

between the Communities and the official has been sufficiently consolidated by two years spent by the official in the service of the Communities. On the other hand the Communities' responsibility for paying the installation allowance in part is provided for where the official leaves the service of the Communities less than two years after entering it. It would be contrary to the proper management of public funds for the Communities to assume full responsibility for paying the installation allowance of an official with

whom, as a result of an act on his part, the service relationship has not been consolidated.

3. When the settlement of the official and his family is established the official does not have to show either the existence of actual expenses or how long he settles with his family in order to receive the installation allowance equal to two months' basic salary.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)  
30 January 1990 \*

In Case T-42/89

**Wolfdieter Graf Yorck von Wartenburg**, a temporary official with the Group of the European People's Party in the European Parliament, residing in Brussels and represented by Victor Elvinger, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 11 A boulevard Joseph-II, Monterey Palace,

applicant,

v

**European Parliament**,

defendant,

\* Language of the case: French.

APPLICATION for the annulment of the decision of the Parliament of 29 February 1988 by which it refused to pay the applicant the installation allowance provided for in Article 5 of Annex VII to the Staff Regulations amounting to two months' basic salary,

THE COURT OF FIRST INSTANCE (Third Chamber)

composed of: S. Saggio, President of Chamber, C. Yeraris and K. Lenaerts (Rapporteur), Judges,

Registrar: H. Jung

having regard to the written procedure and further to the hearing on 16 January 1990,

gives the following

**Judgment**

- 1 By application received at the Court Registry on 11 August 1988, Wolfdieter Graf Yorck von Wartenburg, a temporary official with the Group of the European People's Party in the European Parliament, brought an action for the annulment of the Parliament's decision of 29 February 1988 refusing to grant him the installation allowance and in so far as necessary the Parliament's decisions of 11 May and 18 July 1988 rejecting the complaints made against that refusal. In addition the applicant asked the Court of First Instance to order the Parliament to pay him the installation allowance equivalent to two months' basic salary and to pay the costs.
- 2 The written procedure took place entirely before the Court of First Instance.
- 3 The Parliament did not lodge its defence within the prescribed time-limit. After obtaining a first extension until 17 November 1988 of the time-limit for lodging the defence, originally due to expire on 17 October 1988, and a second extension to 17 December 1988, the Parliament, by letter received at the Court Registry on

19 December 1988, requested a third extension of the time until 17 February 1989. Because of its belated nature the third request was rejected.

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- 4 By letter received at the Court Registry on 6 January 1989 the Parliament requested the Court of First Instance to reopen the period for lodging the defence pursuant to Article 42 of the Protocol on the Statute of the Court of Justice. In support of its application it referred to attempts to reach an amicable settlement of the case with the applicant and a misunderstanding, as regards the expiry of the period in question, on the part of the Secretariat of the Head of the Division responsible for the case in the Parliament's Legal Department. By letter dated 18 January 1989 the Court of First Instance informed the Parliament that since the circumstances referred to in the above letter were not of such a nature as to establish the existence of a case such as provided for in Article 42 of the Protocol on the Statute of the Court of Justice, its application was rejected.
- 5 By application lodged at the Court Registry on 30 January 1989 and registered the following day the applicant applied to the Court of Justice pursuant to Article 94(1) of its Rules of Procedure for judgment by default.
- 6 On the conclusion of the written procedure the Court of Justice referred the case to the Court of First Instance pursuant to the Decision of the Council of 24 October 1988 establishing a Court of First Instance of the European Communities. Upon hearing the Report of the Judge-Rapporteur the Court of First Instance decided to open the oral procedure without any preparatory inquiry.

### **The facts of the case**

- 7 The facts, as they appear from the documents before the Court are as follows:
  - (i) by a contract of 12 June 1974 the applicant was employed as a temporary official with the Group of the European People's Party. On that basis he worked in Luxembourg until 31 October 1987;

- (ii) by an addendum dated 27 October 1987 endorsed on the contract of 12 June 1974 the parties agreed that with effect from 1 November 1987 the applicant would be posted to Brussels (Post No 5051);
- (iii) on 4 January 1988 the applicant and his wife removed by means of their private motor car from Mamer (Grand Duchy of Luxembourg) to Brussels;
- (iv) on 4 March 1988 the applicant's wife returned to her previous home in Mamer;
- (v) on 31 December 1988 the applicant's service as a temporary official of the Parliament was terminated following his acceptance of a proposal to that effect from the Parliament on the occasion of the enlargement of the Communities by the Accession of Spain and Portugal; he continues to live in Brussels.

