot be covered by another legal or statutory sickness insurance scheme.'

Background to the dispute

4 The applicant has lived in Belgium since 1995. On 1 March 2010, she entered the service of the Commission in Brussels (Belgium) as a grade AST 1 member of the temporary staff. She possesses both Polish and Belgian nationality.

5 On 9 March 2010, the applicant applied for an allowance for a person treated as a dependent child ('the dependent person allowance') within the meaning of Article 2(4) of Annex VII to the Staff Regulations of Officials of the European Union, for the maintenance of her mother. According to the applicant, her mother, a Polish national, joined her household in Belgium in 2003.

6 On 27 April 2010, the applicant requested that her mother be covered by the JSIS as a dependent of a person covered under Article 17 of the JSIS rules. By decision of 20 January 2011, that request was granted as from 1 January 2011, the applicant's mother having been covered by the Belgian health system until 31 December 2010.

7 On 3 May 2010, the applicant submitted a request to change her place of origin to Poland, pursuant to Article 7 of Annex VII of the Staff Regulations; this had been set by default in Belgium, the place of her recruitment, when she entered the service of the Commission. Following the request for a change, when questioned concerning the actual residence of her parents, the applicant stated that her father was deceased and that her mother had lived with her in Belgium since 2003. By decision of 15 September 2010, the Commission refused the request to change her place of origin. That decision includes, in addition to the finding that, in her application for the post as a member of the temporary staff, the applicant had claimed that her parents lived in Poland, the following sentence: '[f]rom your personal file, it is clear that your mother is officially registered in Belgium (Asse) …'

8 By decision of 11 May 2010, the Commission granted the dependent person allowance for the period from 1 March 2010 to 28 February 2011.

9 On 7 December 2010, the applicant filed a complaint against the decision refusing to change her place of origin. That complaint was rejected by a decision of 23 March 2011.

10 By decision of 5 May 2011, the entitlement to the dependent person allowance was renewed for the period from 1 March 2011 to 29 February 2012.

11 By decision of 16 January 2012, the entitlement to the dependent person allowance was renewed for the period from 1 March 2012 to 28 February 2013.

12 On 30 November 2012, the applicant submitted an application for renewal of the dependent person allowance for the period following 28 February 2013. Having considered that application, the Commission informed the applicant by a note of 20 August 2013 ('the note of 20 August 2013') that the examination of her application had revealed that on 1 March 2010, the date when she submitted her first application for a dependent person allowance, (i) her mother was the owner of an apartment in Poland, of which the applicant became the owner in July 2010, (ii) her mother was in receipt of a pension from the Polish state and, (iii) her mother was covered by the Polish national health care system, which the applicant had failed to specify either in her application for the dependent person allowance or in her application for her mother to be covered by the JSIS. That note also stated:

'Taking into account all the new factual elements and that most of the medical bills of your mother's submitted during the period the allowance was granted to you originate from Poland, we have to conclude that your mother's habitual place of residence is not Brussels, but Poland.

Consequently, the weighting factor for Poland has to be applied on the assumed costs of maintenance. Given that the resulting calculation is negative the conditions for granting the allowance for persons treated as dependent children concerning your mother are no longer met.'

13 The note of 20 August 2013 also stated that the sums overpaid in respect of the dependent person allowance would be recovered and that the applicant would shortly receive three separate notes with details of the amounts to be reimbursed and a repayment plan.

14 By three decisions of 20 August 2013, the Commission revoked the decisions of 11 May 2010, 5 May 2011 and 16 January 2012 respectively, which granted and subsequently renewed the dependent person allowance ('the decisions of 20 August 2013'). In those decisions, it was stated that the amount of the cost of maintenance of the applicant's mother, calculated after applying the weighting applicable for Poland and taking into account her mother's monthly average income and the rental value of the property that she owned, was less than the dependent person allowance and, therefore, her mother could not be treated as a dependent child and the applicant was not entitled to the dependent person allowance.

15 By a note of 25 September 2013, the Commission informed the applicant that, since her mother was receiving a Polish pension and was accordingly entitled to cover under the Polish national health care system, she was not entitled to cover under the JSIS and that all medical expenses reimbursed for her mother as from 1 March 2010 would be recovered ('the decision of 25 September 2013').

16 By a note of 23 October 2013, the Commission informed the applicant of the amount to be recovered, under Article 85 of the Staff Regulations, in respect of the dependent person allowance unduly received, which was a sum of EUR 14 813.26, and of the schedule of deductions from future pay ('the decision of 23 October 2013').

