JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
28 September 1993 *

In Joined Cases T-57/92 and T-75/92,

Graf Yorck von Wartenburg, former temporary official of the European Parliament, represented by Georges Vandersanden and Laure Levi, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Alex Schmitt, 62 Avenue Guillaume,

applicant,

v

European Parliament, represented by Jorge Campinos, Legal Adviser, assisted by Christian Pennera, Head of Division, and Els Vandenbosch, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the Secretariat General of the European Parliament, Kirchberg,

defendant,

APPLICATION for the annulment of the decision of the European Parliament of 10 December 1991 firstly, inasmuch as it requires the applicant to produce certain documents in order to obtain a resettlement allowance and, secondly, inasmuch as it constitutes a refusal to grant him such an allowance,

THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES (Fifth Chamber),

composed of: D. P. M. Barrington, President, K. Lenaerts and A. Kalogeropoulos, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 13 July 1993,

* Language of the case: French.

gives the following

Judgment

Facts giving rise to the action

1 On 12 June 1974 the applicant, Graf Yorck von Wartenburg, was appointed as a temporary official in the European Parliament ('the Parliament').

2 He was posted to Brussels with effect from 1 November 1987 and worked there until 31 December 1988, the date of termination of his service.

3 Following his posting to Brussels and taking up residence in that city with his wife, the applicant requested an installation allowance from the appointing authority. The request was refused. However, as a result of two judgments of the Court of First Instance, the first of which was given by default on 30 January 1990 in Case T-42/89 *Yorck von Wartenburg* v *Parliament* [1990] ECR II-31, and the second was given on 4 July 1990 on an application by the Parliament to set aside the default judgment in Case T-42/89 OPPO *Parliament* v *Yorck von Wartenburg* [1990] ECR II-299, the appointing authority was ordered to pay the applicant an installation allowance equal to two months' basic salary.

4 On 4 March 1988 the applicant's wife 'left the marital home without hope of return', according to the findings of the Tribunal d'Arrondissement, Luxembourg, in its judgment of 12 July 1990 granting a divorce between the parties. She returned to her previous home in Mamer, as the Court of First Instance found in its judgment in *Yorck von Wartenburg* v *Parliament*, cited above.

5 On 18 April 1988 the applicant's wife filed a petition for divorce with the Tribunal d'Arrondissement, Luxembourg.

6 By interim order of 8 August 1988 she was authorized to reside at Mamer apart from her husband during the proceedings and the applicant was ordered not to disturb her there. A counterclaim by the applicant, who was living and working in Brussels at that time, for an order allowing him to live in the same building as his wife was dismissed on the ground that 'the configuration of the premises does not permit cohabitation, even periodic, of the parties and would interfere seriously with the divorce proceedings brought by the petitioner'. Provisional custody of the applicant's only child, a minor, was granted to his wife by an interim order of the same date.

7 On 9 November 1988 the applicant claimed a retirement pension as from the termination of his service and took up residence at his then address in Brussels from 1 January 1989.

8 On 31 December 1988 the applicant, who was still posted to Brussels, obtained the benefit of a measure to terminate service under Council Regulation (Euratom, ECSC, EEC) of 23 July 1987 introducing special measures to terminate the service of temporary staff of the European Communities (OJ 1987 L 209, p. 1). As he had announced in his request of 9 November 1988, he continued to live in Brussels.

9 On 12 July 1990 the Tribunal d'Arrondissement, Luxembourg, granted a decree of divorce between the applicant, living in Brussels, and his wife, living in Mamer, on the basis of separation of the spouses for more than one year.

10 On 7 October 1991 the applicant submitted a request to the appointing authority for the grant of a resettlement allowance on the ground of his removal from Brussels to Mamer.

11 On 22 November 1991 the applicant produced to the administration a certificate of residence issued by the municipality of Mamer on 21 November 1991, certifying

that he had been registered in the population registers of that municipality since 6 August 1973 and that since that date he had had his permanent residence at the address shown.

12 By letter of 10 December 1991 the Director-General for Personnel, the Budget and Finance informed the applicant that he was entitled to a resettlement allowance equal to two months' basic salary if he produced proof of the resettlement of himself and his family at the address mentioned in his letter. However, the applicant's attention was drawn to the fact that, as his service in Brussels had ended before the expiry of three years from the date of his change of posting, he was required to repay two-thirds of the amount he had received on that occasion as an installation allowance. He was asked to contact the competent official directly for this purpose.

