

ORDER OF THE COURT OF FIRST INSTANCE (Fifth Chamber)  
4 July 1991 \*

In Case T-47/90,

**Annie Bach (née Herremans)**, an official of the Commission of the European Communities, residing at Brussels, represented by Jacques Bourgaux of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Messrs Arendt and Medernach, 4 Avenue Marie-Thérèse,

applicant,

v

**Commission of the European Communities**, represented by Sean van Raepenbusch, a member of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Guido Berardis, a member of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of the posting of the applicant to another Commission building for the performance there of her duties as a messenger,

THE COURT OF FIRST INSTANCE (Fifth Chamber),

composed of: C. P. Briët, President, H. Kirschner and J. Biancarelli, Judges,

Registrar: H. Jung,

makes the following

\* Language of the case: French.

## Order

- 1 By application lodged at the Registry of the Court of First Instance on 6 November 1990, Mrs Annie Bach brought an action seeking the annulment by the Court of First Instance of the decision of the appointing authority of 12 March 1990 by which the applicant was moved from the Breydel building and relocated to the Saint Michel building and asking the Court to take 'formal note that the applicant reserves her rights as regards the assessment of the non-material damage suffered by her'.

### Facts, procedure and forms of order sought

- 2 The applicant, who was born in 1935, was engaged by the Commission in 1973 as a local member of staff. In 1985 she was appointed a Grade D 3 official. Her grade is presently D 2 and she performs the duties of a messenger in Directorate-General IX, General Administration 4, Internal Services.
- 3 Following sick leave, the applicant took up her duties once again prior to Christmas 1989. After successive postings to two different buildings, the applicant requested that her posting be changed, in order that her place of work might be closer to her home. She was then assigned to the Breydel building, which had just entered into commission.
- 4 From January 1990 onwards there occurred a number of incidents between the applicant and the manager of the building, Mr S., a Grade C 4 official, during which the latter, who was found by the Commission frequently to use coarse language with sexual overtones in his dealings with his fellow workers, made vulgar and offensive remarks to the applicant in the presence of her colleagues. The applicant complained about this behaviour to the Staff Committee.
- 5 Thereafter, the relationship between the applicant and the manager of the building continued to deteriorate. On 11 March 1990, following a further incident, the building manager escorted the applicant into the office of the head of section, Mr Garcia Souto. In the absence of the head of the unit, the head of section suggested

to the applicant that she should, with effect from the following morning, perform her duties in another building. Having been invited to choose another building, the applicant chose the Saint Michel building, which is located near her home.

- 6 On the following day, 12 March 1990, the applicant took up her duties in the Saint Michel building. She was called that day to see the unit head, Mr Ravier, for a discussion regarding her relocation.
- 7 On 27 March 1990 the applicant sent a note to Mr Hay, the Director-General for Personnel and Administration. In that note the applicant complained that her former building manager, Mr S., had forced her to move to a new building for no reason other than that he considered her to have too much contact with the Staff Committee. She went on to say that she had informed the Staff Committee of the coarse and vulgar remarks made by Mr S. and she stated she was consequently unable to agree to this arbitrary transfer.
- 8 On 6 April 1990 the applicant lodged, by two separate communications, a request for assistance pursuant to Article 24 of the Staff Regulations of Officials of the European Communities (hereinafter referred to as 'the Staff Regulations') and an official complaint. In her request she complained that she had been the victim of 'sexual harassment in the form of offensive remarks' by Mr S., the manager of the Breydel building where she was employed. She further claimed that she had been the victim of 'psychological harassment', in that her superior, Mr Garcia Souto, had asked her, in the presence of Mr S., to agree to her transfer to another building and had applied such pressure that it had been impossible for her not to 'agree'. She added that the reasons given by way of justification for this measure had been the poor personal relationship which had arisen between her building manager and herself and that she had been told that this had no bearing on her professional competence. She further asserted that she had been advised to keep quiet about the reasons for her transfer, which 'would officially take place because of the requirements of the service'.
- 9 The complaint, which was lodged pursuant to Article 90 of the Staff Regulations, was against the decision by Mr Garcia Souto to 'transfer' the applicant to another building. The applicant claimed that she had not been notified of that decision in

writing and that it had been taken under a false pretext concealing a situation which was far more serious in reality. She further stated that the decision should have been taken with reference to the facts described by her in her request for assistance, a copy of which was annexed to her complaint and which showed, according to her, that she had been doubly wronged by the conduct of her superiors.

