JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
12 December 2000 *

In Case T-11/00,

Michel Hautem, a servant of the European Investment Bank, residing in Schouweiler (Luxembourg), represented by M. Karp and J. Choucroun, of the Luxembourg Bar, with an address for service in Luxembourg at the Chambers of M. Karp, 84 Grand-Rue,

applicant,

v

European Investment Bank, represented by J.-P. Minnaert, Principal Legal Adviser in the Legal Affairs Directorate, acting as Agent, assisted by G. Vandersanden, of the Brussels Bar, with an address for service in Luxembourg at the seat of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

* Language of the case: French.

APPLICATION for compensation for the non-material damage which the applicant claims to have suffered by reason of the refusal of the European Investment Bank to comply with the judgment of the Court of First Instance of 28 September 1999 in Case T-140/97 *Hautem* v *EIB* [1999] ECR-SC I-A-171 and II-897,

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

composed of: R. García-Valdecasas, President, P. Lindh and J.D. Cooke, Judges,

Registrar: G. Herzig, Administrator,

having regard to the written procedure and further to the hearing on 12 September 2000,

gives the following

Judgment

Background to the dispute

1 The applicant entered the service of the European Investment Bank (EIB) on 16 December 1994 as a messenger attached to job category K at step K004.

2 On 31 January 1997 the President of the EIB decided, on the basis of Article 38, third paragraph, of the EIB Staff Regulations and pursuant to the reasoned opinion of the joint committee provided for under Article 40 of those Regulations, to dismiss the applicant without prior notice on grounds of grave misconduct, without loss of his severance grant, for infringement of Articles 1, 4 and 5 of the Staff Regulations (hereinafter 'the dismissal decision').

3 By application lodged at the Court Registry on 29 April 1997 the applicant brought an action for annulment (T-140/97) against the dismissal decision.

4 By judgment of 28 September 1999 in Case T-140/97 *Hautem* v *EIB* [1999] ECR-SC I-A-171 and II-897 (hereinafter 'the *Hautem* judgment'), the Court annulled the dismissal decision. In the operative part of that judgment, the Court:

1. Annulled the decision of the European Investment Bank of 31 January 1997 by which the applicant was removed from his post without loss of his severance grant;

2. Ordered the European Investment Bank to pay to the applicant the arrears of the salary which he should have received since his dismissal;

3. Dismissed the applications for compensation brought by the applicant;

4. Dismissed as inadmissible the application for damages brought by the European Investment Bank;

5. Ordered the European Investment Bank to bear its own costs and to pay the costs of the applicant.

5 By letter of 18 October 1999, counsel for the applicant called on the EIB to set out its position regarding compliance with the *Hautem* judgment. Counsel for the EIB replied, by letter of 22 November 1999, that it intended to appeal against that judgment but did not otherwise set out any position in regard to compliance with the *Hautem* judgment.

6 By statement of appeal lodged at the Registry of the Court of Justice on 26 November 1999, the EIB appealed against the *Hautem* judgment (Case C-449/99 P). The EIB based its appeal, in particular, on the contention that reinstatement of the applicant and payment of arrears of salary would be tantamount to conferring on servants of the EIB the status of officials whereas they are servants under contract.

7 The EIB did not apply for interim measures with a view to obtaining a stay of execution of the *Hautem* judgment.

8 By fax of 30 November 1999, counsel for the applicant requested the EIB to forward to him the salary scales and to establish the amount of arrears payable pursuant to the operative part of the *Hautem* judgment.

9 Counsel for the EIB replied by letter of 8 December 1999 as follows:

'The Bank considers it ... at the very least premature, if not contrary to the proper administration of justice, to accede to [that] request, which, inasmuch as it relates

precisely to the two paragraphs in the operative part of the judgment of the Court of First Instance, requires clarification by the judgment which the Court of Justice will deliver on the appeal. Payment of arrears of salary could result in reimbursement if the Court of Justice were to annul the Court of First Instance's judgment on this point.'

10 By fax of 21 December 1999 addressed to counsel for the EIB, the applicant's counsel called on the EIB to take the measures necessary to ensure reinstatement of his client and payment of his salary arrears. He also pointed out that, should no satisfactory response from the EIB be forthcoming, he would apply for interim measures to have the *Hautem* judgment enforced under threat of periodic penalties.

11 By fax of 22 December 1999, counsel for the EIB confirmed to counsel for the applicant that the EIB took the view that 'for reasons relating to the proper administration of justice and owing to questions of substance relating to the legality of the *Hautem* judgment, it did not have to reinstate Mr Hautem or pay the arrears of salary fixed in the judgment under appeal'.

