

and inconvenience occasioned by the need for an official to move and to establish a provisional residence at his place of employment while maintaining, also on a provisional basis, his previous residence.

No provision of the Staff Regulations or of the Conditions of Employment of Other Servants lays down restrictive rules applicable to an official who is appointed a probationary official after having been a member of the auxiliary staff and then of the temporary staff, and no such restriction is necessary. In such circumstances, where the employment relationship has been precarious at all times, the daily subsistence allowance is granted for a specific purpose, namely to encourage the person concerned to refrain from transferring his residence, a move which, in the event of his not being established, would be premature and would, in the event of termination of his service, give rise to a double reimbursement of removal expenses. The person concerned must therefore be enti-

led, in return, to the grant of the daily subsistence allowance until the end of the period of precarious employment, plus one month, regardless of whether he has already received that allowance in earlier periods when his employment relationship was also precarious.

2. In an action of a financial character brought under Article 91 of the Staff Regulations, the Community judicature has unlimited jurisdiction, so that a claim for an order requiring payment of compensation is admissible.
3. In proceedings by officials, a claim for default interest in the event of annulment of the contested decision need not, in order to be admissible before the Court of First Instance, have been expressly mentioned in the prior administrative complaint.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
30 November 1993 *

In Case T-15/93,

Philippe Vienne, an official of the European Parliament, residing in Brussels, represented by Carlo Revoldini, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 21 Rue Aldringen,

applicant,

* Language of the case: French.

European Parliament, represented by Ezio Perillo, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the Secretariat of the European Parliament, Kirchberg,

defendant,

APPLICATION for annulment of the decision of 2 February 1993 of the Secretary-General of the European Parliament rejecting the complaint in which the applicant sought the grant, throughout his probationary period plus one month, of the daily subsistence allowance provided for in Article 10 of Annex VII to the Staff Regulations,

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

composed of: C. P. Briët, President, A. Saggio and H. Kirschner, Judges,

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 6 October 1993,

gives the following

Judgment

Facts and procedure

On 1 November 1990, the applicant, then residing in Anderlecht, Brussels, was recruited by the European Parliament (hereinafter 'the Parliament') as a member of the auxiliary staff under a contract of indefinite duration, and was assigned to

Luxembourg. By virtue of Article 69 of the Conditions of Employment of Other Servants of the European Communities (hereinafter 'the Conditions of Employment of Other Servants'), he received the daily subsistence allowance provided for by Article 10 of Annex VII to the Staff Regulations. On being recruited, the applicant established his residence in Messancy, near the Belgium-Luxembourg frontier, in order to comply with the residence requirement laid down in Article 54 of the Conditions of Employment of Other Servants and Article 20 of the Staff Regulations, whilst his wife and children remained in Anderlecht.

2 On 1 January 1991, the applicant was recruited by the Parliament as a member of the temporary staff under a contract of indefinite duration which provided for a probationary period of six months. On the basis of Article 25 of the Conditions of Employment of Other Servants, he continued to receive the abovementioned daily subsistence allowance, which was maintained from that date throughout his probationary period, that is to say for a period of six months.

3 On 16 December 1991 the applicant was recruited by the Parliament as a probationary official in Grade B 5, still in Luxembourg. After he was established in October 1992, the applicant made arrangements to give up his family home in Anderlecht.

4 On 16 December 1991, the applicant's entitlement to the daily subsistence allowance was renewed, in view of his status as a probationary official, for a period of 128 days, that is to say until 21 April 1992. The administration thus limited to 12 months (or 365 days) the aggregate period of his enjoyment of that allowance, pursuant to the following calculation:

— aggregate period of payment of the allowance before the applicant's appointment;

— as a member of the auxiliary staff from 5 November 1990 to 31 December 1990 (two months or 57 days);

- as a member of the temporary staff from 1 January 1991 to 30 June 1991 (six months or 180 days);

totalling eight months or 237 days

- balance required to make up the maximum of 12 months (or 365 days):

365 days -237 days = 128 days.

