

# **FSC 1C\_665/2024 of 3 July 2025: Reclaiming overpaid salaries**

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## Key takeaways

- **The Federal Supreme Court upholds the claim for repayment of a public-sector employer (primary school in the city of Dübendorf), which inadvertently continued to pay a teacher's salary for approximately 1.75 years after the end of the employment relationship, based on the principles of unjust enrichment. The teacher must repay salary payments in the amount of CHF 30,272.76.**
- **The employer continued to pay the salary because the payroll administration had not been notified. The corresponding payments were thus made accidentally – and therefore unintentionally and in error. Consequently, the payments did not qualify as voluntary payments of a non-existent debt. Further proof of the school's error was not necessary.**
- **The Federal Supreme Court also denied good faith on the part of the employee. She continued to receive pay slips from her former employer and wage statements for her tax return. If she had exercised reasonable care, she would have realised that her former employer had made a mistake. It is also in line with reasonable care that an employee checks the salary received when starting a new job, and should thus recognise an increase in account balance. Since the employee should have noticed that the salary payments were made in error, the amount due to be reimbursed was not reduced based on good faith.**
- **If the employer reclaims the accidentally overpaid salary payments based on the law of unjust enrichment, it must observe the applicable statute of limitations pursuant to Art. 67 of the Code of Obligations (CO), according to which the claim for unjust enrichment expires three years after the claim becomes known.**
- **Accidental overpayment of salary by an employer often occurs in practice. In this case, the employer must carefully examine the legal basis for a refund and how it can best enforce its claim. The circumstances of each individual case are always relevant.**

## What happened?

“A” (employee) had been working as a primary school teacher for the city of Dübendorf on a part-time basis (50%) since 1 August 2018. From 1 August 2019, she worked on a 64% basis and additionally 22% as a teacher of German as a second language (DaZ). On 1 August 2020, A was hired full-time (100%) as a primary school teacher for the canton. Consequently, she no longer worked as a primary school teacher or DaZ teacher for the city of Dübendorf.

Nevertheless, the city of Dübendorf continued to pay the salary for the DaZ position. In a letter dated 12 April 2022, the school administration of the primary school in the city of Dübendorf

informed A that her salary had been continued to be paid in error from 1 August 2020 until March 2022, and that it now intends to reclaim CHF 36,883.00 from A.

In a reasoned order dated 4 October 2022, the chairperson of the primary school board (Primarschulpflege) of the city of Dübendorf demanded that A repay CHF 32,162.10. A lodged an appeal against this order with the District Council of Uster, which partially upheld the appeal and reduced the disputed amount to CHF 30,272.76. A unsuccessfully appealed the District Council's decision before the Administrative Court of the Canton of Zurich, and subsequently appealed the Administrative Court's decision before the Federal Supreme Court, likewise unsuccessfully.

### **What did the Federal Supreme Court consider?**

The Federal Supreme Court had to decide whether the primary school in the city of Dübendorf could reclaim salary payments made in error based on the law of unjust enrichment, i.e. whether A was rightly obliged to repay the city of Dübendorf an amount of CHF 30,272.76 from unjustified salary payments until the end of February 2022.

#### **Unjust enrichment (Art. 62 of the Swiss Code of Obligations (CO))**

Firstly, the Federal Supreme Court explained the legal basis for unjust enrichment, which also applies in administrative law.

Analogous to the rules of private law on unjust enrichment (Art. 62 et seq. CO), administrative law also recognises as a general legal principle that payments made on grounds that have not been realised or have subsequently ceased to exist must be reimbursed. Payments are considered unjust if there is no entitlement to them under substantive law.

In this regard, the Federal Supreme Court considered that A was unjustly enriched by the amount of the salary payments received for the DaZ position during the period in question because A did not perform any work as a DaZ teacher since 1 August 2020. Furthermore, A did not offer her work and would not have been able to do so due to her new full-time position as a teacher at the canton. Therefore, the salary payments in question in the present case were made without legal basis.

#### **Payment in satisfaction of a non-existent obligation (Art. 63 CO)**

According to Art. 63 para. 1 CO, a person who has voluntarily paid a non-existent debt can only reclaim what they have paid if they can prove that they were mistaken about the debt obligation. A payment made inadvertently and unintentionally does not constitute voluntary payment of a non-existent debt.