17 On 19 November 2013, the applicant filed a complaint against the decisions of 20 August 2013, the decision of 25 September 2013 and the decision of 23 October 2013 (together 'the contested decisions'). By decision of 12 March 2014, that complaint was rejected ('the decision rejecting the complaint').

Forms of order sought

18 The applicant claims that the Tribunal should:

– annul the contested decisions;

– so far as necessary, annul the decision rejecting the complaint;

– order the Commission to pay the costs;

– in the alternative, 'order the [Commission] to assume responsibility for the medical expenses to the extent to which those costs have not been reimbursed under any other sickness insurance scheme.'

19 The Commission contends that the Tribunal should:

– dismiss the action;

– order the applicant to pay the costs.

Law

1. The claim for annulment of the contested decisions

20 The applicant puts forward three pleas in law in support of her claim for annulment, alleging, respectively, incorrect application of Article 72 of the Staff Regulations and Article 2(4) of Annex VII to the Staff Regulations, infringement of the right to good administration and health care, and infringement of a vested right and the right to the protection of legitimate expectations.

21 The application also contains a fourth plea in law alleging infringement of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43) and a fifth plea in law seeking the 'annulment [of the Commission's] decision of 23 October 2013 on the recovery of the overpaid sums under Article 85 of the Staff Regulations.'

First plea in law alleging incorrect application of Article 72 of the Staff Regulations and Article 2(4) of Annex VII to the Staff Regulations

Arguments of the parties

22 In the applicant's view, the decisions of 20 August 2013 are contrary to the objective of Article 2(4) of Annex VII to the Staff Regulations which seeks, in a general way, to deal with situations in which an official cannot claim the benefit referred to in Article 2(3) and (5), where he or she is responsible for the actual maintenance of a person who causes that official to incur comparable expenses.

23 In that regard, the applicant maintains, first, that the decisions of 20 August were incorrect in so far as the Commission, in calculating the cost of her mother's maintenance, incorrectly took the view that her mother's place of residence was in Poland, despite having rejected the applicant's complaint of 7 December 2010 against the decision refusing to change her place of origin on the basis that she was habitually resident in Belgium, precisely because her mother also lived there. The applicant also refers to Article 11 of Regulation (EC) No 987/2009 of the European Parliament and of the Council of

16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ 2009 L 284, p. 1), which provides a list of criteria to help social security institutions assess which country is to be considered to be the place of residence.

24 Secondly, the applicant claims that, since her mother resides in Belgium, that is the competent country in respect of social security matters. Although her mother is covered under the Polish national health care system, that system does not entitle her to apply for reimbursement of medical expenses for health care provided in Belgium. Accordingly, the applicant maintains that her mother is entitled to 'primary' cover under the JSIS as provided for in point 6.2 of Chapter 2 of Title I of the Annex to the Commission decision of 2 July 2007 laying down general implementing provisions for the reimbursement of medical expenses.

25 Thirdly, the applicant submits that Article 7 of the general implementing provisions concerning persons treated as dependent children, established by Commission Decision of 15 April 2004, published in the Administrative Notice No 50-2004 of 28 May 2004 ('GIP concerning persons to be treated as dependent children') does not apply. The applicant maintains that the Commission erred, in the decision rejecting the complaint, in stating that even though her mother had transferred the ownership of the property in Poland to her daughter as a gift on 12 July 2010, her mother continued to reside there free of charge and had been registered there since 17 November 1973 and was paying a monthly fee for satellite television. The applicant submits that her mother did not live free of charge in the apartment in question and there was no satellite television in the building concerned. The applicant adds that in 2008 her mother joined her household in Belgium and had been registered there since 24 July 2008. Furthermore, in the applicant's view, it follows that the decisions of 20 August 2013 in which the rental value of the apartment in Poland was deducted from the maintenance charges were incorrect.

26 Fourthly, the applicant states that the Commission erred in determining, on the basis of Article 5 of the GIP concerning persons to be treated as dependent children, the cost of her mother's maintenance as 50% of the basic salary of an official in the first step of grade AST 1, since her mother resided permanently in her household and, that being so, 40% of that basic salary should have been taken into account.

27 Fifthly, the applicant maintains that she did not submit any document proving that her mother was granted or paid a guaranteed income for elderly persons because the decision granting that guaranteed income to her mother was taken in July 2013 with retroactive effect from 1 September 2012. In the applicant's view, that fact was not relevant to the calculation made by the Commission. However, the fact that her mother receives a guaranteed income for elderly persons proves that her economic interests are in Belgium.