5 The applicant's salary statement for June 1992 showed for the first time that the payment of the daily subsistence allowance had been stopped retroactively from 22 April 1992. The applicant asked the salary department for an oral explanation and was told that, according to the administrative practice followed in the Parliament Secretariat, the Parliament aggregated the various periods served by the recipient of the allowance as a member of the auxiliary staff, a member of the temporary staff and a probationary official; accordingly, the administration paid the daily subsistence allowance only for a maximum period of 12 months.

6 By memorandum of 7 July 1992, received at the Parliament Secretariat on 13 July 1992, the applicant lodged a complaint against his salary statement for June 1992 and claimed the daily subsistence allowance up to 15 October 1992 (his probationary period plus one month). In so doing, he argued, on the basis of the wording of Article 10 of Annex VII to the Staff Regulations, that the Parliament's practice of limiting to one year the aggregate period for which the daily subsistence allowance was payable, thereby taking account of each previous employment status of the official, was not in harmony with either the letter or the spirit of the Staff Regulations. He also claimed that the daily subsistence allowance was granted in order to enable officials to meet the exceptional costs involved in maintaining two residences at the same time. He added that the contested limitation was not applied by other Community institutions and therefore the practice of the Secretariat in that regard discriminated against officials of the Parliament.

- 7 By letter of 3 December 1992, the Secretary-General of the Parliament informed the applicant that his complaint was being examined and that the problem raised had been brought to the attention of the Committee of Heads of Administration with a view to arriving at a uniform solution, since he had found different responses in the various institutions concerned.
- 8 The applicant sent a reminder to the Secretary-General of the Parliament on 28 January 1993 and on 2 February 1993 received a decision expressly rejecting his complaint. In it, the Secretary-General, having stated that he had not yet received the views sought from the other institutions with a view to arriving at a common solution, observed that Article 10 of Annex VII to the Staff Regulations also applied, by virtue of Article 25 of the Conditions of Employment of Other Servants, to employees covered by the Conditions of Employment of Other Servants and that the rules on the grant of the daily subsistence allowance had therefore to be interpreted and applied in a unitary and consistent manner. A maximum period of one year's entitlement to the daily subsistence allowance was laid down both by Article 25 of the Conditions of Employment of Other Servants for temporary staff and by Article 65 of the Conditions of Employment of Other Servants for auxiliary staff, in other words, for those Community employment relationships which were, both legally and in practice, the most precarious. It was clear from all those provisions that the benefit of the daily subsistence allowance had been designed as a first step in providing assistance, being properly of a temporary nature and granted, moreover, on a notional basis, since the person concerned was not required to furnish proof of expenditure incurred. Nor was the sum thus made available paid by reference to the recipient's employment status; consequently, it could not be paid for more than the most favourable period provided for by the rules, merely because of a change in the nature of the employment relationship between the recipient and the institution.
- 9 In those circumstances, the applicant brought the present action, his application being received at the Registry of the Court of First Instance on 9 February 1993. The written procedure followed the normal course. Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Fourth Chamber) decided to open the oral procedure without any preparatory inquiries. However, it put a number of questions to the parties and to the Community institutions.

- 10 In reply to the question put by the Court concerning their administrative practice in circumstances such as those of this case, the Court of Justice, the Council, the Commission and the Court of Auditors unanimously stated that, in the circumstances described, their practice was to grant the daily subsistence allowance in its entirety whenever there was a change of terms of employment, so that a probationary official receives the daily subsistence allowance for the full period prescribed by the Staff Regulations even if he has already received it previously as a member of the auxiliary staff and of the temporary staff. It was made clear, however, that the daily subsistence allowance is not available, first, where the person concerned has already been paid an installation allowance and, secondly, as from the date on which he effects removal. The Council, the Commission and the Court of Auditors also stated that, in the event of a change of terms of employment, the higher amounts granted for the first 15 days are paid only once, when the person concerned first establishes his residence at his place of employment, and that, consequently, the new daily subsistence allowance is paid in its entirety at the reduced rate applicable as from the 16th day.