8 Pursuant to Article 94(2) of the Rules of Procedure of the Court of Justice, applicable *mutatis mutandis* to the Court of First Instance pursuant to the Council Decision of 24 October 1988, the Court of First Instance must, before giving judgment by default, consider whether the originating application is admissible, whether the appropriate formalities have been complied with and whether the applicant's submissions appear well founded.

### **Admissibility**

9 The admissibility of the action must be considered in the light of Article 91(2) and (3) of the Staff Regulations of the European Communities. It is apparent from the documents before the Court that the following steps were taken:

- (i) on 3 December 1987 the applicant made a request within the meaning of Article 90(1) of the Staff Regulations for the grant of an installation allowance pursuant to Article 5 of Annex VII to the Staff Regulations. On 29 February 1988 the Director-General for Staff, Budget and Finances of the Parliament rejected the request;

- (ii) on 5 April 1988 the applicant made a complaint under Article 90(2) of the Staff Regulations against that decision rejecting his request. On 11 May 1988 the Director-General for Staff, Budget and Finances of the Parliament rejected that complaint;
- (iii) on 24 May 1988 the applicant made a fresh complaint which was in turn rejected on 18 July 1988;
- (iv) on 11 August 1988 the applicant brought the present action.

10 Since a complaint within the meaning of Article 90(2) was submitted, prior to the action, to the appointing authority within the period prescribed in that provision, and since that complaint was rejected by a decision and the present action was brought within three months of that decision, the action is admissible.

### **Compliance with the formalities**

11 It is clear from the documents before the Court that the application was duly served on the Parliament. The latter has thus been duly served within the meaning of Article 94(1) of the Rules of Procedure.

### **Substance**

12 In his application the applicant challenges the two grounds cited by the Parliament in its letter of 29 February 1988 to justify rejection of the request to grant him the installation allowance. The relevant part of that letter is worded as follows:

‘According to the case-law of the Court of Justice “the specific and characteristic purpose of an installation allowance is to enable an official to bear, in addition to removal expenses, the inevitable expenses incurred through integrating in new surroundings for an indeterminate but substantial period of time”.

I find:

- (1) that you have owned your house at Ixelles since 1981 and that you do not contemplate moving home which suggests, unless you prove the contrary, that your posting to Brussels does not involve you in installation costs;
- (2) that you have requested the termination of your service at the end of 1988 and thus that perhaps you do not contemplate "settling in new surroundings for an indeterminate but substantial period of time", again unless you prove the contrary.'

13 In his statement lodged on 30 January 1989 the applicant referred to correspondence, which he produced, between himself and the Parliament, comprising a letter from the Parliament to him dated 17 November 1988 and his lawyer's reply dated 12 January 1989.

14 In its letter of 17 November 1988 the Parliament acknowledged that reconsideration of the applicant's file showed that the applicant had indeed settled in Brussels within the meaning of Article 5 of Annex VII to the Staff Regulations. It continued its letter as follows:

'Article 5(5) however provides:

"An established official who has received an installation allowance and who voluntarily leaves the service of the Communities within two years from date of entering it shall, on leaving the service, refund part of the allowance, in proportion to the unexpired portion of that two-year period."

Since it is at present certain that you will leave the European Parliament at the end of this year and that your wife has already resettled in Luxembourg at the beginning of March 1988 (as she stated in a letter dated 17 March 1988), it appears that by application of the paragraph quoted above the amounts to which you would be entitled represent 14/24 (14 months out of a minimum of 24) in respect of the part which directly concerns you plus 4/24 of the part of the allowance relating to your wife, which makes in all 3/4 of salary.'

The Parliament added that it would assume responsibility for the costs occasioned before the Court of Justice in the present action.