13 On 15 January 1992 the applicant lodged a complaint against the letter of 10 December 1991 in so far as it required him, firstly, to produce certain documents in order to obtain the resettlement allowance and, secondly, to repay two-thirds of the installation allowance he had been granted pursuant to the judgment in *Yorck von Wartenburg* v *Parliament* and the *Parliament* v *Yorck von Wartenburg*, cited above. That complaint was implicitly rejected by the appointing authority.

14 On 24 February 1992 the applicant, as a precautionary measure, lodged a second complaint against the same letter of 10 December 1991 from the appointing authority in so far as it might constitute an implied refusal of a resettlement allowance. No reply was given to that complaint either, which was therefore rejected by implication.

15 On 3 April 1992 the appointing authority sent the applicant a letter asking him, in view of the circumstances set out in the abovementioned interim order made in the course of his divorce proceedings, for additional information concerning his family situation so that it could determine whether the evidence adduced in support of his request was sufficient. On 15 June 1992 the applicant refused to comply with this request for information.

16 In addition, on 10 May 1992 the applicant pointed out to the appointing authority that in its previous letter it had not referred to the question of reimbursement of the installation allowance.

17 On 11 June 1992 the appointing authority replied to the applicant's letter of 10 May 1992 as follows: 'Re: Grant of resettlement allowance of 7 October 1991. In reply to your letter of 10 May 1992 concerning the resettlement allowance which was paid to you on your posting to Brussels on 1 November 1987, I am pleased to confirm my letter of 2 April 1992. Consequently you will not have to repay to the institution the amounts paid in respect of the said allowance.'

18 On 7 July 1992 the applicant replied to this letter, pointing out that the reference to 'resettlement' allowance must have been a 'drafting error' and asking the Parliament to rectify this mistake.

Procedure

19 It was in those circumstances that the applicant brought a first action as the result of the implied rejection of his complaint of 15 January 1992 by the appointing authority. This application was lodged at the Court Registry on 14 August 1992, where it was registered under No T-57/92.

20 The applicant then brought a second action following the implied rejection of his complaint of 24 February 1992. The application was lodged at the Court Registry on 22 September 1992 and was registered under no T-75/92.

21 By documents lodged at the Court Registry on 20 October 1992 the Parliament raised the objection that the application in Case T-57/92 was inadmissible. By order of 2 February 1993 the decision on that objection was reserved for the final judgment. Upon hearing the report of the Judge-Rapporteur, the Court (Fifth Chamber) decided to open the oral procedure without any preparatory inquiry.

22 By order of 25 June 1993 the applications lodged on 12 August and 22 September 1992 were joined for the purposes of the oral procedure and the judgment.

23 The parties presented oral argument and replied to the Court's questions at the hearing on 13 July 1993.

Forms of order sought by the parties

24 In Case T-57/92 the applicant claims that the Court should:

(1) declare the application admissible and well founded;

(2) consequently, annul the appointing authority's decision of 10 December 1991 and, so far as necessary, the implied decision rejecting the applicant's complaint of 15 January 1992, and grant the applicant the right to payment of the resettlement allowance together with default interest at the rate of 8% from 7 October 1991, and also exempt him from any repayment of the installation allowance granted to him;

(3) in any event, order the defendant to pay all the costs, as provided in Articles 90 and 91 of the Rules of Procedure of the Court of First Instance.

In Case C-75/92 the applicant claims that the Court should:

(1) declare the application admissible and well founded;

(2) annul the appointing authority's decision of 10 December 1991 and, so far as necessary, the implied decision rejecting his complaint of 24 February 1992, and grant the applicant the right to payment of the resettlement allowance equal to two months' salary, together with default interest at the rate of 8% from 7 October 1991;

(3) in any event, order the defendant to pay all the costs, as provided in Articles 90 and 91 of the Rules of Procedure of the Court of First Instance.

25 In Case T-57/92 the Parliament contends that the Court should:

(1) declare the application inadmissible;

(2) failing this, declare it unfounded;

(3) make an order as to costs in accordance with the provisions applicable.