28 Sixthly, the applicant submits that, contrary to the Commission's view, most of the requests for reimbursement of medical expenses relate to health care provided in Belgium.

29 The Commission contends that the first plea in law should be rejected.

Findings of the Tribunal

30 Article 2(4) of Annex VII to the Staff Regulations provides that '[a]ny person whom the official has a legal responsibility to maintain and whose maintenance involves heavy expenditure may, exceptionally, be treated as if he were a dependent child by special reasoned decision of the appointing authority, based on supporting documents'.

31 In the present case, the parties do not dispute that the Commission, after initially granting and later renewing the applicant's dependent person allowance, subsequently, following examination of the application for renewal of the allowance, decided to cease payment of that allowance owing to the discovery of a series of facts as a result of which the condition of maintenance involving heavy expenditure was no longer satisfied (see paragraph 12 above).

32 Accordingly, it is necessary to examine whether, in the present case, that condition is indeed satisfied, in particular in view of the criteria set out in the GIP concerning persons to be treated as dependent children.

– *The habitual residence of the applicant's mother*

33 It is necessary, first of all, to reject the applicant's argument that the Commission erred, in the note of 20 August 2013, in concluding that the applicant's mother was habitually resident in Poland, despite having rejected her complaint of 7 December 2010 against the decision rejecting the review of her place of origin on the basis that her mother was registered in Belgium.

34 It is not disputed that at the time when the decision rejecting the complaint of 7 December 2010 was adopted, namely 23 March 2011, the Commission did not know that the applicant's mother owned an apartment in Poland, that she received a pension paid in Poland and that she was covered by the Polish national health care system. Furthermore, the applicant did not dispute that, during the procedure leading to the decision rejecting her complaint of 7 December 2010 she herself indicated that her place of residence, which was also that of her mother, was still in Poland.

35 Nor did the applicant dispute the fact that the Commission's finding in the note of 20 August 2013 that her mother's habitual place of residence was in Poland during the period when the applicant had received the dependent person allowance for her mother's maintenance is based on the following facts: (i) her mother has Polish nationality; (ii) she has been registered in the same Polish municipality and at the same address since 17 November 1973; (iii) she receives a pension paid in Poland; (iv) she is covered by the national health insurance scheme in that country, and (v) most of the invoices relating to her medical expenses were issued in that country. Nor did the applicant dispute the choice of those criteria or indicate that the Commission erred in not taking into account other criteria.

36 It is therefore necessary to examine each of those facts, except the first, namely the Polish nationality of the applicant's mother, which is not disputed.

37 As regards the second fact on which the Commission relied in order to determine that the applicant's mother's habitual residence was in Poland, the applicant states that her mother had been registered since 24 July 2008 at the same address as her. However, that argument is ineffective. It follows from the case-law that parallel entry in the population registers of two Member States cannot be used to establish a person's actual residence (see, to that effect, judgments in *Tzvetanova* v *Commission*, F-33/09, EU:F:2010:18, paragraph 43, and *Mioni* v *Commission*, F-28/10, EU:F:2011:23, paragraph 35).

38 As regards the third fact relied on by the Commission, it is sufficient to point out that the applicant did not dispute the fact that her mother received a pension from the Polish State. On the contrary, in her application, she declared that the guaranteed income for elderly persons was calculated on the basis of the Polish pension. The Tribunal notes, however, that in her applications for a dependent person allowance of 9 March 2010, 5 April 2011 and 10 January 2012, the applicant declared that her mother did not receive a pension.

39 As regards the fourth fact relied on by the Commission in determining the applicant's mother's habitual residence, the Tribunal notes, first, that it is clear from the application that the applicant herself mentions that her mother was covered under the Polish national health care system, although, in her applications for renewal of the dependent person allowance of 5 April 2011 and 10 January 2012, she declared that her mother was not covered by a national health insurance scheme.

40 The applicant submits that the cover under the Polish national health care system is restricted to the territory of that country. However, that claim is not supported by any evidence, such as, for example, a refusal by the Polish competent body to reimburse an invoice for medical treatment provided in Belgium. That claim is particularly unlikely since, as the Commission rightly stated, pursuant to Article 27 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, (OJ 2004 L 166, p. 1), the applicant's mother's cover under the Polish national health care system is valid throughout the European Union. It follows that the argument relating to point 6.2 of Chapter 2 of Title I of the Annex to the Commission Decision of 2 July 2007 laying down general implementing provisions for the reimbursement of medical expenses is ineffective. In any event, it is abundantly clear from Article 17 of the JSIS rules that if a person recognised as dependent on a member can be covered by another legal or statutory sickness insurance scheme, that person may not be covered under the JSIS.

