

Case T-42/89 OPPO

European Parliament

v

Wolfdieter Graf Yorck von Wartenburg

(Official — Installation allowance —
Application to set aside a judgment)

Judgment of the Court of First Instance (Third Chamber), 4 July 1990 300

Summary of the Judgment

1. *Officials — Refund of expenses — Installation allowance — Voluntary termination of service before the expiry of a period of two years — Refund by the official — Point in time at which the period begins to run — Date of entry into the service of the Communities — Divergent interpretation based on a particular language version — Not possible*
(Staff Regulations, Art. 71; Annex VII, Art. 5(5))
2. *Officials — Refund of expenses — Installation allowance — Voluntary termination of service before the expiry of a period of two years — Refund by the official — Point in time at which the period begins to run — Date of entry into the service of the Communities — Date of official's assignment to a new place of employment — Not relevant*
(Staff Regulations, Annex VII, Art. 5(1), (2) and (5))
3. *Officials — Refund of expenses — Installation allowance — Voluntary termination of service before the expiry of a period of two years — Refund by the official — Assignment solely in the interest of the service — Application for a refund based on the official's not having settled for an indeterminate but substantial period of time — Rejected*
(Staff Regulations, Annex VII, Art. 5(5))

1. The juxtaposition of the expressions 'taking up appointment' ('entrée en fonctions') and 'transfer' in Article 71 of the Staff Regulations shows that the first expression can in no event encompass the

second, and refers solely to entering the service of the Communities. It follows that the expression 'entering the service' ('entrée en fonctions') necessarily has the same meaning in all the language

versions of Article 5(5) of Annex VII to the Staff Regulations, as is particularly clear from the English and Spanish versions of that provision.

It is therefore not possible to argue that in the German version the expression 'Dienstantritt' can be understood as covering both the taking up of new duties and entering the service of the Communities and that therefore the taking up of new duties giving rise to the payment of the installation allowance can constitute the point from which the period of two years referred to in Article 5(5) — during which the fact that an official voluntarily leaves the service of the Communities will cause him to have to refund all or part of the installation allowance — begins to run.

2. Since paragraphs 1 and 2 of Article 5 of Annex VII to the Staff Regulations draw no distinction between the two eventualities in which the installation allowance is paid, namely the official's first entering the service of the Communities and his being transferred to a new place of employment, the obli-

gation provided for in Article 5(5) for part of the installation allowance to be refunded in proportion to the portion of the two-year period which is unexpired when the person concerned voluntarily leaves the service of the Communities applies without distinction to each of those eventualities. It follows that, where it is appropriate to apply Article 5(5), the starting point for the period laid down in that provision is the same in each of those eventualities, namely the date when the official entered the service of the Communities.

3. Once it is established that the assignment of an official to a new place of employment took place solely in the interest of the service, the Community institution cannot argue that an official who voluntarily left the service of the Communities only 14 months after settling at his new place of employment is entitled to only part of the installation allowance on the ground that he did not satisfy the condition of settling for an indeterminate but substantial period of time.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)

4 July 1990 *

In Case T-42/89 OPPO,

European Parliament, represented by Jorge Campinos, juriconsulte, and Manfred Peter, Head of Division, acting as Agents, with an address for service in Luxembourg at the general secretariat of the European Parliament, Kirchberg,

applicant,

* Language of the case: French.