Forms of order sought

- 11 The applicant claims that the Court should:
- declare his application formally admissible;
 - find that Article 10 of Annex VII to the Staff Regulations has been infringed;
 - find that there has been a breach of the principle of separation of powers as between the executive and administrative authorities and the legislative authorities of the European Communities;
 - consequently, order annulment of the decision of 2 February 1993 of the Secretary-General of the Parliament rejecting the complaint in which the applicant requested that payment of the daily subsistence allowance be continued in accordance with Article 10 of Annex VII to the Staff Regulations;

- order the Parliament to pay the applicant the unpaid daily subsistence allowance amounting to BFR 170 239, together with default interest as from the date on which the complaint was lodged;

- order the Parliament to pay the costs in their entirety.

12 The Parliament contends that the Court should:

- dismiss the action as unfounded;

- make an order as to costs in accordance with the relevant provisions of the Rules of Procedure.

The subject-matter of the application and the pleas in law

13 The applicant seeks relief in the form of annulment of the decision rejecting his complaint, payment of the arrears of the daily subsistence allowance to which he considers himself entitled, plus default interest, and a finding that the Parliament committed certain unlawful acts. The claim for annulment constitutes the essential object of the action, whilst the pecuniary claims are consequential and incidental. The claim for annulment will therefore be considered first. As regards the claim for a finding that certain unlawful acts have been committed by the Parliament, it must be pointed out that, in so far as the object of those claims is actually to have the Court uphold certain of the pleas put forward in support of the claim for annulment, they are inadmissible (Case 108/88 *Jaenicke Cendoya v Commission* [1989] ECR 2711, paragraphs 8 and 9).

- 14 Three pleas were initially advanced by the applicant in support of his application: infringement of Article 10 of Annex VII to the Staff Regulations, application of a rule not found in the employment provisions and, finally, breach of the general principle of separation of powers. In response to a question put by the Court in the written procedure, the applicant expressly stated that he withdrew the third and last plea. As regards the first two, it must be observed that, as the Parliament has rightly pointed out, they are both based on the same substantive argument: according to the applicant, the administration has no right to adopt an analogous and extensive interpretation of the various rules governing the grant of the daily subsistence allowance but must simply apply each of the relevant provisions literally. Accordingly, it is appropriate to consider that argument as a single plea in law.

The claim for annulment

The sole plea in law, alleging infringement of Article 10 of Annex VII to the Staff Regulations and application of a non-existent rule

Arguments of the parties

- 15 The applicant submits that Article 10(2)(b) provides that a probationary official is entitled to the daily subsistence allowance for the duration of his probationary period plus one month. Since his probationary period extended from 16 December 1991 to 15 September 1992 and the Parliament stopped paying him the daily subsistence allowance as from 22 April 1992, the Parliament did not in his view apply the clear and precise text of that provision but adopted an interpretation based on the various provisions concerning the grant of the daily subsistence allowance to probationary officials, auxiliary staff and temporary staff and applied a non-existent provision, namely a 'rule' created by an analogous and extensive interpretation which limits to 12 months the aggregate period for which the daily subsistence allowance is payable.
- 16 The applicant also maintains that the Parliament should not have attached any legal significance to the transition from one employment status to another, without interruption, and should not speak of the 'overlapping of daily subsistence allowances'. There is no legal continuity between the three types of employment

relationship which can exist between an employee and the Community institutions. The terms of those relationships are strictly defined by the Community rules and there is no legal correlation between them.