- 10 Following the request for assistance by the applicant, an inquiry was held during which evidence was given by the applicant and five witnesses called by her. When giving her evidence the applicant, on being asked whether she really wanted her transfer to the Saint Michel building to be annulled and to be able to return to the Breydel building, replied that 'she was happy in the Saint Michel building, that her colleagues were very nice and that she did not want to return to the Breydel building, or at least not whilst Mr S. was there'.
- 11 Following the examination of those witnesses, disciplinary proceedings were brought under Article 87 of the Staff Regulations, which provides that the appointing authority 'shall have the right to issue a written warning or a reprimand without consulting the Disciplinary Board, on a proposal from the official's immediate superior or on its own initiative'. After an investigation of the matter, carried out by the Director-General for Personnel and a Commission director, a written warning was sent to Mr S. and placed in his personal file.
- 12 The applicant relies, in support of this application, on three submissions. The first is based on the impropriety of her transfer, which she claims is justified neither by the interests nor the requirements of the service and which she regards as unfair, since it penalizes the victim rather than the perpetrator of the offensive behaviour. She asserts in this regard that the circumstances surrounding her relocation have caused her damage by adversely affecting her reputation, in that her circle of acquaintance at work and in her private life has with good reason been surprised to see 'a person of her age suddenly ceasing to carry out the duties which she was performing' after two successive postings to two different buildings. In her reply, the applicant further maintained that the reasons put forward by the Commission relating to the interests of the service concealed in reality an unlawful purpose. According to her, her approach to the Staff Committee 'clearly played a part' in the considerations likely to have given rise to the decision to relocate the applicant rather than the building manager.

- 13 In her second submission, based on an infringement of Article 25 of the Staff Regulations, the applicant claims that she was not notified in writing of the decision to transfer her and that it did not state the grounds upon which it was based. In her reply, she further stated that her transfer to another building constituted an act adversely affecting her, since it was imposed upon her at a time when the tension was at its height and she was not in a position to defend herself.
- 14 The third submission is based on an infringement of the administration's duty to assist. The applicant asserts, moreover, that she has unquestionably suffered non-material damage and expressly reserves her rights as to the assessment of the damage suffered by her.
- 15 In contesting the applicant's first submission, the Commission relies, as a preliminary point, on the wide discretionary powers which it enjoys in the organization of its departments and the posting of its staff, provided this is done in the interests of the service and in conformity with the principle of assignment to an equivalent post. It points out that the applicant's duties have not changed or diminished as a result of her relocation. The Commission takes the view that, having regard to the very tense situation prevailing within the service in which the applicant was working, the administration was entitled to deem it in the interests of the service to move her. It further states that the relocation of the manager of the building, 'whose professional abilities, disregarding the indiscretions in the language used by him, are highly valued', would have been detrimental to the interests of the service at a time when the Breydel building had just entered into commission. The Commission maintains that the applicant made no objection to her relocation during her discussions with Mr Garcia Souto and Mr Ravier on 11 and 12 March 1990 and that she stated during the inquiry held following her request for assistance that she was very content with that measure. The Commission accepts that in cases of sexual harassment it is preferable as a general rule to move the perpetrator of the harassment rather than the victim. However, it contends that it must be practicable, particularly where the inquiry into the facts in question has still to be held. The Commission emphasizes that the relocation of the applicant was not intended to penalize her in any way and points out that it was effected in this case essentially in order to protect the applicant and with her consent. With regard to the allegation that the reasons put forward by the Commission concealed in reality an unlawful purpose, the Commission considers that this amounts to a new submission, based on an alleged misuse of powers, which should be rejected as inadmissible. It contends in the alternative that the applicant has adduced no evidence to support her allegation.

- 16 As to the applicant's second submission, based on an infringement of Article 25 of the Staff Regulations, the Commission contends in its defence that the relocation of the applicant was simply a measure taken for the purposes of internal organization which did not adversely affect the applicant's position under the Staff Regulations and for which, therefore, as the Court of Justice has consistently held, no reasons need to be given. It points out that the applicant was not moved against her will, so that there was no act which affected her adversely within the meaning of Article 25 of the Staff Regulations. In its rejoinder, it further stated that the applicant was still assigned to Directorate-General IX for Personnel and Administration, General Administration Directorate, Internal Services, and that her duties had not been changed. The Commission contends in the alternative that the decision adequately stated the reasons on which it was based.
- 17 The Commission contests the admissibility of the applicant's third submission, based on an alleged infringement of the administration's duty to afford protection, on the ground that the applicant's request for assistance was not followed by any complaint as provided for in Article 90(2) of the Staff Regulations. As to the substance of the matter, the Commission refers to the inquiry carried out by it, in which it was shown that the decision by Mr Garcia Souto to relocate the applicant constituted an initial response in urgent circumstances to an administrative situation which had become intolerable as a result of the behaviour of Mr S. and of which she was the victim.
- 18 Lastly, as regards the non-material damage allegedly suffered by the applicant, the defendant does not consider that it has committed any unlawful act capable of causing such damage. It contends, moreover, that the applicant has failed to establish the existence of any non-material damage attributable to the Commission.
- 19 The written procedure followed the normal course. The applicant claims that the Court should:
  - (1) Annul the decision of the appointing authority of 12 March 1990 by which the applicant was moved from the Breydel building and relocated to the Saint Michel building;
  - (2) Annul the implied decision rejecting the complaint lodged by her on 6 April 1990 pursuant to Article 90(2) of the Staff Regulations;

- (3) Take formal note that she reserves her rights as regards the assessment of the non-material damage suffered by her;
- (4) Order the defendant to pay the costs of the proceedings.

