

of their place of employment and which do not qualify for the daily subsistence allowance provided for in Article 13 of Annex VII of the Staff Regulations cannot be regarded as 'missions' within the meaning of subsection F of the aforementioned annex, which is generally only applicable if a journey is made outside the limits of the place of employment.

However, having regard to the basic principle laid down in Article 71 of the

Staff Regulations according to which an official is entitled to reimbursement of expenses incurred by him in the course of or in connection with the performance of his duties, the travel allowance must be granted, pursuant to the second paragraph of Article 15 of Annex VII, to an official of a lower grade than Grade A 2 if, by reason of his employment, he is required constantly to make journeys between two places of work within the boundaries of his place of employment using his own car.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)  
13 March 1990 \*

In Case T-71/89

**Michel Dautremont**, official of the European Parliament, residing in Luxembourg, and others, represented by Jean-Noël Louis, of the Brussels Bar, with an address for service in Luxembourg at the offices of SARL Fiduciaire Myson, 6-8, rue Origer,

applicants,

v

**European Parliament**, represented by Jorge Campinos, Jurisconsult, and Manfred Peter, Head of Division, acting as Agents, assisted by Alex Bonn, of the Luxembourg Bar, with an address for service in Luxembourg at the Chambers of Alex Bonn, 22, Côte d'Eich,

defendant,

\* Language of the case: French.

APPLICATION for the annulment of the implied decision of the European Parliament rejecting the applicants' complaints concerning the reimbursement of the travel expenses incurred daily in the performance of their duties,

THE COURT OF FIRST INSTANCE (Third Chamber)

composed of: A. Saggio, President of Chamber, C. Yeraris and B. Vesterdorf, Judges,

Registrar: H. Jung

having regard to the written procedure and further to the hearing on 30 January 1990,

gives the following

**Judgment**

**Facts and procedure**

1 The applicants, Michel Dautremont, Daniel Barboni, Johan Christiaens, Henry Connolly, Julien Maebe, Detlef Schaal, Robert Fourny and Douglas Eeles, officials of the European Parliament, work in the Information and Public Relations Directorate of the European Parliament, and more specifically in the 'Television' Department which is based in Luxembourg. Nine people work in that department, including the eight applicants. The Television Department's activities are divided between the Senningerberg and Kirchberg centres, a situation which is due mainly to the fact that the department's heavy production equipment is in Senningerberg while its archives and administration are in Kirchberg. A distance of several kilometres separates the two places of work. The applicants are obliged to travel frequently between Senningerberg and Kirchberg and, because there is no shared transport, they must make their own way (in their own cars) at their own expense. The applicants state, by way of example, that between 1 and 5 December 1987, 38 trips were recorded by the nine members of staff. The defendant does not dispute those facts.

- 2 On 20 January 1988 the applicants requested, pursuant to Article 90(1) of the Staff Regulations of Officials of the European Communities ('the Staff Regulations'), to be paid mission expenses as reimbursement of the expenses they are obliged to incur in travelling between Senningerberg and Kirchberg. On 13 August 1988, on expiry of the period prescribed by Article 90(1) for reply, the applicants submitted complaints pursuant to Article 90(2) of the Staff Regulations. The defendant did not respond to the complaints within the time allowed and the applicants brought the present action by an application lodged at the Registry of the Court of Justice on 13 March 1989.
- 3 The written procedure took place entirely before the Court of Justice which, by an order of 15 November 1989, referred the case to the Court of First Instance pursuant to the Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities. Upon hearing the report of the Judge-Rapporteur, the Court decided to open the oral procedure without any preparatory inquiry.
- 4 The conclusions of the parties were as follows.

The applicants claim that the Court should:

- (a) declare the present application admissible and well founded;
- (b) annul:
  - (i) the implied decision of 20 May 1988 rejecting the applicants' request of 20 January 1988 that they should receive reimbursement of the travel expenses which they are obliged to incur in the performance of their daily duties;
  - (ii) in so far as is necessary, the implied decision rejecting the formal complaint submitted by the applicants on 13 August 1988 pursuant to Article 90(2) of the Staff Regulations;
- (c) order the parties to reimburse the applicants the costs which they incurred in carrying out their duties, in particular the travel expenses they must incur daily, to be backdated at the very least to 20 January 1988, the date of the

requests submitted pursuant to Article 90(1) of the Staff Regulations, with default and compensatory interest;

- (d) order the defendant to pay the costs either pursuant to Article 69(2) or the second paragraph of Article 69(3) of the Rules of Procedure and, in particular, the expenses incurred for an address for service and the travel and subsistence expenses and remuneration of lawyers pursuant to Article 73(b) of the aforementioned rules.

The defendant contends that the Court should:

- (a) dismiss the application;
- (b) award costs in accordance with the applicable provisions.

### **Substance**

- 5 In support of their action the applicants claim that the implied decisions at issue infringe Article 71 of the Staff Regulations and Article 12(4) and the second paragraph of Article 15 of Annex VII to the Staff Regulations. They are claiming reimbursement of the expenses in question on the basis of an amount per kilometre pursuant to Article 12(4), or, in the alternative, reimbursement of the expenses as a fixed amount pursuant to the second paragraph of Article 15. The applicants also rely on the defendant's duty to have regard to their interests, the prohibition of discrimination and the principle of equal treatment.
- 6 With regard to the submission that Article 12(4) of Annex VII to the Staff Regulations was infringed, the applicants maintain that the conditions laid down in that article are met and that they should therefore be provided with travel orders within the meaning of Article 11 of that annex.