- 17 The applicant adds that, once the principle of the existence of three types of employment relationship is accepted, all the consequences of that fact must be accepted. Each type of relationship confers on the employees to which it applies specific rights and obligations. Thus, an employee cannot evade the obligations inherent in his new terms of employment by claiming that he undertook equivalent obligations under the terms of his previous employment (for example, a probationary official is required to serve a probationary period even if he has already completed one pursuant to Article 14 of the Conditions of Employment of Other Servants whilst previously employed as a member of the temporary staff). Similarly, he considers that the institutions should discharge their obligations under each type of relationship; moreover, the different types of relationship each fall under a different budgetary heading.
- 18 The Parliament replies that, under arrangements designed to reimburse an employee, by means of a daily subsistence allowance, for expenses incurred in connection with his taking up appointment, the Community administration concerned must, where appropriate, bear in mind, first, that the person concerned has already met the residence requirement imposed by Article 20 of the Staff Regulations by reason of that fact that he is already in the service of the institution, albeit in a different employment relationship, and, secondly, that, whilst in that relationship, he has already received the corresponding daily subsistence allowance. The Parliament insists that, as Community law stands, the principle of separation between the three kinds of employment by the Communities — auxiliary staff, temporary staff and officials — is not in itself such as to justify conferring on an employee who has been successively employed in each of those three types of relationship (without interruption and without any change to his place of employment and ‘residence for employment purposes’), full and automatic enjoyment, cumulatively, of the same daily subsistence allowance, possibly on three consecutive occasions.
- 19 The Parliament submits that the Court of Justice has consistently held that the essential justification for the daily subsistence allowance lies in the official’s obligation to remove to a residence other than that which he occupied previously, without however being able to give up the latter, and that it is intended to compensate for the expense and inconvenience of maintaining those two residences

(Case 148/73 *Louwage v Commission* [1974] ECR 81 and Case 280/85 *Mouzorakis v Parliament* [1987] ECR 589). If that, therefore, is the aim pursued by that allowance, it follows, in the Parliament's opinion, that there is really no plausible reason to justify payment of it in full, once more, to the same person who, whilst remaining in the service of the Communities, is for a 'second time' taking up an appointment with the Communities. At that time, the concern to ensure that the person concerned does not have to bear any expenses incurred as a result of having to reside at the place of his employment has already been taken into account, specifically when the person concerned fulfilled his obligation of residence under Article 20 of the Staff Regulations, an obligation manifestly no longer attaching to him when he takes up appointment for the 'second' time. In other words, the theoretical self-sufficiency of each of the three kinds of Community employment relationship can never be such as to justify the obligation to pay twice, or even three times, the same allowance to the same person for the same reason.

20 The Parliament then submits that the rules governing the daily subsistence allowance involve notional expenses, since the official is not required to furnish evidence that he has actually incurred expenses or that he has retained links with his original place of residence. It also lays stress on the provisional nature of the allowance, which is payable only for a predetermined period, during which its amount is subject to a reduction. Accordingly, there is reason to believe that, in the view of the Community legislature, there is no longer any justification for payment of the daily subsistence allowance even if, upon expiry of that period, the recipient's situation remains unchanged in law (same employment relationship) and in fact (more than one place of residence). In other words, the legislature acted on the assumption that, a specified number of days after the date of recruitment or engagement, the Communities' obligation to provide initial assistance to any person called on to work for them would cease *ipso facto* even if the employment relationship and the link with the place of employment were as 'precarious' as before. Moreover, the amount of the daily subsistence allowance does not vary according to the employment status of the recipient, which means that it is neutral and objective in character.

