

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)  
18 September 2002

Case T-29/01

**Carlos Puente Martín**  
v  
**Commission of the European Communities**

(Officials – Reinstatement – Installation allowance – Qualification for an  
invalidity pension – Resettlement allowance – Conditions)

Full text in Spanish . . . . . II - 833

**Application for:** annulment of the Commission's decision of 22 February 2000 refusing to grant the applicant the full installation allowance and the resettlement allowance following his installation in Brussels and resettlement in Madrid.

**Held:** There is no need to rule on the head of claim that the Court should accept Spanish as the language of the case. The Commission's decision of 22 February 2000 is annulled in so far as it refuses to grant the applicant the full installation allowance provided for in Article 5(1) of Annex VII to the Staff Regulations and the resettlement allowance provided for in Article 6(1) of Annex VII to the Staff Regulations. The Commission is ordered to pay the applicant those allowances, together with default interest from the dates on which the allowances were respectively

payable in accordance with Annex VII to the Staff Regulations and until the date of payment, less the sums already paid to the applicant by way of installation allowance. The annual rate applicable to that default interest is to be calculated on the basis of the rate fixed by the Governing Council of the European Central Bank for the main refinancing operations and applicable during the period concerned, plus two per cent. The remainder of the application is dismissed. The Commission is ordered to pay the costs.

### Summary

*1. Officials – Reimbursement of expenses – Installation allowance – Conditions for granting – Actual transfer of habitual residence – Concept of habitual residence*

*(Staff Regulations, Annex VII, Art. 5(1))*

*2. Officials – Reimbursement of expenses – Installation allowance – Conditions for granting – Actual transfer of habitual residence – Duration of the period of installation at the place of employment – Official automatically retired*

*(Staff Regulations, Annex VII, Art. 5(1))*

*3. Officials – Reimbursement of expenses – Installation allowance – Voluntary termination of service within two years – Refund by the official – Purpose – Date from which the period starts to run – Date of entry into the service of the Communities*

*(Staff Regulations, Annex VII, Art. 5(5))*

*4. Officials – Reimbursement of expenses – Resettlement allowance – Conditions for granting – Minimum length of service  
(Staff Regulations, Annex VII, Arts 5(1) and 6(1))*

*5. Officials – Actions – Subject-matter – Direction to the administration – Unlimited jurisdiction – Claim for payment – Admissibility – Manner of enforcement of payment – Inadmissibility  
(Staff Regulations, Art. 91(1))*

1. In order to be eligible for the installation allowance provided for in the first paragraph of Article 5(1) of Annex VII to the Staff Regulations, the official must fulfil one of the following two conditions: either qualify for expatriation allowance or furnish evidence of having been obliged to change his place of residence in order to comply with Article 20 of the Staff Regulations.

With regard to the first of the two abovementioned alternatives, the installation allowance, which is flat-rate and indivisible in nature, is automatically payable to an established official, provided that he is entitled to the expatriation allowance and that it is established that he has settled in the place of employment. In that regard, there is, moreover, no need for the official concerned to show the existence of actual expenses or that he has been obliged to change his place of residence, since that would have the effect of reducing the alternatives provided for by the Community legislature in the first paragraph of Article 5(1) of Annex VII to the Staff Regulations to only one possibility.

With regard to the second abovementioned alternative, the concept of habitual residence must be interpreted as meaning the place where the person concerned has established, and intends to maintain, the permanent or habitual centre of his or her interests. Moreover, irrespective of the purely quantitative element of the time spent by the person in a particular country, residence implies not only the actual fact of

living in a given place, but also the intention of thereby achieving the continuity which stems from a stable way of life and from the course of normal social relations.