15 In his letter of 12 January 1989 addressed to the Parliament the applicant rejects the solution proposed by the Parliament both as regards himself and his wife. In his opinion Article 5(5) of Annex VII to the Staff Regulations does not apply because 'his "entering the service" dates much further back than the two years contemplated by Article 5(5)'. The applicant thus challenges the interpretation of Article 5(5), adopted by implication by the Parliament in its letter of 17 November 1988, according to which the two years mentioned in that provision begin to run only from the entering the service which gives rise to the grant of the installation allowance, that is to say, in the present case, from 1 November 1987, namely 14 months before the termination of the applicant's service.

16 Article 5 of Annex VII to the Staff Regulations applies in the present case by virtue of Article 22 of the Conditions of Employment of Other Servants. Consideration of the wording of Article 5(5) in the nine Community languages shows that the Danish, Dutch, English, German, Italian and Spanish versions refer solely to the notion of service of the Communities in order to designate both the point in time at which the period of two years referred to in that provision begins to run (entering the service) and the point in time in relation to which the period falls to be determined (the time when the official leaves the service of the Communities). On the other hand, although the French, Greek and Portuguese versions also refer to the notion of service of the Communities in order to designate the point in time in relation to which the period of two years referred to in that provision falls to be determined (the time when the official leaves the service of the Communities) they employ the concept of taking-up of duties to designate the point in time from which the period begins to run. The latter versions could leave room for the interpretation proposed by the Parliament.

17 That interpretation is however contradicted by the other language versions of the provision in question from which it is clear that the 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.

- 18 That solution is corroborated by the structure of the provision in question. Reimbursement by the official of part of the installation allowance calculated proportionately to the part of the period of two years 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. On the other hand the Communities' responsibility for paying the installation allowance in part is provided for where the official leaves the service of the Communities less than two years after entering it. It would be contrary to the proper management of public funds for the Communities to assume full responsibility for paying the installation allowance of an official with whom, as a result of an act on his part, the service relationship has not been consolidated.
- 19 It is sufficient, in order to be persuaded that this solution is the right one, to take the case of an official with 30 years' service who, six months before the voluntary termination of his service, is posted to a new place of employment. According to the Parliament's argument he would be entitled by reason of the short duration of his installation, to only a quarter of the installation allowance, which would be not only unjust but also contrary to the wording and spirit of Article 5(5) of Annex VII to the Staff Regulations.
- 20 In that respect it must also be pointed out that according to Article 7 of the Staff Regulations assignment to a post takes place solely in the interests of the service, regardless of whether the assignment accords with the wishes of the person concerned. It follows that the applicant's assignment to a new place of employment could not have taken place unless the interest of the service required it.
- 21 Moreover the reduction to 4/24 'in respect of the part' relating to the applicant's spouse, proposed by the Parliament in its letter of 17 November 1988, can find no basis in any provision and is incompatible with the reasoning which has just been set out. It also disregards the fact that, as is clear from the provisions of Article 5 of Annex VII to the Staff Regulations, the installation allowance received by the official who settles with his family is indivisible in nature.

22 In that connection, the flat-rate nature of the installation allowance, as is apparent from Article 5(1) to (3), should be noted. Under Article 5(1) and (2) an installation allowance, equal to two months' basic salary, is payable to an official who is entitled to the household allowance and who is transferred to a new place of employment and is thereby obliged to change his place of residence in order to comply with Article 20 of the Staff Regulations. According to Article 5(3) the allowance is calculated by reference to the official's marital status and salary on the date of his transfer to the new place of employment and it is paid on production of documents establishing the fact that the official together with his family has settled at the place where he is employed.

23 It follows that when it is established that the official and his family have so settled the official does not have to show either the existence of actual expenses or how long he settles with his family in order to receive the installation allowance equal to two months' basic salary.

24 In consequence the applicant is entitled to an installation allowance equal to two months' basic salary since he settled with his wife at his new place of employment and he had been in the service of the Communities for more than two years when he left their service.

25 It follows that the application must be allowed.

### Costs

26 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 successful party's pleadings. 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 decision of the Parliament refusing to grant the applicant the installation allowance equal to two months' basic salary;**
- (2) **Orders the Parliament to pay the applicant the installation allowance provided for in Article 5 of Annex VII to the Staff Regulations equal to two months' basic salary;**
- (3) **Orders the Parliament to pay the costs.**

Saggio

Yeraris

Lenaerts

Delivered in open court in Luxembourg on 30 January 1990.

H. Jung  
Registrar

A. Saggio  
President of the Third Chamber