

JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)
18 December 1997

Case T-57/96

Livio Costantini
v
Commission of the European Communities

(Officials – Change of place of employment – Return to the place of original employment – Installation allowance – Daily subsistence allowance)

Full text in Italian II - 1293

Application for: annulment of the Commission's decisions refusing to pay the applicant an installation allowance and a daily allowance on his return to his original place of employment following a period of employment outwith his institution.

Decision: Annulment; remainder of application dismissed.

Abstract of the Judgment

The applicant, an official of the Commission employed at the Joint Research Centre, Ispra, was requested, by decision of the Commission, to serve with the International Atomic Energy Authority in Vienna for the period 1 January to 31 December 1993, which was subsequently extended to 28 February 1995. During that period the applicant settled in Vienna with his wife. For that purpose the Commission, pursuant to Annex X of the Staff Regulations of Officials of the European Communities (Staff Regulations), assumed responsibility for the cost of renting a home in Vienna and paid the applicant the installation allowance and the daily subsistence allowance provided for in Articles 5 and 10 of Annex VII to the Staff Regulations.

On his return to Ispra on 1 March 1995 the applicant requested payment of a 're-installation allowance' and a daily subsistence allowance. The administration rejected that request by two separate notes of 17 May 1995 and 26 July 1995 (decisions).

The sole plea in law, alleging breach of Articles 5 and 10 of Annex VII to the Staff Regulations

Recourse by the administration to a wrong legal basis constitutes an error of law, but such an error does not provide grounds for annulling the administrative decision in question where that choice, which is of a purely formal nature, has not had any decisive influence on the administration's assessment and therefore on the content of the contested decision. In the present case the choice of the legal basis of the applicant's temporary transfer to Vienna did not have any decisive influence on the content of the contested decision (paragraphs 23 and 24).

See: C-268/94 *Portugal v Council* [1996] ECR I-6177, para. 79; T-75/95 *Günzler Aluminium v Commission* [1996] ECR II-497, para. 55

As regards the installation allowance, since Article 5(1) of Annex VII provides for a flat-rate allowance, it follows that where it is established on the basis of the documents required by the second subparagraph of Article 5(3) that the official has settled at the place in question there is no requirement to show the existence of actual expenses. In those circumstances, where an official is required to change his residence to take up duties in a new place of employment the allowance must be paid to him except in exceptional circumstances analogous to an abuse of a right (paragraphs 28 and 29).

See: 140/77 *Verhaaf v Commission* [1978] ECR 2117, paras 18 and 22; Opinion of Advocate General Sir Gordon Slynn in 90/81 *Burg v Court of Justice* [1982] ECR 983, at 995; T-42/89 *Yorck von Wartenburg v Parliament* [1990] ECR II-31, para. 23; T-42/89 *OPPO Parliament v Yorck von Wartenburg* [1990] ECR II-299, para. 20; T-33/95 *Lozano Palacios v Commission* [1996] ECR-SC II-1535, para. 62; T-74/95 *Monteiro da Silva v Commission* [1996] ECR-SC II-1559, para. 62

As regards the daily subsistence allowance, Article 10 of Annex VII to the Staff Regulations provides that an official who furnishes evidence that he must change his place of residence in order to satisfy the requirements of Article 20 of the Staff Regulations is entitled to a daily subsistence allowance until the date on which he effects his removal. That allowance, whose duration may not exceed specific limits, is intended to compensate the official for the expense and inconvenience occasioned by the need to change residence or to establish a provisional residence at his place of employment while maintaining, also on a provisional basis, his residence at the place where he was recruited or previously employed (paragraph 40).

See: 280/85 *Mouzourakis v Parliament* [1987] ECR 589, para. 9; T-63/91 *Benzler v Commission* [1992] ECR II-2095, para. 20

In the present case the applicant has been unable to provide evidence of the temporary costs or inconvenience incurred as a result of his re-installation in his own house in Ispra, which remained at his disposal during his stay in Vienna. It follows that the applicant's situation does not in any way correspond to the purpose of Article 10 of Annex VII to the Staff Regulations, in the light of which that provision is to be construed and applied. Consequently, the application must be dismissed inasmuch as it is based on a breach of Article 10 of Annex VII to the Staff Regulations (paragraphs 41 and 42).

Operative part:

The decision of the Commission refusing payment to the applicant of the installation allowance is annulled.

The Commission is ordered to pay the applicant the amount of the allowance provided for in Article 5(3) of Annex VII to the Staff Regulations, together with interest at the rate of 8% per annum as from the date of the request.

The remainder of the application is dismissed.