

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
17 July 1998

Case T-28/97

Agnès Hubert
v
Commission of the European Communities

(Officials – Action for annulment – Internal transfer/Reassignment – Interests
of the service – Failure to state reasons – Action for damages)

Full text in French II - 1255

Application for: annulment of the Commission decision of 27 March 1996
changing the applicant's posting and for compensation for
material and non-material damage allegedly sustained as a
result.

Decision: Application dismissed.

Abstract of the Judgment

Mrs Hubert held a post at the Commission as Head of Unit 3 (Equal Opportunities) of Directorate A (Employment and labour market) in Directorate-General V (Employment, Industrial Relations and Social Affairs) (Unit V.A.3).

On 25 January 1996 her Director informed her that he was to be transferred with Unit V.A.3 to Directorate D (Social dialogue and freedom of movement for workers) of DG V and that she was to be appointed to a post as adviser to DG V.

During several meetings with the Director-General of DG V, the subject of discussion was a proposal to appoint the applicant as adviser on relations with non-governmental organisations. During those discussions, the applicant commented that she regarded the fact that she had been relieved of her responsibilities as Head of Unit V.A.3 as an unjustified disciplinary measure. She also expressed reservations concerning the job profile of the proposed post.

On 15 February 1996 the Director-General of DG V sent a note to the Director-General of Directorate-General IX (Personnel and Administration) with a view to proceeding, in the interests of the service, with a series of amendments to DG V's organisation plan, to include *inter alia* the transfer of the applicant with effect from 1 March 1996.

On 19 February 1996 the applicant asked the Director-General of DG V, in his capacity as appointing authority, to explain the reasons for the decision to relieve her of her duties as Head of Unit.

By mail of 27 March 1996 the Director-General of DG V notified the applicant of the decision to change her posting (the contested decision) with effect from 1 April 1996.

On 18 April 1996 the applicant had a meeting with the Director of Directorate E (Social policy and action) of DG V (Directorate V.E) who explained to her the tasks and duties of the post in question.

On 24 May 1996 the Director-General of DG V sent the applicant a note together with a job profile for the post of adviser to that directorate. By note of 28 May 1996 the applicant stated that this was the first time that she had received a description of the tasks attaching to the post of adviser to Directorate V.E since being notified of the contested decision of the Director-General relieving her of her duties as Head of Unit.

On 13 June 1996 a vacancy notice was published for post COM/065/96 as Head of Unit 5 (Equal opportunities) of Directorate D in DG V, Grade A 5, Step 4.

On 27 June 1996 the applicant submitted a complaint pursuant to Article 90(2) of the Staff Regulations seeking annulment of the contested decision and of the appeal assessor's decision of 25 April 1996 confirming her 1993/1995 staff report, and compensation for material and non-material damage. By decision of 6 November 1996, received by the applicant on 11 November 1996, the Commission rejected the branch of her complaint relating to the contested decision.

The application for annulment

The plea in law alleging infringement of Articles 4 and 29 of the Staff Regulations

Articles 4 and 29 of the Staff Regulations apply only in the case of a 'vacant post' within the meaning of those articles. Consequently, the re-assignment of an official in the absence of such a 'vacant post' does not constitute an internal transfer within the meaning of those articles and the formalities provided for therein do not apply (paragraph 52).

See: T-32/92 *Rasmussen v Commission* [1993] ECR II-765, para. 33

The existence of a vacant post, within the meaning of Articles 4 and 29 of the Staff Regulations, presupposes that a post is not filled amongst the total number of permanent posts in the list of posts appended in accordance with Article 6 of the Staff Regulations to the section of the budget relating to the institution in question and indicating, for each category and each service, the number of posts in each grade for each career bracket (paragraph 53).

See: *Rasmussen v Commission*, cited above, para. 34

The present case concerns a transfer together with a post, not a transfer to a vacant post, because the number of the post filled by the applicant remained unchanged after her transfer and the post to which she was transferred was used as the budgetary justification for a post for her successor. Accordingly, the applicant's argument that the transfer to the post of adviser to Directorate V.E was an internal transfer requiring publication of a vacancy notice must be rejected (paragraph 54).

The applicant's argument that where a post is transferred from one department to another and the duties involved are substantially changed, a new post is thereby created so that a vacancy notice must be published before that post is filled must be rejected. Although the Court of Justice has stated that where a post is transferred without any substantial change in the duties attaching to it, that does not amount to the creation of a new post, the fact remains that in the next paragraph the Court clearly held that, where an official is transferred together with his post, 'there is no vacancy, nor consequently is there an obligation to implement the procedure provided for such a case' in Articles 4 and 29 of the Staff Regulations (paragraphs 57, 58 and 61).

See: 161/80 and 162/80 *Carbognani and Coda Zabetta v Commission* [1981] ECR 543, para. 19; T-50/92 *Fiorani v Parliament* [1993] ECR II-555, para. 27; T-80/92 *Turner v Commission* [1993] ECR II-1465, para. 30; 61/70 *Vistosi v Commission* [1971] ECR 535, paras 6 and 7

The plea in law alleging infringement of Article 7(1) of the Staff Regulations

The institutions enjoy a broad discretion to organise their departments to suit the tasks entrusted to them and to assign staff available to them in the light of such tasks, on condition, however, that the staff are assigned in the interests of the service and in conformity with the principle that assignment must be to an equivalent post. Such discretion is indispensable in order to achieve effective organisation of work and to adapt that organisation to varying needs. The Court of Justice even specifically rejected the argument that reassignment should not normally take place without the agreement of the official concerned, on the ground that the

effect of such an approach would be to impose an intolerable restriction on the institutions' freedom to organise their departments and in adapting that organisation to changing requirements. Any problems which might be caused to an official's department by his departure and the benefit to his new department which might be obtained from his reassignment are considerations which are governed by the same discretionary power. Having regard to the extent of the institutions' discretion in evaluating the interests of the service, the review undertaken by this Court must therefore be confined to the question whether the appointing authority remained within the bounds of that discretion and did not use it in a manifestly improper way (paragraph 76).

See: *Carbognani and Coda Zabetta v Commission*, cited above, para. 28; T-108/89 *Scheuer v Commission* [1990] ECR II-411, para. 37; *Turner v Commission*, cited above, para. 53

It is for the official to adduce evidence that the decision adopted with regard to him is contrary to the interests of the service (paragraph 77).

See: 60/80 *Kindermann v Commission* [1981] ECR 1329, para. 17; *Scheuer v Commission*, cited above, para. 48

Since the applicant has failed to adduce evidence to show that the contested decision was adopted for reasons unconnected with the interests of the service, this plea must be rejected (paragraph 84).

The plea in law alleging failure to state reasons

In view of the extent of the discretion enjoyed by the appointing authority as regards organisation of its departments and of the circumstances in which the contested decision was adopted, the explanations given at the meetings and in the correspondence between the applicant and her Director and the Director-General of DG V are sufficient to discharge the obligation laid down in Article 25 of the Staff Regulations to state reasons, in that they enable the Community judicature to review the legality of the contested decision, and provide the person concerned with sufficient information to ascertain whether or not the decision is well founded. Since the staff report procedure was under way at the same time, the applicant must have been aware that her immediate superior did not agree, *inter alia*, with her way of organising Unit V.A.3. Those explanations should have enabled the applicant to understand that the contested decision was taken with a view to making best use of her abilities (paragraphs 93, 94, 95 and 96).

See: *Turner v Commission*, cited above, para. 62; T-36/93 *Ojha v Commission* [1995] ECR-SC II-497, paras 59 and 60

Operative part:

The application is dismissed.