In Case T-75/92 the Parliament contends that the Court should:

(1) declare the application unfounded;

(2) make an order as to costs in accordance with Articles 87(2) and 88 of the Rules of Procedure of the Court of First Instance.

Pleas in law and arguments of the parties

26 The first application seeks the annulment of the Parliament's decision of 10 December 1991 in so far as it requires, firstly, additional proof of the resettlement of the applicant and his family, such requirement being, according to the applicant, in breach of the principle of equal treatment, and, secondly, repayment of two-thirds of the installation allowance which, again according to the applicant, is contrary to the principle of *res judicata* and also contrary to Article 24(1) of the Conditions of Employment of Other Servants of the European Communities ('CEOS').

27 The second application seeks the annulment of the Parliament's decision of 10 December 1991 in so far as it refuses the applicant a resettlement allowance, which, according to him, is contrary to Article 24(2) of the CEOS.

Admissibility of the first application

— Arguments of the parties

28 The Parliament has raised an objection of inadmissibility against the first application. With regard to the first subject of the application, namely the requirement of additional proof of the applicant's resettlement, the Parliament contends that it is clear from the applicant's claims that this is an action 'for a declaration' and not an action for annulment. It is settled case-law that the Court refuses to issue directions to the institutions or to assume their role (Case T-19/90 *Von Hoessle* v *Court of Auditors* [1991] ECR II-615).

29 In its defence, the Parliament also contends that, in so far as the applicant seeks the annulment of the letter from the Director General for Personnel, the Budget and Finance of 10 December 1991 inasmuch as it contains a requirement of proof, those claims are also inadmissible. To that extent the letter does not constitute an act adversely affecting an official. Consequently, the applicant's letter of 15 January 1992 cannot constitute a complaint within the meaning of Article 90(2) of the Staff Regulations of the European Communities, made applicable to members of the temporary staff by Article 46 of the CEOS. The object of the letter of 15 January 1992, which, according to the Parliament, is admittedly a complaint with regard to the question of recovery of the undue payment linked to the payment of the installation allowance, was, so far as the resettlement allowance was concerned, to obtain a response to the applicant's original request of 7 October 1991. The letter cannot be a complaint in this respect, because the period of four months laid down by Article 90(1) of the Staff Regulations, which began to run on 7 October 1991, had not expired on 15 January. The Parliament finds proof of this in the fact that the applicant, correctly, lodged a genuine complaint in this respect on 24 February 1992 and that the parallel case T-75/92 is proceeding in that context.

30 With regard to the second subject of the application, namely repayment of the installation allowance, the Parliament states that these claims have no purpose. The appointing authority gave a positive reply to the applicant's complaint on 2 April 1992, that is to say, before the expiry of the time-limit for a reply. That reply was confirmed by letter of 11 June 1992. The Parliament contends that the slip of the pen in the later letter, which referred to a 'resettlement' allowance instead of the 'installation' allowance could not have misled the applicant because of the context of the mistake, which clearly indicated that the installation allowance was meant.

31 The applicant replies, as regards the first subject of the application, that the action does not seek a declaration, but the annulment of the decision of 10 December 1991, which required him to provide additional proof of his resettlement. He adds that his application for a declaration is a logical consequence of his application for annulment in the context of a dispute of a pecuniary nature in respect of which the Court of First Instance has unlimited jurisdiction.

32 In his reply the applicant states that the letter of 10 December 1991 is indeed an act adversely affecting him which he can seek to have annulled independently of the second application. In that letter the appointing authority 'refused to recognize that the applicant's situation so far as proof was concerned was in order' and thus contravened the provisions of its Notice of February 1991 to temporary staff concerning the termination of their service ('Notice of February 1991', reply, pp. 4 and 5).

33 The applicant discontinues the action so far as the second subject of the application is concerned which, he admits, has become devoid of purpose. However, he contends that the Parliament's attitude compelled him to bring an action although a favourable decision had already been taken. The letters of 19 March and 2 April 1992 never reached him, while the letter of 11 June 1992 was ambiguous as it referred to a 'resettlement' allowance instead of an installation allowance and he received no reply to his request for clarification on this point. He considers, therefore, that this should be taken into account when apportioning the costs.

