2. Orders the parties to bear their own costs.

Everling Pescatore Galmot

Delivered in open court in Luxembourg on 25 November 1982.

For the Registrar

H. A. Rühl

Principal Administrator

U. Everling

President of the Third Chamber

OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN DELIVERED ON 11 NOVEMBER 1982

My Lords,

This is a claim for one month's salary which is brought by Mr Evens against the Court of Auditors. He claims it as being part of the resettlement allowance to which he says he is entitled and which he has not yet received.

The statutory and the factual context in which this claim arises can be stated shortly.

Article 71 of the Staff Regulations currently in force provides that an official shall be entitled, as provided for in Annex VII, to reimbursement of expenses incurred by him, *inter alia*, on taking up appointment and on leaving the service. Annex VII is headed "Remuneration and Reimbursement of Expenses" and Section 3 deals with the reimbursement of expenses. There is first provided an installation allowance in Article 5 which entitles an official to an allowance equal to two months' basic salary, if he is also entitled to the household allowance, or to one month's basic salary in other cases. That allowance is to be paid to an established official who qualifies for the expatriation allowance or who furnishes evidence of having been obliged to change his place of residence in order to comply with Article 20 of the Staff Regulations.

By paragraph 3 of the article, the installation allowance is to be paid on production of documents establishing the fact that the official, together with his family, if he is entitled to the household allowance, has settled at the place where he is employed. Paragraph 4 of Article 5 provides that an official who is entitled to the household allowance and does not settle with his family at the place where he is employed is to receive only half the allowance to which he would otherwise be entitled. There is a consequential provision that if the family move to settle with him then he shall be paid the other half of the installation allowance.

Part B of Section 3 is headed "Resettlement Allowance" and that provides, in Article 6 (1), that an established official who satisfies the requirements of Article 5 (1) shall be entitled, on termination of service, to a resettlement allowance equal to two months' basic salary in the case of an official who is entitled to the household allowance, or to one month's basic salary in other cases, provided that he has completed four years of service.

By paragraph 4 of Article 6 it is provided that the resettlement allowance shall be paid against evidence that the official and his family, or, where the official has died, his family only, have resettled at a place situated not less than 70 kilometres from the place where the official was employed.

In the present case the applicant began to work as an official for the ECSC at Luxembourg in 1953 and he received an installation allowance under the Staff Regulations which were then in force. In 1967 he transferred to Brussels and, with his family, settled in Liège. He received an installation allowance on that occasion pursuant to Article 5 of Annex VII to the Staff Regulations. In 1978 he transferred to the Court of Auditors in Luxembourg. He himself settled in Luxembourg but his family remained in Liège and, on this occasion, pursuant to the terms of paragraph 4 of Article 5, he received only half the allowance, namely one month's salary. He has, during the period since 1978, lived in Luxembourg and his family have remained in Liège.

On 1 June 1981 he retired and returned to live with his family in Liège. By letter of 3 June he applied for the grant of a resettlement allowance equal to the amount due under the "ECSC and EEC Euratom Staff Regulations". He was told in reply by the Court of Auditors that a claim under the ECSC Staff Regulations would produce less money for him than would a claim under the current Staff Regulations, and he was subsequently informed that he was to be paid one month's basic salary as his resettlement allowance. By letter dated 18 August, he submitted a complaint against that decision contending that he was entitled to two months' salary as his resettlement allowance. That complaint was rejected by the Court of Auditors on 3 December and Mr Evens began proceedings before the Court on 25 February.

At one stage, as I have indicated, the applicant was contending that he should receive his allowance under the ECSC Staff Regulations. It has been shown in Case 10/74 *Becker* v *Commission* [1974] ECR 867, as counsel for the Court of Auditors in my view rightly contends, that the provisions of Article 99 of the 1962 version of the ECSC Staff Regulations did no more than to keep available for the official the right to claim an allowance under the earlier Staff Regulations if, under the newer

ones, he would receive less by way of payment. It seems quite clear in the present case that, on any view, the applicant would receive more under the current Regulations and therefore it does not seem that the ECSC Staff Regulations are of any relevance to the claim, except in so far as they are relied on as a means to interpretation of the current Regulations.