12 By fax of 30 December 1999, counsel for the EIB indicated that the latter considered that 'it did not, for the moment, have to take any effective action' in response to the applicant's requests and that it maintained its position, as set out in the letters of 8 December 1999 and 22 December 1999.

Procedure and forms of order sought by the parties

13 The applicant brought the present action by application lodged at the Court Registry on 18 January 2000.

14 By separate document lodged at the Court Registry on 26 January 2000, the applicant applied for interim measures seeking in effect compliance with the *Hautem* judgment on pain of imposition of periodic penalties.

15 By separate document lodged at the Court Registry on 17 March 2000, the applicant applied for legal aid.

16 By order of 7 April 2000, the President of the Court dismissed the application for interim measures as inadmissible on the ground that the judge hearing such applications lacked the appropriate jurisdiction.

17 On 11 April 2000, the parties met informally with the President of the Fifth Chamber of the Court with a view to resolving the dispute amicably. The parties were unable to reach an agreement.

18 By letter of 5 June 2000, the applicant announced that he did not intend to lodge a reply.

19 By order of 26 June 2000, the President of the Fifth Chamber of the Court granted the applicant legal aid.

20 Upon hearing the report of the Judge-Rapporteur, the Court (Fifth Chamber) decided to open the oral procedure without any preparatory inquiry.

21 The parties presented oral argument and replied to the Court's questions at the public hearing held on 12 September 2000.

22 The applicant claims that the Court should:

— order the EIB to pay him the sum of EUR 60 000 as compensation for the non-material damage caused to him by its failure to comply with the *Hautem* judgment;

— order the EIB to pay the costs.

23 The EIB submits that the Court should:

— declare the application to be unfounded;

— order the applicant to pay the costs.

Substance

24 According to settled case-law, the Community will incur legal liability only if a set of conditions, regarding the illegality of the allegedly wrongful act committed by

the institution concerned, the suffering of actual harm and the existence of a causal link between the act and the alleged damage, are satisfied (Case C-136/92 P *Commission* v *Brazzelli Lualdi and Others* [1994] ECR I-1981, paragraph 42, and Case T-48/97 *Frederiksen* v *Parliament* [1999] ECR-SC I-A-167 and II-867, paragraph 44).

The unlawful conduct of the EIB

Arguments of the parties

25 The applicant submits that the EIB has seriously failed in its obligations by obstinately refusing to comply with a judgment, even though it is enforceable. This attitude on the part of the EIB is contrary not only to the applicant's interests but also to public policy.

26 In regard to the section in the operative part of the *Hautem* judgment concerning the EIB's obligation to pay him the arrears of salary which he should have received since his dismissal, the applicant submits that both his request to be informed of the exact amount to which he is entitled and his request to see the salary scales to enable him to calculate that amount were rejected by the EIB. The EIB also refused to reinstate the applicant.

27 The EIB contends that it explained to the applicant why it considered that it was in the interests of the proper administration of justice to wait for the judgment of the Court of Justice on the appeal lodged against the *Hautem* judgment, while at

the same time assuring him that it would comply with its obligations which would result definitively from the judgment of the Court of Justice, whatever those might be. It is therefore wrong to allege that the EIB has been guilty of inertia in complying with the *Hautem* judgment or that it has demonstrably refused to comply with that judgment.

28 The EIB claims that it refrained from any action liable to frustrate future compliance with the *Hautem* judgment and that it offered the applicant every guarantee of compliance once the issue of substance is definitively resolved. It thus proposed to the applicant to place on deposit an amount corresponding to the arrears of salary.

29 Consequently, the EIB continues, the applicant's challenge cannot relate to the EIB's obligation to comply in good faith and in full with the *Hautem* judgment. Such a challenge can relate solely to the period within which such compliance is to be effected.

30 The EIB submits that the reasonable period for compliance with the *Hautem* judgment falls, in this case, to be assessed in the light of the fundamental objection set out, in the appeal, against the ruling in that judgment and at present before the Court of Justice for assessment. It is vital that the Court of Justice should determine whether relations between the EIB and its staff are governed by staff regulations or are contractual in nature. The EIB also claims to have taken into account the legal certainty of the applicant, whose rights will be determined definitively only after the Court of Justice has delivered its judgment.

31 The EIB concludes that, in taking into account all the factors in this case and ensuring that the applicant's rights will be fully preserved in the event that the Court of Justice dismisses the appeal, it has not committed any fault such as to render it liable.

Findings of the Court

32 Article 41 of the EIB Staff Regulations provides: 'Disputes, of any nature, between the Bank and individual members of staff shall be brought before the Court of Justice of the European Communities'.