41 In short, the applicant's claim concerning the restriction to Polish territory of cover under the Polish national health care system is not equivalent to a supporting document, within the meaning of Article 2(4) of Annex VII to the Staff Regulations, and must accordingly be rejected as ineffective.

42 As regards the fifth fact relied on by the Commission, it is apparent from the file that the applications for reimbursement of medical expenses incurred by the applicant's mother in Poland are dated 21 July 2011, 29 August 2011, 28 and 29 December 2011, 22 and 29 June 2012, 23 August 2012, 26 September 2012, 25 October 2012, 23 November 2012, 20 December 2012 and 17 January 2013. Although the applicant argues that most of the medical treatment received by her mother was provided in Belgium, she has adduced no evidence in support of that claim. The medical invoices presented at the hearing are irrelevant, since, when considered over the period, they are not conclusive for the purpose of determining the actual place of residence of the applicant's mother.

43 Finally, with regard to the argument based on Article 11 of Regulation No 987/2009, it is sufficient to note that that regulation is not relevant for servants of the European Union.

44 It follows from the foregoing that the applicant cannot claim that the Commission, in concluding that her mother's habitual residence was in Poland, misinterpreted Article 72 of the Staff Regulations and Article 2(4) of Annex VII of the Staff Regulations. Accordingly, the amount of the cost of maintenance of the applicant's mother, calculated in the decisions of 20 August 2013 on the basis of an amount corresponding to 50% of the basic monthly salary of an official in the first step of grade AST 1, subject to the weighting applicable to Poland, is correct.

45 It also follows that the decision of 25 September 2013, also based on the same facts as the above examination, is fully justified.

– *The application of Article 7 of the GIP concerning persons to be treated as dependent children*

46 The applicant takes issue with the deduction made by the Commission of the rental income concerning the apartment in Poland.

47 In that respect, it must be noted that the applicant did not declare any income from renting the apartment in Poland to her mother or to another person. In the absence of a declaration of any such income, it must be concluded that the applicant's mother was living in that apartment free of charge,

so that the resulting reduction for the applicant in the cost of her mother's maintenance must be taken into account under Articles 7 and 9 of the GIP concerning persons to be treated as dependent children.

48 Although the applicant maintains in her application that her mother does not '[live] there for free', which appears to contradict her claim that her mother lived permanently in her household, she has submitted no evidence in that regard.

49 It follows that the applicant cannot claim that, in taking into account rental income for the apartment in Poland for the calculation of the cost of her mother's maintenance in the decisions of 20 August 2013, the Commission misinterpreted the relevant provisions of the GIP concerning persons treated as dependent children.

– *The guaranteed income for elderly persons*

50 It must be pointed out that the Belgian authorities' decision of 1 July 2013 to grant the applicant's mother payment of a monthly guaranteed income for elderly persons with retroactive effective from 1 September 2012 has no relevance to the assessment of the legality of the decisions of 20 August 2013, given that, for the purpose of calculating the cost to the applicant of maintaining her mother, that income was not taken into account because the applicant only informed the Commission of the receipt of that income in her complaint of 19 November 2013 against the decisions of 20 August 2013.

51 The applicant's argument to the effect that the granting of the guaranteed income for elderly persons proves that her mother's economic interests are in Belgium is also ineffective. Even if that argument were well-founded, it is not disputed that, when it adopted the decisions of 20 August 2013, the Commission did not know that that income had been granted.

52 It follows from all of the foregoing that the first plea in law must be rejected.

Second plea in law alleging infringement of the right to good administration and of the right to health care

Arguments of the parties

53 The applicant submits that the contested decisions infringe the right to good administration conferred on every person by the Charter of Fundamental Rights of the European Union, firstly, since the information relied on by the Commission in the decision rejecting the complaint was inaccurate and incorrect, secondly, because there was a contradiction between, on one hand, the decisions of 20 August 2013 and the decision rejecting the complaint and, on the other hand, the decision of 15 September 2010 rejecting the request to change the place of origin, given that in its reasoning for that decision, the Commission stated that her mother could not be recognised as dependent because her place of residence was in Poland, and, thirdly, because her mother was not covered by a health insurance scheme for several months from 1 March 2013.

