

Action brought on 24 August 2006 — Kretschmer v Parliament

(Case T-229/06)

(2006/C 294/105)

Language of the case: French

Parties

Applicant: Elfriede Kretschmer (Overijse, Belgium) (represented by: G. Vandersanden, lawyer)

Defendant: European Parliament

Form of order sought

The Court is asked to:

- Annul the decision, brought to the applicant's notice on 14 June 2006, not to grant her payment of the daily subsistence allowance in full with effect from 16 October 2003 and determining Overijse (Belgium) as her place of recruitment;
- as a consequence, order the defendant to pay the following sums:
 - (i) by way of daily subsistence allowance:
 - EUR 50 per day in respect of the period from 16 October 2003 to 30 April 2004 in accordance with Article 12(1) of the Rules governing the secondment of national experts to the European Parliament of 2 June 2003;
 - EUR 84 per day in respect of the period from 1 May 2004 to 31 March 2005 in accordance with Article 12(1) of the Rules governing the secondment of national experts to the European Parliament of 3 May 2004;
 - EUR 84,35 per day with effect from 1 May 2005 in accordance with Article 15(2) of the Rules governing the secondment of national experts to the European Parliament of 7 March 2005;
 - (ii) EUR 72,39 by way of supplementary monthly allowance in accordance with Article 15(2) of the Rules governing the secondment of national experts to the European Parliament of 7 March 2005;

- order the defendant to pay the applicant default interest on the sums referred to at (i) and (ii) from the respective due dates until the date of actual payment. The interest rate must be the rate fixed by the European Central Bank for principal refinancing operations applicable for the period in question, increased by two points;
- order the defendant to pay the token sum of one euro as compensation for non-material damage caused to the applicant on account of the faults committed as a result of delays in the management of the case;
- order the defendant to pay the costs in their entirety.

Pleas in law and main arguments

The applicant is a national expert on secondment to the European Parliament. Her initial contract for the period from 16 October 2003 to 15 October 2004 was renewed for the period from 16 October 2004 to 15 October 2005 and then again for a further two-year period from 16 October 2005 to 15 October 2007. By her application, she seeks annulment of the decision, brought to her attention by e-mail on 14 June 2006, not to grant her payment of the daily subsistence allowance in full with effect from 16 October 2003 and determining Overijse (Belgium) as her place of recruitment.

In support of her claim, the applicant alleges misinterpretation and misapplication of the 2002, 2004 and 2005 Rules on national experts on secondment (SNEs) to the Parliament. The applicant maintains that, at the time when she was first recruited, her place of residence was in Germany and not in Belgium, which was considered by the Parliament authorities to be her place of recruitment. She submits that her secondment was approved by agreement between her authority from which she came (the Minister-President of the Land of North-Rhine Westphalia) and the Commission when she was first engaged as a temporary agent for the period from 1 September 2002 to 31 July 2003, which, in her view, constitutes evidence of her place of residence prior to her recruitment and at the times when her contracts were renewed. The applicant also maintains that the fact that she moved to Brussels to take up her duties as SNE and registered as a temporary resident in Brussels in accordance with Belgian law, cannot be regarded as constituting a change in 'place of residence', which presupposes fixed, permanent and settled establishment. In support of her position, she relies on the fact that she is subject to fixed-term recruitment for a maximum period of six years and that, at the end of that period she will, in principle, return to Germany to resume her duties as judge in the national courts. She therefore considers that throughout the period of employment as SNE her place of residence has been Germany and not Brussels.

With regard to the claim for compensation, the applicant considers that the European Parliament exceeded a reasonable period in responding to her requests for clarification and for a review of her situation and, furthermore, that such conduct is inconsistent with the requirements of the European Code of good administrative conduct. The applicant seeks an order that the defendant pay the token sum of one euro as compensation for the non-material damage thus caused. The applicant also seeks default interest on the sums due to her under the 2002, 2004 and 2005 rules on SNEs.

Action brought on 4 September 2006 — Nederlandse Omroep Stichting v Commission of the European Communities

(Case T-237/06)

(2006/C 294/106)

Language of the case: Dutch

Parties

Applicant: Nederlandse Omroep Stichting (represented by: J.J. Feenstra and H.M.H. Speyart, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- Annul the Commission's decision, in particular Article 1(1) and (2) and Articles 2 and 3 and the recitals on which they are based;
- order the Commission to pay the costs

Pleas in law and main arguments

By its application the Nederlandse Omroep Stichting (NOS) seeks the annulment of the Commission's decision of 22 June 2006 on ad hoc financing of the Dutch public broadcasters (State aid C 2/2004 [ex NN 170/2003]).

In support of its application the applicant alleges, first, breach of Article 88(1), (2) and (3) EC and of Regulation No 659/1999⁽¹⁾. It submits that the Commission has incorrectly interpreted and applied the distinction between new and existing aid. The ad hoc aid which is the subject of the contested decision was merely a part of the total system of public financing of Dutch public broadcasters. The general system has been recognised by the Commission as existing aid. The cash flows, which the Commission refers to as ad hoc financing, are provided on the same lines and should, according to the applicant, therefore be regarded as existing aid.

Secondly, the applicant alleges breach of Articles 87 and 88 EC as result of the Commission's incorrect interpretation and application of the judgment in *Altmark*⁽²⁾. According to the applicant, the Commission found, wrongly and on the basis of an unfair criterion, that the ad hoc financing should be regarded as State aid. The applicant submits that the criteria developed in *Altmark* by the Court of Justice cannot be applied in the present situation. Instead, the Amsterdam Protocol on the financing of public broadcasting⁽³⁾ should be the point of departure.

Thirdly, the applicant alleges breach of Articles 87 and 88 EC, Article 253 EC and Regulation No 659/1999 as result of the lack of connection between the provision of the ad hoc financing and the overcompensation found by the Commission. According to the applicant, the overcompensation connected with the creation of reserves in the case of the broadcasting institutions is not sufficiently attributable to the allocation of the funds which the Commission refers to as ad hoc financing.

Fourthly, the applicant alleges breach of Articles 87 and 88 EC as result of the fact that the Commission wrongly regards copy-right royalties as State aid. Moreover, the ad hoc financing is not favouring the applicant as an undertaking within the meaning of Article 87(1) EC and the public financing awarded does not lead to a distortion of competition within the meaning of Article 87(1) EC.

Fifthly, the applicant alleges breach of Article 86(2) EC owing to a lack of proportionality. Also when viewed in the light of the Amsterdam Protocol on the financing of public broadcasting, the Commission wrongly failed, after finding that there was no distortion of competition, to balance the lack of negative effects of overcompensation against the interest of the performance of a public task and the Community's interest in general. The applicant submits that the Commission should have also taken into account the limited nature of the Dutch language area and the fact that the reserves that had arisen would have led to expenditure in the foreseeable future and would thus have disappeared.

Finally, the applicant alleges breach of the rules of procedure in Article 88(2) EC and the rights of the defence as result of the fact that the Commission extended the scope of the investigation in various respects.

⁽¹⁾ Council Regulation (EC) No. 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

⁽²⁾ Case C-280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH* [2003] ECR I-7747.

⁽³⁾ Protocol annexed to the Treaty establishing the European Community concerning the system of public broadcasting in the Member States.