— Findings of the Court

34 The Court takes formal note *in limine* that the applicant has withdrawn his application in so far as it relates to repayment of the installation allowance.

35 It must first be observed that the remainder of the application must be construed, not as an action for a 'declaration', as the Parliament claims, but as an action for annulment of the letter of 10 December 1991.

36 With regard to the admissibility of the action, it has been consistently held that only measures producing binding legal effects of such a kind as to affect the applicant's interests by bringing about a distinct change in his legal position constitute acts against which an action for annulment may be brought, and that such measures are those which definitively establish the position of the institution and are not provisional measures intended to pave the way for the final decision, which can only be contested incidentally in an appeal against measures capable of being annulled (see, for example, the judgments of the Court of Justice in Case 11/64 *Weighardt* v *Commission* [1965] ECR 365 and Case 346/87 *Bossi* v *Commission* [1989] ECR 303, and the judgment of the Court of First Instance in Joined Cases T-32/89 and T-39/89 *Marcopoulos* v *Court of Justice* [1990] ECR II-218, paragraph 21).

37 In the present case, the letter of 10 December 1991 from the Director-General for Personnel, the Budget and Finance states as follows: 'Thank you for your letter of 7 October 1991 claiming a resettlement allowance following the termination of your service on 31 December 1988. You were a member of the temporary staff of the European Parliament in Luxembourg from 1 June 1974 to 31 October 1987 and you were posted to Brussels from 1 November 1987 to 31 December 1988 with the group of the European People's Party. At the time of your change of posting you received a double installation allowance. As you know, you are entitled to a resettlement allowance equal to two months' basic salary if you produce proof of the resettlement of yourself and your family at the address mentioned in your letter. Please contact Mrs T. direct in Brussels for this purpose (BEL ... tel. ...).'

38 It is clear from the wording of that letter that it is a preparatory act which does not adversely affect the applicant. Firstly, it is intended to pave the way for the appointing authority's decision to grant or refuse a resettlement allowance to the applicant by informing him of his obligations concerning proof and of the particulars of the person responsible for his file. Secondly, the letter contains no reference to the document sent to the administration by the applicant on 22 November 1991 and cannot therefore be construed as taking a negative view of its adequacy. Thirdly, the letter does not formulate any additional requirement in relation to the Notice of February 1991, which states that 'it is necessary to produce a certificate of residence proving that your change of residence and, as the case may be, that of your family, has actually been carried out'.

39 It follows that the letter of 10 December 1991 cannot be regarded as an act adversely affecting the applicant and that therefore the action must be declared inadmissible in so far as it is directed against that letter.

Substance of the second application

— Arguments of the parties

40 In setting out the reasons which led him to bring the second action and the differences which distinguish it from the first, the applicant begins by stating that his first action sought the annulment of the Parliament's letter of 10 December 1991 in so far as it required proof of his resettlement other than the production of certificates of residence, whereas the second action seeks the annulment of the same letter in so far as it refuses in principle to grant him a resettlement allowance.

41 Secondly, he states that the Parliament would infringe Article 24(4) of the CEOS if it refused him the resettlement allowance equal to two months' basic salary because at the date of termination of his service he fulfilled all the conditions laid down by that provision. He maintains, in particular, that there is a resettlement of an official on termination of his service within the meaning of Article 24 of the CEOS where, first, the official has informed the local authorities that he has left his place of

employment and, second, he has informed the local authorities of his arrival in the municipality of the country where he has decided to resettle.

42 In the present case, the applicant puts forward the following matters in support of his submission that he has resettled in Mamer:

— the return by him in January 1989 of the special Belgian residence permit issued to him by reason of his last administrative posting, to Brussels;

— an application dated 13 March 1989 for a foreigner's identity card, giving 6 August 1973 as the 'date of entry' into Luxembourg, with no mention of any interruption in residence at Mamer since that date; foreigner's identity card issued on that basis to the applicant in September 1989 and valid until September 1994;

— a certificate of residence issued by the municipality of Mamer on 21 November 1991, certifying that he has been registered in its population registers since 6 August 1973 as having his permanent residence in Mamer;

— a declaration by the applicant dated 15 April 1992 to the effect that he is the owner of a private apartment in Ixelles (Belgium) used by him as a secondary residence or as a pied-à-terre, and an extract, issued on 3 November 1992, from the list of taxpayers of the municipality of Ixelles certifying that the applicant is registered on the list for local tax on secondary residences;

— several land tax assessments relating to his house in Mamer for 1990, 1991 and 1992;

— a certificate dated 18 November 1992 by Mrs J. Gr., a Member of the Parliament, stating that he was engaged by her as a research assistant.