54 In the second plea in law, the applicant also alleges infringement of Article 35 of the Charter of Fundamental Rights of the European Union.

55 The Commission contends that the second plea in law should be rejected.

Findings of the Tribunal

56 As observed in paragraphs 44 and 45 above, the decisions of 20 August 2013 and the decision of 25 September 2013 are not affected by any of the unlawful acts claimed. It follows that the alleged infringement of the right to good administration resulting from those unlawful acts is unfounded.

57 As regards the alleged contradiction between, on the one hand, the decisions of 20 August 2013 and the decision rejecting the claim and, on the other hand, the decision of 15 September 2010, it is also sufficient to refer to paragraphs 44 and 45 above.

58 As regards the argument to the effect that the applicant's mother was not covered by a health insurance scheme for several months from 1 March 2013, it is again sufficient to note that the decision of 25 September 2013 is not affected by the unlawful acts raised. It follows that as from 1 March 2013 the applicant's mother no longer satisfied the requirements for affiliation to the JSIS. Furthermore, the applicant did not dispute the fact that her mother was covered during the period in question by the Polish national health care system.

59 As regards the alleged infringement by the Commission of Article 35 of the Charter of Fundamental Rights of the European Union, on health care, it should be noted that that allegation is not supported by any argument. Accordingly, that allegation is inadmissible.

60 The second plea in law must therefore be rejected.

Third plea in law alleging infringement of a vested right and the right to protection of legitimate expectations

Arguments of the parties

61 The applicant claims that the Commission infringed a vested right and the principle of legitimate expectations since the administration always reimbursed the medical expenses incurred by her mother, thereby encouraging her belief that her mother was entitled to cover under the JSIS.

62 The Commission contends that the third plea in law should be rejected.

Findings of the Tribunal

63 It should be noted that the conditions laid down in the case-law for entitlement to rely on the protection of legitimate expectations (judgments in *Skoulidi* v *Commission*, F-4/07, EU:F:2008:22, paragraph 79, and *Mandt* v *Parliament*, F-45/07, EU:F:2010:72, paragraph 124) are not satisfied in the present case, as the applicant cannot rely on precise, unconditional and consistent assurances given by the administration.

64 In this respect, it is sufficient to state that the payments made in favour of the applicant by the administration, even over several years, by themselves cannot be regarded as precise, unconditional and consistent assurances giving entitlement to rely on the protection of legitimate expectations. Otherwise, any decision of the administration refusing for the future, and possibly with retroactive effect, to pay a pecuniary benefit unduly paid to the person concerned for several years would be systematically annulled by the Courts of the European Union for non-compliance with the principle of legitimate expectations, with the consequence that Article 85 of the Staff Regulations, on the recovery of undue payment, would be largely deprived of any practical effect (judgment in *Mandt* v *Parliament*, EU:F:2010:72, paragraph 125).

65 The third plea in law must therefore be rejected.

Fourth plea in law alleging infringement of Regulation No 1049/2001

Arguments of the parties

66 By that plea, the applicant claims that the Commission infringed Regulation No 1049/2001 because it was not possible for her to verify the weightings applied and the calculation made, since she was refused access to her file.

67 The Commission contends that the fourth plea in law should be rejected as inadmissible.

Findings of the Tribunal

68 According to settled case-law, the rule of correspondence between the complaint, within the meaning of Article 91(2) of the Staff Regulations, and the subsequent application requires a plea raised before the Courts of the European Union to have been raised during the pre-litigation procedure, so that the appointing authority has already been made aware of the criticisms levelled by the person concerned against the contested decision, failing which the application will be inadmissible (judgments in *Schmitt* v *AER*, T-175/03, EU:T:2004:214, paragraph 42, and *Commission* v *Moschonaki*, T-476/11 P, EU:T:2013:557, paragraph 71).

69 The plea in law alleging infringement of Regulation No 1049/2001 must consequently be rejected as inadmissible since it was not raised in the complaint and does not therefore comply with the rule of correspondence which must exist between the prior administrative complaint and the action.

Fifth plea in law alleging 'the annulment of [the Commission's] decision of 23 October 2013 on the recovery of the overpaid sums under Article 85 of the Staff Regulations'

Arguments of the parties

70 In the applicant's view, the decision of 23 October 2013 should be annulled because, contrary to the wording of Article 85 of the Staff Regulations, she was not aware that there was no due reason for the payment, nor was the fact of the overpayment patently such that she could not have been unaware of it.