33 In its judgment in Case 110/75 *Mills* v *EIB* [1976] ECR 955, the Court of Justice ruled that any termination of the contract of a servant of the EIB which was contrary to the provisions of that contract or to the general principles of the law of master and servant could be declared void and, should that be the case, it was for the Court to make a declaration to that effect (paragraphs 25 and 26). The Court of Justice also stated that 'termination of a contract taking the form of "summary dismissal for grave misconduct", the penalty prescribed by Article 38 of the Staff Regulations of the Bank, might be declared void if the Court found that such misconduct had not occurred' (paragraph 27).

34 Under Article 233 EC, '[t]he institution or institutions whose act has been declared void or whose failure to act has been declared contrary to this Treaty shall be required to take the necessary measures to comply with the judgment of the Court of Justice'.

35 Article 242 EC provides that: 'Actions brought before the Court of Justice shall not have suspensory effect. The Court of Justice may, however, if it considers that circumstances so require, order that application of the contested act be suspended'.

36 It is clear from the documents in the present case not only that the EIB has not complied with the *Hautem* judgment but moreover that it refuses to do so before the Court of Justice has delivered its judgment in Case C-449/99 P.

37 By letters of 8, 22 and 30 December 1999, the EIB refused to accede to the requests of counsel for the applicant that it comply with the *Hautem* judgment on the ground that such compliance would be contrary to the proper administration of justice inasmuch as two paragraphs in the operative part of that judgment required to be clarified by the judgment to be delivered by the Court of Justice in Case C-449/99 P.

38 The fact remains that the EIB did not lodge an application for interim measures in order to obtain a stay of execution of the contested judgment. It cannot therefore argue that awaiting the judgment of the Court of Justice constitutes proper administration of justice. As stated above, the institution whose act has been declared void is required to take the measures necessary to comply with the judgment annulling that act. It is for the Court of Justice alone, should it consider that circumstances so require, to order that application of the contested act be suspended.

39 The EIB has argued in this regard that the reason why it had not considered it appropriate to seek a stay of execution was that, in view of the existing case-law on the matter, no stay would have been granted to it because a body such as the EIB could never prove irreparable damage. This condition governing any stay of execution would certainly be unsatisfied, it argues, since it could reasonably be argued that, in the event of a judgment upholding its appeal, it could use the legal means at its disposal to recover any amounts paid to the applicant. That being so, it appears that the EIB deliberately acted to apply a *de facto* stay of execution

which it considered that it could not secure by legal action and that its conduct therefore constitutes an infringement of the Treaty provisions.

40 So far as concerns the EIB's offer to place on deposit an amount corresponding to the arrears of salary which the applicant ought to have received since his dismissal, suffice it to hold that such a measure does not conform to the operative part of the *Hautem* judgment and cannot therefore be treated as a measure of compliance with that judgment. The EIB's assertion that such a measure would provide the applicant with all guarantees of proper compliance does not in any way alter this conclusion. It is for the Court of Justice alone to prescribe, pursuant to Article 243 EC, any interim measures which it may consider to be necessary; that is a prerogative which the EIB cannot arrogate to itself.

41 Nor can the EIB rely on the fact that the reasonable period for compliance with the *Hautem* judgment has not yet expired. Such an argument could be taken into account only if the EIB had begun to adopt the measures necessary for compliance with that judgment or had demonstrated its intention to take those measures without yet having had the time, for material or administrative reasons, to put them into effect. No such circumstances have been invoked by the EIB. Indeed, on the contrary, as is clear from the abovementioned correspondence and the statements made by counsel for the EIB at the hearing, the EIB has made clear its intention not to comply with the *Hautem* judgment but to wait for pronouncement of the judgment of the Court of Justice.

42 Finally, as regards the argument that it is vital that the Court of Justice should determine whether the link between the EIB and its staff is governed by staff regulations or is contractual, it must be remembered that compliance with the *Hautem* judgment does not prejudge the solution which the Court of Justice may give to such an issue in the context of the judgment on the appeal. Moreover, in its above judgment in *Mills* v *EIB* (paragraph 22), the Court of Justice ruled that: 'The system adopted for the relations between the Bank and its employees is ... contractual ...'.

43 It follows that the conduct of the EIB in refusing to take any specific measure to comply with the *Hautem* judgment amounts to an infringement of Article 233 EC and consequently constitutes unlawful conduct capable of rendering the Community liable (see, to this effect, Case T-84/91 *Meskens* v *Parliament* [1992] ECR II-2335, paragraph 81, upheld by the Court of Justice in Case C-412/92 P *Parliament* v *Meskens* [1994] ECR I-3757, and *Frederiksen* v *Parliament*, cited above, paragraph 96).

The existence of damage and of a causal link

Arguments of the parties

44 The applicant submits that he has suffered non-material damage by reason of the EIB's failure to comply with the *Hautem* judgment.