21 The Parliament submits that whilst there are apparently no coordinating provisions regarding the grant of the daily subsistence allowance for the three different kinds of employment in Community institutions, the fact remains that that insufficiency of the legislation cannot in itself justify the automatic grant of consecutive allowances: in the first place, the provisions concerning grant of the daily subsistence

allowance, although included in each case among those appertaining specifically to the type of employment relationship concerned, constitute, by reason of their specific objective, a unitary, uniform and consistent set of legislative rules. Secondly, it is undisputed that the grant of the daily subsistence allowance is conditional upon the taking up of a 'substantive' appointment with the Communities, regardless of the legal status of that employee. Accordingly, from the 'substantive' point of view, that taking up of appointment is not genuinely 'renewed' whenever there is a change in the terms of employment; the person concerned is still 'physically' employed in the same place. Thirdly, in the case of the relationships which are most precarious, both *de jure* and *de facto* (such as those of members of the temporary staff with short-term contracts and members of the auxiliary staff), the Community legislature limited the availability of the daily subsistence allowance to 12 months. It follows, in the Parliament's opinion, that beyond that maximum period the daily subsistence allowance can no longer be granted, even if the employee concerned continues thereafter to perform his duties in the same capacity, in the same institution and on a similarly precarious basis.

- 22 According to the Parliament, the Court of Justice, having regard to that criterion of continuity, has established the principle that, in circumstances like those of this case, the provisions of the Staff Regulations concerning the various allowances must be interpreted in a manner conducive to the operational unity of the European Communities, a concept which precludes the cumulative payment of an allowance relating to departure from the service of one of the institutions and of an allowance relating to commencement of service with another institution (Cases 27/59 and 39/59 *Campolongo v High Authority* [1960] ECR 391).
- 23 In response to the applicant's criticism that it adopted an analogous and extensive interpretation and thereby created a new rule, the Parliament contends that, by contrast with most other provisions of the Conditions of Employment of Other Servants, Article 25 thereof does not render Article 10 of Annex VII to the Staff Regulations, to which it refers, applicable 'by analogy', but provides that it 'shall apply'. That term, far from being seen as indicative of a fortuitous oversight on the part of the Community legislature, proves that, in the general scheme of European Community civil service law, Article 25 of the Conditions of Employment of Other Servants forms an integral part of Chapter E (Daily subsistence allowance) of Section 3 (Reimbursement of expenses) of Annex VII to the Staff Regulations. Those same considerations also appear applicable to Article 69 of the Conditions of Employment of Other Servants concerning members of the auxiliary staff.

24 In those circumstances, it is incumbent on the administration to adopt a systematic interpretation of the various provisions that are applicable. Accordingly, in specifically applying those provisions, objective criteria should be relied on so as to ensure that each recipient is treated without discrimination and consistently from one period to the next. The Parliament adds that whilst the Staff Regulations and the Conditions of Employment of Other Servants apply, *ratione personae*, in two separate areas, there are nevertheless many provisions and even whole chapters (for example Chapters 7 and 8 of the Conditions of Employment of Other Servants) which are common to both *ratione materiae*.

25 At the hearing, the Parliament commented on the administrative practice adopted in this area by the other Community institutions (see paragraph 10 above), contending that, whilst their practice apparently differs from that of the Parliament, the other institutions do not appear to embrace totally the view advanced by the applicant that the three types of employment relationship are entirely separate. The fact of refusing to grant the daily subsistence allowance to a probationary official who has previously, as a member of the temporary staff, received the installation allowance and the fact of paying the higher rate of daily subsistence allowance only once (for the first 15 days at the new place of employment) show, according to the Parliament, that the other institutions also take account of the previous situation of the person concerned and that they too thus perceive a degree of continuity extending to all types of employment with the Communities.

26 The Parliament considers that the grant of the daily subsistence allowance is not granted because of the precarious nature of the employment relationship in question but is merely a flat-rate reimbursement of expenses. This is borne out by the fact that they are also paid to officials recruited as established officials from the outset (those in Grades A 1 and A 2 who, by virtue of Article 34(2) of the Staff Regulations, are not required to serve a probationary period). Finally, the Parliament states that its limitation of the daily subsistence allowance to a maximum of one year also applies in the opposite case, namely where a probationary official finds himself again a member of the temporary staff — for example, following the annulment of his appointment by the Court of First Instance.

