

JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber)
12 December 1996

Case T-132/95

Peter Gammeltoft
v
Commission of the European Communities

(Member of the temporary staff – Former national expert on secondment –
Former member of the auxiliary staff – Installation allowance – Reimbursement
of removal expenses)

Full text in French II - 1633

Application for: annulment, *inter alia*, of the Commission's decision of 15
September 1994 refusing to grant the applicant the
installation allowance and reimbursement of removal
expenses.

Decision: Annulment as regards the installation allowance and
reimbursement of removal expenses. For the rest,
application inadmissible.

Abstract of the Judgment

The applicant, formerly an official at the Danish Ministry of the Environment placed at the disposal of the Commission in Brussels as a national expert on secondment, was appointed as a member of the auxiliary staff of the Commission and subsequently engaged as a member of the temporary staff.

While on secondment the applicant continued to be remunerated by his Danish employer. Pursuant to the rules applicable to national experts on secondment, he was required to reside at his place of employment or at no greater distance therefrom than was compatible with the proper performance of his duties.

While on secondment the applicant lived in Brussels. He and his wife own a flat in Copenhagen, where they lived with their son prior to the applicant's secondment. While the applicant was on secondment his wife initially remained in Copenhagen with her son. They joined the applicant in Brussels before he was appointed as a member of the auxiliary staff.

The Commission determined the place of recruitment of the applicant, who was then a member of the auxiliary staff, as Brussels and his place of origin as Frederiksberg (Denmark). It refused to grant him the installation allowance, reimbursement of travel expenses, reimbursement of removal expenses or the daily subsistence allowance. On the other hand, he was granted the expatriation allowance.

On 8 September 1994 the applicant, who had become a member of the temporary staff, wrote to the Commission claiming that he was entitled to the installation allowance and to reimbursement of his removal expenses.

On 15 September 1994 the Commission informed the applicant by memorandum that his request could not be granted.

On 18 November 1994 the applicant lodged a complaint against that decision.

The Commission rejected the complaint.

Admissibility

In so far as the application seeks the annulment of a decision of the Commission refusing to grant the applicant the daily subsistence allowance or reimbursement of his travel expenses, it is inadmissible on the ground that its subject-matter is inconsistent with that of the complaint.

See: T-545/93 *Kschwendt v Commission* [1995] ECR-SC II-565, paras 28 to 31

Substance

Installation allowance

The first subparagraph of Article 5(1) of Annex VII to the Staff Regulations of Officials of the European Communities (Annex VII and Staff Regulations) provides that to be entitled to an installation allowance an official must meet one of the two alternative conditions set out therein, that is to say he must qualify for the expatriation allowance or he must furnish evidence of having been obliged to change his place of residence in order to comply with Article 20 of the Staff Regulations (paragraph 50).

The applicant receives the expatriation allowance, which was granted by a decision of the Commission which has become final. He is therefore entitled to the installation allowance (paragraphs 52 and 53).

In order to be so entitled an official is not additionally required to show that he has had to change his residence (paragraph 53).

Nor is the official concerned required to show the existence of actual expenses (paragraph 54).

See: 140/77 *Verhaaf v Commission* [1978] ECR 2117; Opinion of Advocate General Sir Gordon Slynn in 90/81 *Burg v Court of Justice* [1982] ECR 983, at 995; T-42/89 *Yorck von Wartenburg v Parliament* [1990] ECR II-31, paras 21 to 23

It follows from Article 24 of the Conditions of Employment of Other Servants of the European Communities (Conditions of Employment) that the situation of a member of the temporary staff engaged for a fixed period of three years and entitled to the household allowance is to be assimilated to that of an established official, who is entitled to the installation allowance provided for in Article 5(1) of Annex VII. The Community legislature thus took the view that such a member of the temporary staff would incur certain additional expenditure, in particular in arranging appropriate accommodation for a stay of at least three years, comparable with that incurred by an established official who is required to establish a permanent residence at his place of employment (paragraph 55).

See: T-33/95 *Lozano Palacios v Commission* [1996] ECR-SC II-1535, para. 63

The applicant's situation corresponds to the purpose of Article 24 of the Conditions of Employment, in particular in that, upon being recruited as a member of the temporary staff, he was required to establish a permanent residence in order to be able to reside at his place of employment for three years, whereas he had previously been in a precarious situation and had only been obliged to establish a provisional residence (paragraph 56).

Finally, Article 5(3) of Annex XII only requires proof that the official and, where appropriate, his family have settled at the place where he is employed, that is to say that they are living there (paragraph 57).

The Commission's decision is annulled in so far as it refuses to grant the applicant the installation allowance provided for in the first subparagraph of Article 5(1) of Annex VII (paragraph 59).

Reimbursement of removal expenses

The purpose of Article 9(1) of Annex VII is to enable an official to bear the costs of moving from his former place of residence to his place of employment. That provision only allows for reimbursement of the costs actually incurred, in accordance with an estimate approved in advance (paragraph 62).

In order to determine whether the applicant was required to change his place of residence in order to comply with Article 20 of the Staff Regulations, it is appropriate to employ by analogy the approach adopted by the Court of Justice in paragraph 21 of the judgment in *Parliament v Vienne* to the meaning of the expression 'must change his place of residence' in the context of the daily subsistence allowance provided for in Article 10 of Annex VII (paragraph 63).

See: C-43/94 P *Parliament v Vienne* [1995] ECR I-2441, para. 21

It follows that the residence to be taken into account for the application of Article 9(1) of Annex VII is the one where the official concerned has his centre of interests. To be entitled to reimbursement of his removal expenses, it is sufficient for him to show that he is unable to continue to live at that former place of residence and that he has had to remove in order to establish a new residence at his place of employment (paragraph 64).

Until he was recruited as a member of the temporary staff the applicant kept his former residence in Copenhagen, where he remained in the employment of the Ministry of the Environment and maintained family and social links (paragraphs 65 and 66).

Consequently, the Court considers that the 'former residence' to be taken into account for the purposes of Article 9(1) of Annex VII is the one in Copenhagen (paragraph 68).

See: *Parliament v Vienne*, cited above, para. 21

The applicant was therefore obliged to change his place of residence within the meaning of Article 9(1) of Annex VII and for that reason is entitled to reimbursement of his removal expenses as provided for therein (paragraph 69).

In order to be entitled to reimbursement of removal expenses in such circumstances, the person concerned must establish (a) that his residence at his place of employment was provisional, in that he occupied it only in order to perform the duties associated with his secondment, for a specific period, by his employer in his country of origin and subsequently only in order to perform the duties associated with his contract as a member of the auxiliary staff, for a short period and still with the permission of his employer in his country of origin; (b) that he maintained his former residence at the place where he has his centre of interests in his country of origin; and (c) that owing to his appointment he is no longer able to live in that former residence (paragraph 72).

The Commission's decision is annulled in so far as it refuses to grant the applicant reimbursement of his removal expenses (paragraph 74).

Operative part:

The application is dismissed as inadmissible in so far as it seeks to obtain the daily subsistence allowance and reimbursement of travel expenses.

The Commission's decision of 15 September 1994 is annulled in so far as it refuses to grant the applicant the installation allowance provided for in Article 5(1) of Annex VII to the Staff Regulations and reimbursement of his removal expenses as provided for in Article 9(1) of Annex VII.