- 7 In reply to that argument, the defendant contends that the concept of 'mission' covers any journey made outside the place where the official actually works on a regular basis. However, in its view Article 11 of Annex VII to the Staff Regulations is applicable only if the official is required to travel on mission within the meaning of that article. According to the defendant, mission expenses are not reimbursed when a journey between two places of work is made within a limited geographical area so that it represents 'normal travel' rather than 'travel on mission' within the meaning of Article 11 of Annex VII.
- 8 As a preliminary observation it should be pointed out that Article 71 of the Staff Regulations lays down as a basic principle that an official is entitled to reimbursement of expenses incurred by him in the course of or in connection with the performance of his duties. The detailed rules for the application of that principle are laid down in Annex VII to the Staff Regulations.
- 9 With regard to the reimbursement of travel expenses incurred by Community staff in the performance of their duties, the Community legislature has provided, in Section 3 of Annex VII to the Staff Regulations, for two distinct schemes, namely the reimbursement of 'mission expenses' and the payment of a fixed allowance to cover 'normal travel' within the meaning of Article 15 of the aforementioned annex.
- 10 It is evident from the scheme of subsection F ('mission expenses') of Annex VII to the Staff Regulations that the system established by Articles 11 to 13 is intended to cover journeys which involve travelling a certain distance and which entitle the employee to reimbursement of travel expenses and a daily subsistence allowance. On the other hand, Article 15 clearly concerns journeys which are fairly short and frequent and are made within a limited geographical area. A member of staff making such a journey is entitled, not to reimbursement of the exact amount of the expenses on presentation of supporting documents, but, for reasons of economy, to reimbursement by way of a fixed allowance, without production of supporting documents.
- 11 The present case concerns two places of work which are only several kilometres apart. Both places are located within the geographical limits of the applicants' 'place of employment' and the journeys in question are made within those limits. The journeys made do not qualify for the daily subsistence allowance provided for in Article 13 of Annex VII of the Staff Regulations. Therefore they cannot be

regarded as 'missions' within the meaning of subsection F of the aforementioned annex, which is generally only applicable if a journey is made outside the limits of the place of employment.

- 12 It follows that the applicants' submission that they should be paid travel expenses pursuant to Article 12(4) of Annex VII to the Staff Regulations cannot be upheld.
- 13 With regard to the submission that the second paragraph of Article 15 of Annex VII to the Staff Regulations was infringed, the applicants claim that the paragraph in question permits any official whose duties necessitate regular journeys of whatever kind to be granted the allowance provided for in the first paragraph of Article 15.
- 14 The defendant replies that it was unable to apply that provision, which, as an exception, must be used restrictively.
- 15 The first paragraph of Article 15 of Annex VII to the Staff Regulations provides that officials in Grades A 1 and A 2 who do not have an official car at their disposal may receive a fixed allowance, not exceeding a certain amount per year, to cover normal travel within the boundaries of the town where they are employed. The second paragraph of Article 15 provides that the travel allowance in question may, by reasoned decision of the appointing authority, be granted to an official of a lower grade if he is required constantly to make journeys within the boundaries of his place of employment using his own car.
- 16 It is common ground that the applicants are required to travel regularly, for reasons connected with their employment, between two places of work, separated from one another by several kilometres, and that their only means of transport is their own cars. They are therefore required to incur expenses in the performance of their duties.

17 In those circumstances and having regard to the basic principle laid down in Article 71 of the Staff Regulations it must be stated that the second paragraph of Article 15 is applicable to the applicants' case. It follows that the implied decisions of the defendant rejecting the applicants' requests constitute an infringement of Community law, and that those decisions must therefore be annulled.

18 With regard to the applicants' application for an order requiring the defendant to reimburse them the travel expenses they incurred in the performance of their duties, it must be pointed out first of all that the applicants have not supplied any evidence which would enable the Court of First Instance to determine which of them actually incurred travel expenses and the amount of their respective expenses. In those circumstances and having regard to the obligation of the European Parliament to take the necessary measures to comply with the judgment of the Court of First Instance pursuant to Articles 168a(2) and 176 of the EEC Treaty, it is not necessary to rule on that head of claim.

19 It must be added that, in complying with this judgment, the Parliament must determine whether and to what extent each applicant has actually incurred travel expenses and, in accordance with its findings and within the limit laid down in the first paragraph of Article 15 of Annex VII to the Staff Regulations, to adopt the decisions referred to in the second paragraph of Article 15 of the aforementioned annex. It must also be pointed out that the defendant did not dispute the applicants' claim that the amounts thereby payable should be subject to default interest.

### Costs

20 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs, if they have been asked for in the successful party's pleading. Since the defendant has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

- (1) **Annuls the implied decision of the European Parliament rejecting the requests submitted by the applicants on 20 January 1988 and refusing to grant them reimbursement of their travel expenses;**
- (2) **Orders the European Parliament to pay the costs.**

Saggio

Yeraris

Vesterdorf

Delivered in open court on 13 March 1990.

H. Jung

Registrar

A. Saggio

President of Chamber