Findings of the Court

- 27 It must be stated as a preliminary point that the subject-matter of this dispute is confined to the question whether the applicant, as a probationary official who had not yet transferred his residence or received an installation allowance, is entitled for the last part of his probationary period, plus one month, to payment of the daily subsistence allowance provided for in Article 10(2)(b) of Annex VII to the Staff Regulations. Articles 25 and 69 of the Conditions of Employment of Other Servants — in particular the time-limits which they impose — are not applicable to this case; those articles govern the payment of the daily subsistence allowance for the periods preceding the period at issue in this case. Their impact on the outcome of the dispute is therefore limited to the question whether the payments made earlier under those provisions can influence the interpretation of the specific time-limit laid down in Article 10.
- 28 As regards the Parliament's argument that the provisions on the daily subsistence allowance contained in the Staff Regulations and the Conditions of Employment of Other Servants constitute a unitary, uniform and consistent set of rules, the systematic and teleological interpretation of which must lead to the total period during which the allowance is granted being fixed at a maximum of one year, it must be recognized, first of all, that the relevant provisions must not be interpreted in such a way as to produce results not consonant with their purpose. Consequently, the rule providing for the grant of the daily subsistence allowance at a higher rate for the first 15 days — not an issue in this case — should normally apply only when the person concerned first establishes himself at his place of employment. The benefit of the higher rate, as a flat-rate reimbursement of expenses, is justified by experience, in so far as an official, when setting up residence for the very first time, necessarily incurs extraordinary expenses (those of hotel accommodation, paying deposits, estate agencies and frequent travel). That specific aim, pursued by the grant of a higher daily subsistence allowance, is no longer relevant if the employee concerned changes his legal status without changing his place of employment. Entitlement to that allowance cannot therefore be 'revived' in favour of such an employee merely because he has moved from the status of member of the auxiliary or temporary staff to that of a probationary official.
- 29 In view of that finding, it is clear that the formal principle of separation between the terms of employment of officials, on the one hand, and those of other

employees, on the other, as embodied in the case-law (for example, Case 146/84 *De Santis v Court of Auditors* [1985] ECR 1723, paragraph 17, and Case 37/87 *Sperber v Court of Justice* [1988] ECR 1943, paragraphs 8 and 12, as well as Case T-30/90 *Zoder v Parliament* [1991] ECR II-207, paragraph 22), does not by itself suffice to support the position defended by the applicant. It is therefore necessary to interpret the provisions in question having regard to their wording and purpose.

30 In that regard, the Court finds that no provision of the Staff Regulations or Conditions of Employment of Other Servants expressly lays down restrictive rules applicable to the circumstances of the present case. In particular, the text of Article 10 of Annex VII to the Staff Regulations does not prevent the cumulative grant of the daily subsistence allowance, as requested by the applicant.

31 The Parliament, on the basis of a literal interpretation, objects that, pursuant to Article 10(1) of Annex VII to the Staff Regulations, an official must furnish evidence that he must 'change his place of residence', a condition not fulfilled by the applicant since he had already changed his place of residence when he was recruited as a member of the auxiliary staff. However, the Court considers that that view disregards the continuous and enduring nature of the obligation to pay allowances imposed by that provision on institutions with respect to their officials. Moreover, the Parliament itself recognized, in principle, that it had an obligation *vis-à-vis* the applicant under that provision since, for the first four months of his probationary period, it paid him the daily subsistence allowance for which it provides.