(see paras 53-54 and 60)

See: C-62/97 P *Commission v Lozano Palacios* [1998] ECR I-3273, para. 21; T-63/91 *Benzler v Commission* [1992] ECR II-2095, para. 25; T-33/95 *Lozano Palacios v Commission* [1996] ECR-SC I-A-575 and II-1535, paras 58 and 61; T-74/95 *Monteiro da Silva v Commission* [1996] ECR-SC I-A-583 and II-1559, para. 58; T-132/95 *Gammeltoft v Commission* [1996] ECR-SC I-A-611 and II-1633, para. 50; T-137/95 *Mozzaglia v Commission* [1996] ECR-SC I-A-619 and II-1657, para. 51; T-37/99 *Miranda v Commission* [2001] ECR-SC I-A-87 and II-413, paras 31 and 32; T-60/00 *Liaskou v Council* [2001] ECR-SC I-A-107 and II-489, para. 53

2. A period of two-and-a-half months for the installation of an official at his place of employment for the purpose of complying with Article 20 of the Staff Regulations is not sufficient to demonstrate that the transfer of that official's residence to that place has actually occurred. However, that reasoning does not apply where the official has been automatically retired by the appointing authority, in accordance with Article 53 of the Staff Regulations, in response to the findings of the Invalidity Committee recognising, pursuant to Article 78 of and Annex VIII to the Staff Regulations, that the official concerned is affected by total permanent invalidity preventing him from performing the duties corresponding to a post in his career bracket. In such a case, the limited duration of the official's stay at his place of employment, which stems from the termination of his service with the institution for reasons connected with his state of health, is completely beyond the control of the official in question. In any event, even if such a situation also accords with the wishes of the official concerned, the fact nevertheless remains that his entitlement to invalidity pension for the abovementioned reasons arises because the interest of the service requires it.

(see paras 67-68)

See: T-42/89 *Yorck von Wartenburg v Parliament* [1990] ECR II-31, para. 20; *Miranda v Commission*, cited above

3. Reimbursement by the official of part of the installation allowance calculated proportionately to the part of the period of two years of service which remains to run is not intended to take account of the duration of the installation, since the cost of installation for a short period is the same as that of installation for a longer period. Its object is to make the Communities responsible for paying the whole of the installation allowance paid on the posting of the official to a place of employment only when the service relationship between the Communities and the official has been sufficiently consolidated by two years spent by the official in the service of the Communities.

That period of two years must be calculated from the official's entering the service of the Communities and not from his taking up the duties which give rise to the grant of the installation allowance.

(see para. 73)

See: *Yorck von Wartenburg v Parliament*, cited above, paras 17 and 18; Case T-42/89 OP *Parliament v Yorck von Wartenburg* [1990] ECR II-299, para. 13

4. In order to be entitled to the resettlement allowance provided for by Article 6(1) of Annex VII to the Staff Regulations, the official must fulfil the following four cumulative conditions: firstly, have terminated his service, secondly, fulfil the conditions laid down in Article 5(1) of that annex for entitlement to the installation allowance, thirdly, have completed four years of service and, fourthly, not receive a similar allowance in his new employment.

Contrary to Article 5(5) of Annex VII to the Staff Regulations, relating to the installation allowance, the first paragraph of Article 6(1) of that annex merely refers to the completion by the official concerned of 'four years of the service' without specifying a date from which that period starts to run. Consequently, it cannot be a requirement that those four years must have been completed continuously and directly prior to the termination of service.

(see paras 80, 83, 84)

5. Although, in disputes of a financial character, the Community judicature has unlimited jurisdiction under the second sentence of Article 91(1) of the Staff Regulations, allowing it to order the defendant institution to pay specified amounts together with default interest, it cannot dictate to the latter, even at the request of the applicant, the manner in which such an order is to be enforced, in particular payment to a third party of the default interest owed to the applicant. A claim to that effect must be rejected as inadmissible.

(see paras 86 and 90)

See: T-156/96 *Valverde Mordt v Court of Justice* [1991] ECR II-407, para. 150; T-130/96 *Aquilino v Council* [1998] ECR-SC I-A-351 and II-1017, para. 39; T-197/98 *Rudolph v Commission* [2000] ECR-SC I-A-55 and II-241, para. 32