43 The applicant protests against the Parliament's argument concerning the evidential value, for the purposes of the present action, of the residence permit issued to him by the Luxembourg authorities. According to the applicant, a residence permit is customarily issued to non-nationals of a State to place on record the authorization they have received to stay or settle in that State. In the present case, the residence permit of a national of the European Communities issued to the applicant by the Luxembourg authorities constitutes 'authorization for permanent settlement' and is valid for five years. The applicant fails to see how he could have been authorized to settle in Luxembourg, and in Mamer in particular, without having first resettled in Mamer.

44 Although he accepts that the issue of his residence permit was probably made easier by his previous settlement in Mamer and by the fact that he owns a house there, he considers that it is going too far to suggest that the issue of the permit does not necessarily mean that he is actually settling in Mamer. To claim the contrary would amount to calling into question the effectiveness of the Luxembourg administrative authorities in applying the regulations for the control of aliens, or to alleging that his residence permit was issued merely as a favour.

45 The applicant adds that if, as the Parliament contends, he never settled in Mamer, his residence permit has become invalid because it is provided that 'the residence permit shall cease to be valid if the holder resides outside the Grand Duchy for more than six months without interruption'. However, the validity of his permit had never been questioned by the Luxembourg authorities.

46 He concludes that, unless it wishes to challenge the actual validity of his residence permit, the Parliament cannot contend that the permit and the settlement it authorizes in Mamer do not depend on his prior resettlement there.

47 Furthermore, he denies that the Parliament's submissions concerning his divorce proceedings are relevant. The terms used by the Luxembourg courts in the context of the divorce proceedings have a special meaning which is delimited by the characteristics of the proceedings in question and by the statutes and regulations and

the relevant case-law. Their meaning cannot be transposed to the context of a dispute concerning the Community civil service.

48 The Parliament replies that payment of the resettlement allowance is subject to a change in the place of residence (see, most recently, the judgment of the Court of Justice in Case 79/82 *Evens* v *Court of Auditors* [1982] ECR 4033), to the actual transfer of the habitual residence to the new place indicated as being that of resettlement, to the existence of a genuine and effective connection between the former official and that place, and the establishment of his principal residence at that place.

49 The Parliament adds that the fact that a person has his actual residence in one place does not, of course, prevent him from having a second residence elsewhere, but a fictitious home cannot give rise to the grant of a resettlement allowance. Thus in *Gutmann* v *Commission* Advocate General Mancini found that an alleged resettlement in Paris was wholly fictitious notwithstanding the production of a certificate of permanent residence issued by the authorities of that city (see Opinion in Case 92/82 [1983] ECR 3127, 3136). Similarly, the Court of Justice has acknowledged that 'an official residence permit has a specific function only in connection with national provisions on registration and it does not of itself prevent the permit holder from in fact having his actual residence elsewhere' (Case 284/87 *Schäflein* v *Commission* [1988] ECR 4475).

50 The Parliament intends to refute the evidence relied upon by the applicant in order to establish that he has actually resettled in Mamer.

51 With regard to the return by the applicant of his special Belgian residence permit in January 1989, the Parliament states that this was necessary for the simple reason that the applicant's service in the Parliament ceased at the end of 1988. Such a permit, like that of the spouse, becomes invalid and must be returned automatically as soon as the principal holder loses the status of an official. The return of the permit certainly does not mean that the applicant informed the Belgian authorities of his departure or, *a fortiori*, that he transferred his residence from Brussels to Mamer.

52 It is likewise unclear to the Parliament how the applicant could have informed the local authorities of his departure because his residence certificate clearly shows that he has always been registered in Mamer and never in the Brussels district of Ixelles. This is confirmed by the applicant's own statement that 'registration was not effected in the municipality of Brussels as I left at once for the Grand Duchy of Luxembourg'.

