

Case T-146/04

Koldo Gorostiaga Atxalandabaso

v

European Parliament

(Rules governing the payment of expenses and allowances to Members of the European Parliament — Verification of the use of allowances — Proof of expenses — Recovery of a debt by offsetting)

Judgment of the Court of First Instance (Second Chamber, Extended Composition), 22 December 2005 II - 5995

Summary of the Judgment

1. *European Parliament — Rules governing the payment of expenses and allowances to Members of the European Parliament — Recovery of sums unduly paid — Application of the procedure described in Articles 16(2) and 27(3) and (4) of those rules as a lex specialis derogating from that laid down in Article 27(2)*

2. *European Parliament — Rules governing the payment of expenses and allowances to Members of the European Parliament — Decision of the Secretary-General concerning the recovery of sums unduly paid — No authority to order such recovery by offsetting against allowances due to the Member without being instructed to do so by the Bureau in accordance with the applicable procedure*

3. *Actions for annulment — Jurisdiction of the Community judicature — Claims made in an action for annulment seeking to set the case back to the stage preceding the adoption of the annulled measure in order to resume proceedings at the point where the illegality arose — Inadmissibility*
(Arts 230 EC and 233 EC)

4. *Community law — Principles — Rights of the defence — Documents which were not the subject of comment by the person concerned — Exclusion as evidence — Limits*

5. *Acts of the institutions — General obligation to inform the addressees of measures of the judicial remedies available and of the time-limits — None — Guide to obligations of officials and other servants of the European Parliament — Provision requiring an indication, in a measure, of the possibility of bringing judicial proceedings — Breach — Infringement of essential procedural requirements — None*

6. *Acts of the institutions — Statement of reasons — Obligation — Scope — Decision of the Secretary-General of the European Parliament concerning the reimbursement of sums paid to a Member by way of Parliamentary allowances — Reference to an audit report communicated to the applicant — Reference to documents produced by him and to partial reimbursement — Permissible*
(Art. 253 EC)

7. *Community law — Principles — Equal treatment — Limits — Advantage unlawfully granted*

8. *Actions for annulment — Pleas in law — Misuse of powers — Meaning*

9. *European Parliament — Rules governing the payment of expenses and allowances to Members of the European Parliament — Parliamentary assistance allowances — Paying agent to manage amounts paid — Lack of documents to evidence use in accordance with rules — Obligation to repay — Burden of proof in the event of a dispute before the Community judicature*

1. Article 27(2) of the Rules Governing the Payment of Expenses and Allowances to Members of the European Parliament, which lays down a procedure empowering the Quaestors to rule on any disagreement between a Member and the Secretary-General about the application of those Rules, is a provision of general application which, barring the application of special rules, relates to all matters governed by those Rules. It is therefore a general provision by comparison with Articles 16(2) and 27(3) and (4), which relate in particular to differences regarding the recovery of parliamentary allowances that have been unduly paid. Hence, given that special provisions exist, Article 27(2) is not applicable to the recovery of parliamentary allowances that have been unduly paid.

(see para. 83)

2. A decision of the Secretary-General of the European parliament must be annulled where it, first, finds that that

the sums mentioned have been improperly paid to a Member by way of expenses and parliamentary allowances and that they have to be recovered and, secondly, states that recovery should be effected by means of offsetting against allowances payable to the Member insofar as it requires recovery of the amount owed by the Member by means of offsetting.

In that regard, Article 27(4) of the Rules Governing the Payment of Expenses and Allowances to Members of the European Parliament ('the Rules Governing the Payment of Expenses and Allowances') does in fact describe an offsetting procedure. First, that provision refers to Article 73 of the Financial Regulation No 1605/2002 and to the rules for implementing that article, the second subparagraph of paragraph 1 of which places an obligation on the accounting officer of each institution to recover amounts by offsetting them up to the amount of the Communities' claims on any debtor who himself has a claim on the Communities that is certain, of a fixed amount and due. Furthermore, it is clear from subparagraphs (d) to (f) of Article 78(3) and from Articles 83 and 84 of Regulation No 2342/2002 on the

rules for the implementation of Articles 71 and 73 of the Financial Regulation that each institution must first attempt to recover Community claims by means of offsetting and that, if recovery is not achieved, it must initiate the procedure for recovery by any other means offered by the law.