32 According to the Parliament, the grant of the daily subsistence allowance is limited to the very first occasion on which the employee takes up a 'substantive' appointment with the Communities, and that taking up of an appointment is not 'renewed' upon each change of terms of employment. However, Article 71 of the Staff Regulations provides that an official is to be entitled, as provided for in Annex VII, to reimbursement of expenses incurred by him *inter alia* on 'taking up appointment'. The duties performed by an official can be distinguished, from the legal point of view, from those performed by a member of the auxiliary or temporary staff since

the employment status of the persons concerned is different (see *Sperber v Court of Justice*, cited above, paragraph 8). The term ‘taking up appointment’ can therefore be interpreted as referring only to the taking up of an appointment following a formal appointment to a post as an official. Similarly, the Parliament’s argument that Article 10 of Annex VII to the Staff Regulations applies as it stands and not by analogy, pursuant to Articles 25 and 69 of the Conditions of Employment of Other Servants, is not sufficient to exclude the possibility that a member of the temporary staff or auxiliary staff appointed as an official may, pursuant to Article 10, receive the allowance provided for by it, even if that article was applied to him directly, by virtue of Articles 25 and 69 of the Conditions of Employment of Other Servants, during his previous periods of service.

33 It must be added that the administrative situation of a probationary official is characterized by the precariousness of his employment relationship. In that context, it must be observed that a maximum limit on the period for which the daily subsistence allowance is granted, such as that which the Parliament seeks to apply to the probationary period, would be contrary to the second subparagraph of Article 34(1) of the Staff Regulations, according to which the probationary period may be extended for an indeterminate period following an accident or sickness of the person concerned. That possibility in itself shows that the precariousness of the employment relationship may persist even after the end of the 12-month period applied by the Parliament as a maximum limit. The necessary coherence between Article 34 of the Staff Regulations and Article 10 of Annex VII to the Staff Regulations requires that Article 10 should not give rise, for probationary officials, to a fixed period for the grant of the daily subsistence allowance. The period for which it is available must, on the contrary, be linked with the (flexible) duration of the probationary period, plus one month. That link shows, once again, that the precariousness of the employment relationship is an important factor relevant to the interpretation of Article 10.

34 In the present case, the applicant’s administrative situation comprised three successive phases: after employment as a member of the auxiliary staff and then of the temporary staff, he was appointed a probationary official. Throughout that period, the precariousness of his employment relationship persisted, even in the last phase, since he aspired to be established even though he knew he had no automatic right to be. In those circumstances, the daily subsistence allowance is granted for a specific purpose: it seems reasonable to encourage the person concerned to refrain from transferring his residence, a move which, in the event of his not being established, would be premature and would, in the event of termination of his service, give rise, pursuant to Article 9(1) and (2) of Annex VII to the Staff Regulations, to a double reimbursement of removal expenses. In those circumstances, the person

concerned must be entitled in return, pursuant to Article 10 of Annex VII to the Staff Regulations, to the grant of the daily subsistence allowance until the end of the period of precarious employment, plus one month, regardless of whether he has already received that allowance in earlier periods when his employment relationship was also precarious.

35 In the present case it is common ground that, throughout that period, the applicant, because of his employment as an official in Luxembourg, maintained two residences, one for his family in Anderlecht, Brussels, and a temporary residence in Messancy, near his place of employment. Thus, the circumstances of this case are in conformity with the objective pursued by the grant of the daily subsistence allowance, namely compensation for the expenses and inconvenience occasioned by the need for an official to move and to establish a provisional residence at his place of employment while maintaining, also on a provisional basis, his previous residence (see *Monzourakis*, cited above, paragraph 9, and Case T-63/91 *Benzler v Commission* [1992] ECR II-2095, paragraph 20).

36 Consequently, it must be stated that the conditions laid down in Article 10 of Annex VII to the Staff Regulations are fulfilled in this case. The applicant is therefore entitled to payment of that allowance under that article. By adopting the decision of 2 February 1993 rejecting the applicant's complaint, the Parliament thus infringed his right to that allowance under the Staff Regulations.