The Commission contends that the Court should:

- (1) Declare the application unfounded;
- (2) Make an appropriate order as to costs.

### **Admissibility**

- 20 Where an action brought in the Court is manifestly inadmissible, the Court may, pursuant to Article 111 of its Rules of Procedure of 2 May 1991 (Official Journal 1991 L 136, p. 1), give a decision on the action by reasoned order without taking any further steps in the proceedings. In the present case, the Court considers that the facts are sufficiently clear from the documents before it and decides that there is no need to take any further steps in the proceedings.
- 21 In accordance with the combined provisions of Article 91(1) of the Staff Regulations and Article 3(1)(a) of Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities, the Court of First Instance has jurisdiction in any dispute between the Communities and their servants regarding the legality of an act adversely affecting such person within the meaning of Article 90(2) of the Staff Regulations. The existence of such an act is therefore an indispensable condition precedent to the admissibility of the action. Where it is manifestly lacking, Article 111 of the Rules of Procedure of the Court of First Instance is applicable.
- 22 It should be pointed out in this regard that an official is adversely affected by an act only where it is such as to have a direct effect on his position in law (see, for example, the judgment of the Court of Justice in Case 32/68 *Grasselli v Commission* [1969] ECR 505, paragraph 4). Such acts need to be distinguished

from measures relating purely to the internal organization of the services which do not adversely affect the position of the official concerned under the Staff Regulations (see the judgment of the Court of Justice in Case 129/75 *Hirschberg v Commission* [1976] ECR 1259, paragraph 18).

- 23 With regard to the relocation of the applicant from the Breydel building to the Saint Michel building, it is apparent from the documents before the Court that this did not in any way affect her rights under the Staff Regulations. Indeed, that measure involved no change to the applicant's rank, nor to her specific rights under the Staff Regulations.
- 24 The further point should be made that that relocation from one building to another within the same city cannot be assimilated to the relocation of an official or servant from one place of employment to another which, because of the effect which it may have on the personal and family circumstances of the person concerned, may affect him adversely (see, for example, the judgment in Joined Cases 161/80 and 162/80 *Carbognani and Coda Zabetta v Commission* [1981] ECR 543).
- 25 The next point to note is that the applicant's duties remained identical following her relocation, with the result that, as is quite apparent, the principle that the post to which an official is assigned should correspond to his grade was not infringed by the measure in dispute. It should be borne in mind in this context that even a change in an official's scientific or administrative duties going far beyond a mere relocation from one building to another does not constitute an act affecting him adversely, in so far as the changed duties continue to correspond to his grade (see the judgments of the Court of Justice in Case 338/82 *Albertini and Montagnani v Commission* [1984] ECR 2123, paragraph 46; Case 280/87 *Hecq v Commission* [1988] ECR 6433, paragraph 10; and Joined Cases C-116/88 and C-149/88 *Hecq v Commission* [1990] ECR I-599, paragraph 14).
- 26 It should further be pointed out that, as the Court of Justice has consistently held, certain acts may be regarded as adversely affecting an official, even though they do not affect his material interests or his rank, if they adversely affect the morale or future prospects of the person concerned (see, with regard to transfers, the judgments of the Court of Justice in Case 35/72 *Kley v Commission* [1973] ECR 679, paragraph 4 et seq.; and Case 125/80 *Arning v Commission* [1981] ECR 2539, paragraph 17). However, it is clear that in the present case the contested measure did not have any such effect. In the absence of any change to her duties, the



personal interest which the applicant may have in preferring some duties to others has not been adversely affected (see the judgment of the Court of Justice in Case 7/77 *von Wüllerstorff und Urbair v Commission* [1978] ECR 769, paragraph 11). There is nothing to indicate that the applicant's career prospects were changed or affected by her being called upon to perform her duties in another building. Lastly, and in any event, there are grounds for finding that the applicant's fears regarding the allegedly adverse effect on her reputation are unfounded, given firstly that the applicant is able personally to explain the circumstances of her relocation 'to her circle of acquaintances' and secondly that Mr S. has been disciplined.

- 27 Consequently, the contested measure has clearly not altered the applicant's status in law, given that neither her rights under the Staff Regulations nor her personal interests have been affected. It is thus clear that that measure does not constitute an act having an adverse effect, but simply a measure taken for the purposes of the internal organization of the services of the Commission. It follows that the application for its annulment is manifestly inadmissible.
- 28 Finally, with regard to the application that it should 'take formal note that the applicant reserves her rights as regards the assessment of the non-material damage suffered by her', the Court considers that that request should be interpreted as meaning that the applicant intended merely to draw the attention of the Court to the fact that she is not seeking by this application to obtain compensation for any such damage. Such conclusions are likewise inadmissible in any event.

### Costs

- 29 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs. However, Article 88 of those Rules provides that, in proceedings brought by servants of the Communities, the institutions are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby:

- 1. Dismisses the application as inadmissible;**
- 2. Orders the parties to bear their own costs.**

Luxembourg, 4 July 1991.

H. Jung

Registrar

C. P. Briët

President