53 As regards the residence permit and the residence certificates relied upon by the applicant, the Parliament finds, firstly, that neither the application for a foreigner's identity card, nor the residence permit, nor the residence certificate prove the applicant's resettlement in Mamer after leaving Brussels. Those documents show that the applicant has always been registered in the population registers for the municipality of Mamer since 1973 and that consequently that authority was never informed of his departure for Brussels in January 1988. If those documents are to be believed, since 1973 the applicant has always had his residence in Mamer and at no time transferred it to Brussels; still less did he resettle in Mamer after leaving Brussels.

54 Secondly, the Parliament stresses that the abovementioned documents are based on the applicant's own declarations. In the absence of notification of departure for Brussels, the present registration in the population registers of Mamer is still based on the very first registration following the applicant's first entering Luxembourg in 1973, whether subsequently confirmed or not by later declarations by the applicant to the local authority. It is unnecessary to point out that the issue of the residence permit and the residence certificates also arises from this same registration in Mamer.

55 With regard to the second residence in Brussels, the Parliament observes that the documents relating to this were produced by the applicant himself after commencing the present proceedings (his statement of April 1992) or were issued on the basis of that statement (extract from the list of taxpayers issued on 3 November 1992). The latter originates in the fact that he is the owner of an apartment in Ixelles and is not registered in the population registers of that district. Furthermore, the fact that he has a pied-à-terre at the place of his former posting, Brussels, does not prove actual residence in Mamer.

56 As regards the contract concluded with a member of the Parliament, the Parliament contends that the document which has been produced shows that the applicant has his principal place of work in the Federal Republic of Germany, from where he has to carry out various tasks in all the Member States of the Community. Although, in his reply, the applicant notes that 'in connection with his post as assistant to a Member of the Parliament, he is often called upon to work outside Luxembourg, particularly in Brussels', the Parliament still does not see how all these statements can support the argument that he has actually resettled in Mamer.

57 The Parliament adds that in so far as the documents and the arguments put forward by the applicant are intended to prove his resettlement, they contradict the documents, facts and statements mentioned below, which do not in any way confirm the applicant's contention that he resettled at his address in Mamer at the beginning of 1989 or even later.

58 Firstly, the Parliament observes that on 8 August 1988, in an order prescribing interim measures during the divorce proceedings, the Judge of the Tribunal d'Arrondissement, Luxembourg, who heard the application for interim relief authorized the applicant's wife to reside separately from him in Mamer during the proceedings, prohibited him from disturbing her there and dismissed his counterclaim to be allowed to reside in the same building as his wife while he was working and living in Brussels. However, if the residence certificate which the applicant has produced is to be believed, he always lived in a house which, by a court order, he was prohibited from entering.

59 Secondly, the Parliament refers to various Luxembourg judgments given in proceedings between the applicant 'residing in Brussels' and Mrs G. during the period from 8 February 1989 to 8 July 1992.

60 Thirdly, the Parliament refers to several letters it received from the applicant or his wife. In a letter dated 15 June 1990 the applicant mentioned the statement that the minimum period of *de facto* separation had expired on 12 June 1990, the date of the last pleadings in the divorce proceedings. By letter dated 19 June 1990 Mrs G. stated that she was living in Mamer separately from her husband and, producing

the interim order of 8 August 1988, requested payment, on the basis of the separation, of household, education and dependent child allowances to her own account in Luxembourg. By letter of 7 October 1991, the applicant himself stated, 'I shall leave my present residence in Brussels ... and return to Mamer'. By letter of 11 December 1991, that is to say shortly after submitting the request for a resettlement allowance and at the same time as the request for 'transfer of his financial rights', the applicant asked that his mail continue to be sent to him at his Brussels address on the ground that he assumed that his wife in Mamer would not forward it to him.

61 The Parliament concludes from all this that the applicant actually resided in Brussels during the divorce proceedings (from 1989 to 1992) and expresses very considerable doubts as to whether in reality he transferred his actual residence to Mamer. It suggests that there is a strong presumption that the applicant's official residence in the municipality of Mamer was fictitious. The documents he has produced cover long periods during which he certainly was not living in Mamer, particularly the documents concerning his divorce, a statement by his former wife and his own statements.