It has been stressed by the applicant that there is missing from Article 6 of Annex VII an equivalent to paragraph 4 of Article 5. On the other hand it is suggested that it is so obvious that, if the installation allowance is to be halved under Article 5 (4) for someone whose family does not settle with him, the resettlement allowance must also be halved for someone whose family does not have to go back to resettle with him when he leaves the service and, accordingly, it is suggested that the draftsman found it unnecessary to insert any provision to that effect in Article 6. I hope that that was not the thought process of the draftsman. It clearly is not a tenable proposition that the matter is so obvious that no provision in Article 6 was required. On the contrary, there is force in the counter-argument that, if the limitation is omitted from Article 6 when it is present in Article 5, it is intended to exclude the limitation in Article 6.

At the end of the day, however, the short question is whether the applicant can show that he has satisfied the provisions of Article 6. By paragraph 1 of Article 6, he is entitled to the two months' allowance if he satisfies Article 5 (1), which he does; if he is entitled to the household allowance, which he clearly is; and if he has completed four years' service, which he quite clearly has. That would appear under paragraph 1 to give him an absolute right to two months' salary. Article 6 (1) must, however, be read together with Article 6 (4). From the latter, it is plain that an official cannot enforce or perfect the right given to him by Article 6 (1) unless he produces evidence that he and his family have resettled at a place situated not less than 70 kilometres from the place where he was employed. The words are clear, namely, that he "and his family ... have resettled". These words do not say, as the applicant appears to contend, that it is enough if he settles with his family in the sense of rejoining them in the place where they are. In my opinion both must go back, where there is a family, if paragraph 6 (4) is to be satisfied. The present applicant cannot establish that they did, since it is plain that his family remained in Liège throughout.

Counsel for the applicant has sought to rely on the provisions of the ECSC Staff Regulations, not so much as a separate claim, but to show that there never has been a provision cutting down a resettlement allowance by half where the official, albeit entitled to the household allowance, has to resettle, but where his family is already in some other place. He also refers to the fact that in Article 12 of the 1956 version of the ECSC Staff Regulations, the payment of the resettlement allowance is linked to the payment of an installation allowance and, as I understand it, the argument is

that once you are entitled to the installation allowance you must be entitled to the full two months' allowance provided for on resettlement.

I do not find that these references to the earlier legislation are of any assistance in construing what seem to me to be clear words.

It is not strictly necessary in this case to decide whether the applicant is entitled to the one month's basic salary which he has been paid. There is no issue in the case about that, although counsel for the Court of Auditors has contended that the logical result of one of the arguments put forward by the applicant is that he is entitled to nothing. If that were so, it might well cast doubt on the conclusion for which the Court of Auditors contends in the alternative.

Accordingly, briefly, I would comment as follows. There is nothing in Annex VII which gives him expressly a right to any payment unless he and his family resettle. It is quite plain that, under Article 71 standing alone, the applicant is not entitled to any reimbursement of expenses since that right is subject to the words "as provided for in Annex VII". The highest the argument could be put would be that Article 71 would give him a right to be repaid expenses which he had actually incurred but that would be contrary to what in my view rightly is common ground between the parties, since it is agreed that a lump-sum is deliberately paid to cover expenses which will necessarily be incurred but which it is difficult to quantify and expensive and inconvenient for the administration to investigate, so that no provision was made for actual expenses to be investigated.

It is arguable that a married official living alone at his place of work, who goes to rejoin his family at the family home, does not incur expenses of the kind which are intended to be covered and to which I have just referred. His only expenses would be those of transferring his possessions from one home to the other and not of setting up a new home. If that were right, Mr Evens would be entitled to nothing since he cannot satisfy the provisions of Article 6 (4).

I do not think that this was intended. It seems to me that there is a gap in the drafting, as there is also in the case of an official who installs himself with his family at his new work-place but, on leaving the service, also separates from his family who stay where they are, whereas he goes off to resettle elsewhere. It seems to me in the present case that, to make this system of resettlement allowances work, and to make it work equitably, there must necessarily be implied into Article 6 (4) a provision that an official, whose family do not install themselves with him (and who therefore receives only one month's allowance under Article 5 (4), when he first goes to his new place of work), should be entitled to receive half the allowance, that is to say one month's salary, on his resettlement, subject to his producing the necessary evidence.

Accordingly, even though it is not necessary to decide this point, I consider that the Court of Auditors came to the right conclusion and that, in any event, (a) this application should be dismissed since the applicant cannot satisfy paragraph 4 of Article 6 and (b) that each of the parties should bear their own costs in accordance with Article 70 of the Rules of Procedure.