However, as regards the special relationship between Article 16(2), Article 27(3) and Article 27(4) of the Rules Governing the Payment of Expenses and Allowances, the latter article lays down the procedure to be followed if it is intended to apply a recovery method (offsetting) that involves the allowances payable to a Member so that he can effectively perform his representative duties by ensuring that he can exercise his mandate in an effective manner. For that reason it provides for a series of procedural and substantive guarantees. Since this provision concerns a particular method of recovering one or several allowances that have been improperly paid, it must be considered to be a *lex specialis vis-à-vis* Articles 16(2) and 27(3) of the Rules Governing the Payment of Expenses and Allowances, which moreover justifies its insertion after the last-mentioned paragraph. In this light the term ‘in exceptional cases’ at the beginning of Article 27(4) of the Rules Governing the Payment of Expenses and Allowances confirms that offsetting can be carried out only after those guarantees have been complied with.

Therefore, when it amended its Rules Governing the Payment of Expenses and Allowances by adding a new paragraph 4, the Parliament intended to provide that, if it is necessary to recover a claim from a Member by offsetting it against parliamentary allowances owed to that Member, that can be done only in accordance with the procedure laid down in paragraph 4 of the said article. Hence, since the Secretary-General was not competent to order the offsetting in question without having been instructed to do so by the Bureau in accordance with the procedure laid down in that provision, his decision must be annulled insofar as it orders such offsetting.

(see paras 86-87, 95-97, 99)

3. As regards claims made in an action for annulment seeking to set the case back to the stage preceding the adoption of the annulled measure in order to resume proceedings at the point where the illegality arose, it is not for the Community court to rule on the action to be taken by an institution in response to a judgment annulling all or part of a measure. Rather, it is for the institution concerned to adopt measures under Article 233 EC to implement a judgment given in proceedings for annulment.

(see para. 98)

4. According to the general principle that the rights of the defence must be observed, a person against whom an objection is directed by the Community administration must have the opportunity to comment on every document which the latter intends to use against him. Where he is not given such an opportunity, the undisclosed documents must not be taken into consideration as evidence. However, the exclusion of certain documents used by the administration is of no significance except to the extent to which the objection can be proved only by reference to those documents. It is for the Community court to consider whether the non-disclosure of the documents indicated by the applicant influenced the course taken by the proceedings and the content of the contested decision to his detriment.
5. No express provision of Community law imposes on the institutions any general obligation to inform the addressees of measures of the judicial remedies available or of the time-limits for availing themselves thereof. As regards the obligations that the European Parliament assumed by adopting the Guide to obligations of officials and other servants, the fact that the Parliament did not indicate, in a measure, the possibility of bringing judicial proceedings is undoubtedly likely to constitute a breach of the obligations imposed by the Guide. However, the disregard of such an obligation does not constitute an infringement of essential procedural requirements, the consequence of which would be to affect the lawfulness of the measure.

(see para. 131)

Furthermore, in the context of an action brought before the Community court against the decision closing an administrative procedure, it is open to that court to order measures of organisation of procedure and to arrange full access to the file, in order to determine whether the refusal to disclose a document may be detrimental to the defence of the applicant

(see paras 118-119)

6. The statement of reasons required by Article 253 EC must be appropriate to the nature of the measure in question and must show clearly and unequivocally the reasoning of the institution which adopted the contested measure so as to inform the persons concerned of the justification for the measure adopted and to enable the competent Community court to exercise its power of review. In that regard, it can be considered that sufficient reasons were given for a decision if the decision explicitly refers to an audit report that has been communicated to the applicant

and to the documents produced by him after the audit and to the monthly instalments paid as reimbursement of the debt.

(see paras 134-136)

7. The principle of equality of treatment must be reconciled with the principle of legality, according to which no person may rely, in support of his claim, on an unlawful act committed in favour of another.

(see para. 141)

8. A decision may amount to a misuse of powers only if it appears, on the basis of objective, relevant and consistent factors, to have been taken with the exclusive purpose, or at any rate the main purpose, of achieving an end other than that stated or evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case.

(see para. 145)

9. Under the system established by the Rules Governing the Payment of Expenses and Allowances, a Member who appoints a paying agent to manage amounts paid by way of parliamentary assistance allowances must also be in a position to produce documents demonstrating their use in accordance with the contracts he has concluded with his assistants. The lack of documents to evidence expenses claimed by way of assistants' salaries or any other expenditure repayable in accordance with the Rules Governing the Payment of Expenses and Allowances can have no other consequence than the obligation to repay the amounts in question to the Parliament. Any amount for which there is no documentary proof that it was used in compliance with the Rules Governing the Payment of Expenses and Allowances must be considered to have been paid improperly. A person who has submitted documents to the administration in order to demonstrate the use of the funds received must therefore claim and prove, in support of his action before the Community court, that the administration has erred in refusing to take them into account.

(see para. 157)