A's argument that the primary school knew that she was no longer working as a DaZ teacher as of 1 August 2020, and therefore no further salary payments were owed, did not prevail.

Rather, the Federal Supreme Court determined that the salary payments in question had not been discontinued at the end of July 2020 because notification to the payroll administration had been inadvertently omitted. It was not until March 2022 that the administrative

management realised monthly salary payments had been made in error for the DaZ position that no longer existed. Therefore, the Federal Supreme Court assumed that the primary school administration of the city of Dübendorf had made the salary payments on the assumption that they were still owed. Given these circumstances, the Federal Supreme Court assumed that the payment in question had been made inadvertently, unintentionally and in error.

Furthermore, an error is to be assumed if, based on the circumstances of the case, it can be ruled out that the provider intended to make a gift. In the case of payments made by the state, it can never be assumed that the state intended to make a gift.

### **Enrichment of the recipient (Art. 64 CO)**

The Federal Supreme Court further stated that repayment pursuant to Art. 64 CO cannot be claimed if the recipient can prove that they are no longer enriched at the time of the reclaim. However, this does not apply to cases in which the recipient disposed of the enrichment and was not acting in good faith or should have expected repayment. Although good faith is generally presumed (Art. 3 para. 1 of the Swiss Civil Code (CC)), the enriched person cannot invoke good faith if, at the time of the transfer or disposal, they had to expect repayment because they knew or, had they exercised due care, should have known that the performance was unjust or not owed (see Art. 3 para. 2 CC).

For several reasons, the Federal Supreme Court assumed that A did not accept the salary payments in good faith. Firstly, from 1 August 2020, A received a monthly pay slip from the canton for the new full-time position and also a pay slip from the city of Dübendorf for the DaZ position. Given the level of attention required, A should have realised that the city of Dübendorf had made a mistake. Secondly, she declared her income in her tax return in 2020, which means she must have taken note of the salary statement from the city of Dübendorf. Furthermore, the Federal Supreme Court held that even if A did not examine the account statements individually, she should have noticed the monthly increase of CHF 1,500.00 in the account balance, especially since it is prudent to check whether the salary corresponds to the new employment conditions, particularly in the case of a new job.

Due to a lack of good faith, A was liable for repayment. The Federal Supreme Court left open the question of whether A was enriched at the time the repayment claim was made.

### **Claim for compensation for necessary use (Art. 65 CO)**

A further alleged that she used the inadvertently paid salary payments to purchase a vehicle and claimed the annual maintenance costs for this vehicle as necessary expenses. However, according to the Federal Supreme Court, A cannot prove that the vehicle in question can be qualified as a substitute for the inadvertently paid salary payments. The Federal Supreme Court notes that A does not claim that she would not have purchased the vehicle without the salary payments made. Therefore, A is not entitled to a claim for compensation for necessary expenses based on Art. 65 CO.

## **No fault on the part of the employer**

According to the Federal Supreme Court, A cannot derive any advantage from the fact that the primary school board of the city of Dübendorf may have been at fault. Pursuant to the court, it is not contrary to federal law not to apply Art. 44 CO (reduction in the obligation to pay compensation) to claims for restitution based on unjust enrichment.

## **Why is this judgement important?**

In practice, salaries often continue to be paid inadvertently after the employment relationship has ended as a result of accounting errors. The Federal Supreme Court's judgement provides a practical interpretation of Art. 62 et seq. CO in the context of overpaid salaries after the termination of an employment relationship.

This decision is important because it clarifies the requirements for an employer's repayment claim and can be used to assess such claims. Additionally, the Federal Supreme Court's judgement highlights when an employee cannot invoke good faith and emphasises certain duties of care on the part of the employee.

However, it should be noted that the employer must also consider the limitation periods under Art. 67 CO when reclaiming a payment made under the law of unjust enrichment. Accordingly, the claim for repayment expires three years after the claim becomes known, but no later than ten years after the claim arises.

Ultimately, the circumstances of each individual case are always relevant. These can have an impact on the applicable legal basis for the employer's claim for repayment, as well as on the question of how the employer can best enforce its claim.

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## **No legal or tax advice**

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