37 The Parliament refers to the judgment in *Campolongo*, contending that the principle of the operational unity of the Communities precludes cumulative entitlement to allowances. However, this Court finds that that judgment of the Court of Justice concerns circumstances entirely different from those of this case. Mr Campolongo, the applicant, had resigned his post in a Community institution in order to enter the service of another. The Court rejected his claim for a resettlement allowance on the ground that a payment had already been made for the same reason. In that context, the Court held that the operational unity of the Communities precluded the grant of an allowance in respect of departure from one institution coinciding with the grant of an allowance in respect of entry into the service of another. This Court considers that whilst *Campolongo* concerned an attempt to obtain more than one allowance for a specific, single event, the significant feature of the present case is the continuous and enduring nature of the situation in respect

of which the applicant seeks the daily subsistence allowance and which, having given rise to the payment of that allowance in the past, still meets the conditions of the Staff Regulations for entitlement thereto.

38 As regards the question raised by the Parliament at the hearing concerning the rules applicable to the payment of the daily subsistence allowance to an official who, after annulment of his appointment, becomes a member of the temporary staff, the Court considers that that hypothesis, not falling within the subject-matter of these proceedings, concerns an exceptional situation and cannot therefore be taken into consideration in interpreting the provisions relevant to the converse case on which it is now called on to adjudicate.

39 Finally, the Parliament states that the payment of the daily subsistence allowance is limited to 12 months even for the most precarious posts (above all those of members of the auxiliary staff and members of the temporary staff with short-term contracts), so that there is no justification for any extension beyond that limit for an employee such as the applicant who moves successively from one employment status to another without changing his place of employment. However, the Court considers that, in the light of the foregoing considerations, that argument based on fairness finds no support in the relevant provisions at present in force.

40 It follows from all the foregoing that the applicant's plea in law is well founded and that the claim for annulment must therefore be upheld. Consequently, the decision of 2 February 1993 rejecting the applicant's complaint must be annulled.

The pecuniary claims

41 The applicant claims that the Parliament should be ordered to pay him unpaid daily subsistence allowance in the sum of BFR 170 239. The Court considers that, this being an action of a financial character in which the Court has unlimited

jurisdiction pursuant to the second sentence of Article 91(1) of the Staff Regulations, that claim must be considered admissible. As regards the amount claimed, the applicant produced in the course of the written procedure, at the Court's request, a calculation of the unpaid daily subsistence allowance. At the hearing the Parliament stated, in response to a question put to it by the Court, that it had no objection regarding the amount. Consequently, the pecuniary claim must be upheld.

42 As regards the applicant's claim that the Parliament be ordered to pay him default interest as from the date of his complaint, it is apparent from the application that the claim for interest was dependent on annulment of the decision, so that that claim, which is moreover of a purely ancillary nature, did not have to be expressly mentioned in the complaint addressed by the applicant to the Parliament (Case T-4/92 *Vardakas v Commission* [1993] ECR II-357, paragraph 50). As regards the substance, the Court considers that that claim also falls within its unlimited jurisdiction and should be upheld, the rate of default interest being fixed at 8% (see, for example, *Vardakas*, paragraph 49). The complaint was received at the Secretariat of the Parliament on 13 July 1992 and default interest should therefore be paid as from that date.

Costs

43 Under the first subparagraph of Article 87(3) of the Rules of Procedure, where each party succeeds on some and fails on other heads the Court may order that the costs be shared. Since the Parliament has been essentially unsuccessful, it must be ordered to pay the costs in their entirety.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. **Annuls the Parliament's decision of 2 February 1993 rejecting the complaint in which the applicant sought the grant, throughout his probationary period plus one month, of the daily subsistence allowance provided for in Article 10 of Annex VII to the Staff Regulations;**
2. **Orders the Parliament to pay the applicant BFR 170 239 and default interest thereon at the rate of 8% per annum as from 13 July 1992;**
3. **Dismisses the applicant's remaining claims;**
4. **Orders the Parliament to pay the costs in their entirety.**

Briët

Saggio

Kirschner

Delivered in open court in Luxembourg on 30 November 1993.

H. Jung

C. P. Briët

Registrar

President