45 He points out that he, together with his family, is in a situation of uncertainty. Although he has obtained a favourable judgment, compliance with which would re -establish his rights, he must await the outcome of the appeal even though the EIB has not requested a stay of execution of that judgment.

46 The applicant submits in this regard that his present situation is extremely precarious since, apart from the ever-increasing financial problems resulting from

the decision to dismiss him, and notwithstanding the fact that he is entitled not to have to seek employment again, he is not in the situation of a servant of the EIB either.

47 Further, the failure to comply with the *Hautem* judgment leaves doubts as to the applicant's professional competence and integrity. Potential employers whom he might contact would be entitled to raise doubts as to his work-related qualities (Case T-59/92 *Caronna* v *Commission* [1993] ECR II-1129).

48 The EIB denies that there has been any non-material damage. In its view, it appears at the very least bold for the applicant to plead his integrity when he has been guilty of conduct which, even if it did not, in the Court's view, justify dismissal, was at least adjudged to be serious. In any event, the EIB asserts that it has not put in question, even indirectly, the integrity of the applicant, in particular *vis-à-vis* employers whom he has approached for the purpose of finding work.

49 Second, the EIB argues that there is no direct causal link between the alleged fault and the damage which the applicant pleads.

50 Given that the damage pleaded by the applicant relates to the consequences of the dismissal decision and not to those of non-compliance with the *Hautem* judgment, it has not been established that such damage would not have arisen had the EIB properly complied with that judgment.

Findings of the Court

51 With regard to damage, the refusal by a Community institution or body to comply with a judgment of the Court of First Instance, even if such a refusal is limited to the period between delivery of that judgment and that of the judgment to be delivered by the Court of Justice on the appeal, will adversely affect the confidence that litigants must have in the Community judicial system, which is based, in particular, on respect for the decisions made by the Community Courts. Consequently, irrespective of any material damage which might result from non-compliance with a judgment, an express refusal to comply with it will in itself involve non-material damage for the party who has obtained a judgment in his favour.

52 Furthermore, the unlawful conduct of the EIB has unquestionably placed the applicant in a prolonged state of uncertainty and anxiety with regard to the recognition of his rights and his professional future, whilst the indeterminate nature of his present work status has also caused him difficulties in finding employment. This situation manifestly constitutes non-material damage (*Meskens* v *Parliament*, cited above, paragraph 89, and *Frederiksen* v *Parliament*, paragraphs 110 and 112).

53 With regard to the causal link, suffice it to hold that the non-material damage incurred by the applicant is directly attributable to the EIB's decision not to comply with the *Hautem* judgment and would not have arisen had the EIB properly complied with that judgment.

54 It follows that the existence of a causal link between the unlawful conduct of the EIB and the damage caused has been established.

Conclusion

55 In view of the particular circumstances of this case and having regard to the significance of the non-material damage incurred by the applicant, the award of EUR 25 000 should represent appropriate compensation for that damage.

Costs

56 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, Article 88 of those Rules provides that in proceedings between the Communities and their servants the institutions are to bear their own costs.

57 Since the EIB has been unsuccessful in the main action, it must be ordered to pay all the costs in accordance with the form of order sought by the applicant.

58 Concerning the costs of the proceedings for interim measures, since the applicant has been unsuccessful, each party must be ordered to pay its own costs.

59 Pursuant to Article 97(3) of the Rules of Procedure, the decision as to costs may order payment to the cashier of the Court of the whole or any part of amounts

advanced as legal aid. The Registrar is required to take steps to obtain the recovery of those sums from the party ordered to pay them.

60 By order of 26 June 2000, the President of the Fifth Chamber of the Court granted the applicant legal aid in the maximum amount of EUR 8 000. An advance of EUR 3 000 was granted to the applicant's lawyer in respect of his expenses and fees. The EIB must therefore be required to pay to the cashier of the Court the sum of EUR 3 000, or any lower amount justified by the applicant as expenses connected to the main action. Should the expenses relating to the main proceedings exceed EUR 3 000, the remaining amount should be paid by the EIB directly to the applicant.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber),

hereby:

1. **Orders the European Investment Bank to pay to the applicant EUR 25 000 in reparation of the non-material damage which he has incurred;**

2. Orders the European Investment Bank to pay the costs relating to the main proceedings;

3. Orders the European Investment Bank to pay to the cashier of the Court the sum of EUR 3 000, or any lower amount justified by the applicant as expenses relating to the main proceedings;

4. Orders each party to bear its own costs in regard to the proceedings for interim measures.

García-Valdecasas Lindh Cooke

Delivered in open court in Luxembourg on 12 December 2000.

H. Jung P. Lindh

Registrar President