62 The Parliament concludes that, in view of what is stated in the documents produced by the applicant, their origin and the inconsistencies contained in them, and having regard to the documents or information in its possession which contradict the contention that he had resettled in Mamer, it was unable to pay him a resettlement allowance.

— Findings of the Court

63 The Court observes *in limine* that the action must be regarded as directed against the implied decision of 7 February 1992 rejecting the applicant's request of 7 October 1991, and not against the letter of 10 December 1991, which does not adversely affect the applicant.

64 It follows from Articles 5(1) and 6(1) of Annex VII to the Staff Regulations, in conjunction with Article 24 of the CEOS, that a member of the temporary staff

who received an expatriation allowance or who proved that he had had to change his residence in order to fulfil his obligations under Article 20 of the Staff Regulations is entitled to a resettlement allowance equal to two months' basic salary on the termination of his service. The allowance is paid on proof of the resettlement of the official and his family in a place not less than 70 kilometres from his place of employment, and on condition that resettlement takes place not later than three years after the termination of his service.

65 It has been consistently held by the Court of Justice that the payment of a resettlement allowance is conditional upon there being a change in the place of residence (see, most recently, the judgment in *Evens,* cited above), that is to say, the actual transfer of the official's habitual residence to the new place indicated as being that of resettlement.

66 It follows that it is for the official to show, by any legally permissible means, that he actually changed his place of residence in the three years following the termination of his service. In order to facilitate relations between officials and the administration with regard to proof of resettlement, in February 1991 the Parliament circulated a notice requiring officials to produce 'a certificate of residence *proving* that the *change* of residence ... has *in fact* been effected'. That notice confirms the official's obligations regarding proof and further specifies the document to be produced by him. Consequently, the certificate of residence is in principle sufficient proof of an official's resettlement unless the appointing authority puts forward evidence calling question its probative value, in which case the official must produce additional evidence to prove that his '*change* of residence has in fact been effected'.

67 Before considering whether, in the present case, the Parliament has put forward any circumstances such as to cast doubt on the probative value of the residence certificate of 21 November 1991, it should be observed that the applicant has not specified the date on which he allegedly resettled in Mamer, and that he admits that his resettlement had to take place before 31 December 1991, that is to say, three years

after the termination of his service, in order to entitle him to the resettlement allowance. Consequently, any evidence of resettlement after that date is irrelevant.

68 Furthermore, the Court finds that the applicant's resettlement could not have been prior to 7 October 1991. In his request of that date for payment of the resettlement allowance he stated: 'I should like to submit my request for the resettlement allowance following my change of residence. In fact, I *shall leave* my *present* residence in Brussels ... and return to Mamer'. Thus the applicant clearly indicated that on 7 October 1991 he was still living in Brussels and that he intended to transfer his residence to Mamer. The words used in the request are corroborated on this point by the applicant's statement of 9 November 1988, in which, with the termination of his service in mind, he stated: 'I choose my residence as from 1 January 1989 at ... current residence ... Brussels'. This shows that, on the termination of his service, it was not the applicant's intention to change his place of residence in the immediate future. This evidence is reinforced by a letter from the applicant dated 11 December 1991, by which he informed the Parliament of his new account number in Luxembourg, following his letter of 21 November 1991, and in which he stated: 'Da ich vermuten muß, daß Frau G. in Mamer mir meine Post nicht übergeben wird, möchte ich Sie bitten(, sie) an meine Brüsseler Anschrift weiterzuversenden, bis die Scheidung ausgesprochen ist.' ('As I must presume that Mrs G. in Mamer will not give me my mail, would you please forward (it) to my Brussels address until the divorce is granted.') The tenor of these last two letters was clarified by the applicant in his reply as follows: '... Although, at first, the applicant stated that, *in maintaining* his residence in Brussels, he wished his financial rights to be exercised there, in view of the *new* authorization for settlement in Mamer which *had just* been granted to him, the applicant quite logically asked for the transfer of the place for exercising his financial rights'. In addition, mention must be made of the appointing authority's decision of 17 December 1991, following the applicant's letter of 11 December 1991, to transfer his financial rights with effect from 1 December 1991 only.