71 The Commission contends that the fifth plea in law should be dismissed.

Findings of the Tribunal

72 In that regard, it should be noted that the words 'patently such', used of the irregularity of the payment, in Article 85 of the Staff Regulations, do not mean that the official in receipt of an undue payment does not need to make any effort to reflect or check, but means that repayment is required 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 (judgments in *Stempels* v *Commission*, 310/87, EU:C:1989:9, paragraph 10; *Maslias* v *Parliament*, T-92/94, EU:T:1996:70, paragraph 60; *Jensen* v *Commission*, T-156/96, EU:T:1998:174, paragraph 63; *Barth* v *Commission*, T-348/00, EU:T:2001:144, paragraph 29, and *Gussetti* v *Commission*, T-312/02, EU:T:2004:102, paragraph 82).

73 In the present case, it should be noted that, contrary to her obligations under Article 11(1) and (3) of the GIP concerning persons to be treated as dependent children and under Article 3 of the decisions of 11 May 2010, 5 May 2011 and 16 January 2012 which granted and then renewed the dependent person allowance, the applicant did not inform the Commission that, as from 12 July 2010, she was the owner of an apartment in Poland, that her mother was receiving a pension from the Polish State and that her mother was covered by the Polish national health care system. On the contrary, in her applications for the dependent person allowance of 9 March 2010, 5 April 2011 and 10 January 2012, the applicant declared that she did not own any property and furthermore did not indicate that her mother was covered under the Polish national health care system. It follows that the applicant knew or should have known that the dependent person allowance payments were made without due reason.

74 In addition, the applicant has not put forward any argument explaining why the recovery of the amount of EUR 14 813.26 does not comply with Article 85 of the Staff Regulations.

75 It follows that the fifth plea in law must be rejected.

76 It follows from all of the foregoing that the claim for annulment of the contested decisions must be rejected.

2. The claim for annulment of the decision rejecting the complaint

77 It should be noted that, according to settled case-law, claims for annulment formally directed against a decision rejecting a complaint, where that decision has no independent content, have the effect of bringing before the Tribunal the act against which the complaint was submitted (judgment in *Vainker* v *Parliament*, 293/87, EU:C:1989:8, paragraph 8). Since the decision rejecting the complaint lacks any independent content in the present case, the action must be regarded as being directed against the contested decisions.

3. The claim in the alternative

78 In the alternative, the applicant requests the Tribunal to ‘order the [Commission] to assume responsibility for the medical expenses to the extent to which those expenses have not been reimbursed under any other sickness insurance scheme’.

79 Assuming that that request must be regarded as a claim for damages it is sufficient to state that, contrary to Article 35(1)(e) of the Rules of Procedure in force when the action was brought, the applicant has failed to comply with the conditions governing the submission of such a claim.

80 Finally, as regards Article 24 of the Staff Regulations, relied on by the applicant in order to claim compensation for damage suffered, it is sufficient to state that that provision only relates to damage suffered by an official as a result of the conduct of a third party.

81 Consequently, the claim in the alternative must be rejected.

82 It follows from all the foregoing that the action must be dismissed.

Costs

83 Under Article 101 of the Rules of Procedure, without prejudice to the other provisions of Chapter 8 of Title 2 of those rules, the unsuccessful party is to bear his own costs and to be ordered to pay the costs incurred by the other party if they have been applied for in the other party’s pleadings. Under

Article 102(1) of those rules, if equity so requires, the Tribunal may decide that an unsuccessful party is to bear his own costs, but is to pay only part of the costs incurred by the other party, or even that he is not to be ordered to pay any costs.

84 For the reasons set out in this judgment, the applicant has been unsuccessful in her action. Furthermore, in its pleadings the Commission has expressly requested that the applicant be ordered to pay the costs. Since the circumstances of the present case do not warrant the application of Article 102(1) of the Rules of Procedure, the applicant must bear her own costs and pay those incurred by the Commission.

On those grounds,

THE CIVIL SERVICE TRIBUNAL (First Chamber)

hereby:

1. **Dismisses the action;**

2. **Declares that WR shall bear her own costs and orders her to pay those incurred by the European Commission.**

Barents Perillo Svenningsen

Delivered in open court in Luxembourg on 7 July 2015.

W. Hakenberg
Registrar

R. Barents
President