69 It follows that the applicant's resettlement could not have taken place before 7 October 1991 and that, for him to be entitled to the resettlement allowance, it had to take place before 31 December 1991. The evidence he has produced need, therefore, be examined only in so far as it is capable of establishing his resettlement in Mamer between these two dates.

70 During the period in question, and in relation to it, the applicant produced a certificate of residence dated 21 November 1991 and issued by the municipality of Mamer. The Court considers that is must in the present case examine the question whether the appointing authority had any reason, at the time when the certificate was produced, for doubting its probative value regarding the applicant's resettlement and for requiring the production of evidence other than that referred to in the Notice of February 1991.

71 On that point it should be noted, firstly, that the time and the actual terms of the request of 7 October 1991 for the resettlement allowance justified the Parliament in questioning whether the applicant had actually resettled. The appointing authority was aware that the three-year time limit expired one month and ten days after the production of the residence certificate and that, as at 7 October 1991, the applicant had still not resettled in Mamer. Secondly, his letter of 11 December 1991 was such as to confirm these doubts because it asked for his mail to be sent in future to his former, and not to his supposed current, address on the ground that he feared that his wife, with whom he was involved in divorce proceedings, would not forward it to him. In doing this, the applicant reminded the appointing authority that he was at that time involved in divorce proceedings in the context of which he had been prohibited, by order of 8 August 1988, from residing at the address at which he claimed he had resettled.

72 Furthermore, the Court finds that the certificate of residence produced by the applicant does not in itself in any way prove a change in the place of residence because it shows that the applicant has always, since 1973, been registered in the population registers of the municipality of Mamer, including periods during which it cannot be denied that he did not live in Mamer, for instance, from January 1988 to 7 October 1991. As this document does not refer to his departure for Brussels in January 1988, it cannot prove his resettlement in Mamer because it is the result of his very first registration in the population registers of Mamer following his first entry into Luxembourg in 1973. It can therefore under no circumstances constitute a certificate of residence *proving* that *a change* of residence was *actually* effected for the purposes of the Notice of February 1991. These various factors were sufficient to justify the Parliament in requesting the applicant to produce additional evidence of his resettlement in Mamer.

73 The Court finds that the additional evidence finally produced by the applicant is not such as to prove that he resettled in Mamer between 7 October 1991 and 31 December 1991. As the Parliament has stated, neither the application for a foreigner's identity card nor the card itself, as produced by the applicant, prove his actual resettlement in Mamer after leaving Brussels during the period in question because those documents are dated 13 March and September 1989 respectively. The fact that he returned his special Belgian residence permit does not establish that he informed the Belgian authorities that he was leaving or, *a fortiori*, that he had transferred his residence from Brussels to Mamer, but only that he was no longer in the service of the Communities. With regard to the other documents produced by the applicant, such as those concerning tax, it should be observed that the Belgian documents relate to a period after the period in question and that they are the result of a declaration made by the applicant in Ixelles on 15 April 1992. So far as the Luxembourg documents are concerned, they are solely the result of the fact that he has owned a house in Mamer for many years. The probative value of the address to which they were sent for the applicant is destroyed by the fact that that address is stated in these documents for periods when he was not residing in Mamer, for example, on 23 November 1990.

74 It follows from all the foregoing considerations, and in the light of the various documents which the Parliament has produced in this action, in particular those concerning the applicant's divorce proceedings and the establishment by him of a new home in Belgium, that the Parliament was justified in refusing, for the reasons of which it informed him in the letter of 3 April 1992, to pay him a resettlement allowance on the basis of that evidence.

75 The application must therefore be dismissed.

Costs

76 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. However, under Article 88 in proceedings between the Communities and their servants the institutions are to bear their own costs.

77 In the present case no exception should be made to this rule, as the applicant requests. He cannot claim that the sole reason for his first action was the Parliament's attitude concerning the installation allowance which he had received, because the action related not only to this, but also the resettlement allowance which he claimed.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby:

1. Dismisses the applications;

2. Orders the parties to bear their own costs.

Barrington Lenaerts Kalogeropoulos

Delivered in open court in Luxembourg on 28 September 1993.

H. Jung A. Kalogeropoulos

Registrar President