

JUDGMENT OF THE COURT (Fourth Chamber)
27 October 1987 *

In Joined Cases 176 and 177/86

Arlette Houyoux, an official of the Commission of the European Communities,
residing in Brussels,

and

Marie-Catherine Guery, an official of the Commission of the European
Communities, residing in Brussels,

both represented by Edmond Lebrun, of the Brussels Bar, with an address for
service in Luxembourg at the Chambers of Tony Biever, 83 boulevard Grande-
Duchesse-Charlotte,

applicants,

v

Commission of the European Communities, represented by Marie Wolfcarius, a
member of the Commission's Legal Department, acting as Agent, with an address
for service in Luxembourg at the Chambers of G. Kremlis, Jean Monnet Building,
Kirchberg,

defendant,

APPLICATION for the annulment of the Commission's decisions refusing to
grant the applicants a rent allowance with retroactive effect,

THE COURT (Fourth Chamber),

composed of: G. C. Rodríguez Iglesias, President of Chamber, T. Koopmans and
C. Kakouris, Judges,

Advocate General: J. L. da Cruz Vilaça
Registrar: S. Hackspiel, Administrator

* Language of the Case: French.

having regard to the Report for the Hearing and further to the hearing on 14 May 1987,

after hearing the Opinion of the Advocate General delivered at the sitting on 1 July 1987,

gives the following

Judgment

- 1 By applications lodged at the Court Registry on 16 July 1986, Mrs Arlette Houyoux (Case 176/86) and Mrs Marie-Catherine Guery (Case 177/86), both Commission officials in Category C, each brought an action, in Case 176/86, for the annulment of the Commission's decision of 14 November 1985 refusing to grant the applicant a rent allowance and for an order that the Commission pay the applicant the said allowance for the period from 1 July 1982 to 30 April 1985, together with default interest; and, in Case 177/86, for the annulment of the Commission's decision of 16 October 1985, in so far as the rent allowance thereby granted to the applicant takes effect only as from 1 June 1985, and for an order that the Commission pay the applicant the balance of the said allowance, together with default interest.
- 2 Mrs Houyoux was employed at the Commission's Delegation to the Organization for Economic Cooperation and Development (OECD) in Paris from 1 July 1982 to 30 April 1985. On 21 October 1985, she applied for the grant of a rent allowance which was refused on the ground that it could not be granted with retroactive effect.
- 3 Mrs Guery was employed at the Commission's Delegation to the OECD in Paris from 1 July 1981 to 31 August 1985. On 3 June 1985 she applied for the grant of the rent allowance. The Commission granted her the allowance as from 1 June 1985, June being the month in which she submitted her request, but refused to grant it in respect of the preceding period.

- 4 The applicants claim that the Commission's decisions were adopted in breach of the applicable rules. According to Article 14a of Annex VII to the Staff Regulations of Officials (hereinafter referred to as 'the Staff Regulations'), an official employed 'in a place where the problem of accommodation is recognized as being particularly difficult' may be given a rent allowance; the list of places for which the allowance may be granted, the maximum amount of the allowance and the rules for granting it are to be laid down by the Council. Article 2 of the Council's implementing regulation, Regulation No 6/66/Euratom, 121/66/EEC of the Council of 28 July 1966 (hereinafter referred to as 'the 1966 Regulation'), includes Paris amongst the places of employment for which the rent allowance may be granted. According to the applicants, it follows, moreover, from Article 4 of the 1966 Regulation that the rent allowance 'shall be granted' to an official whose monthly rent, after deduction of certain charges, exceeds the limits specified in that provision. The rent allowance is therefore payable automatically subject to fulfilment of certain objective conditions relating first to the place of employment and, secondly, to the amount paid by the official by way of rent.
- 5 In the alternative, the applicants maintain that it is contrary to the principle of the protection of legitimate expectation for the Commission to refuse their application for the grant of the allowance in question on the ground that it was submitted out of time. The applicants were not informed that they were entitled to the allowance when they were transferred to Paris, and they were misled by the 'Vade-mecum for the use of officials transferred to a Commission delegation or information office', published in June 1980 and given to them at the time of their transfer, since the passage relating to the allowance for the costs of accommodation refers only to places of employment situated outside the Member States of the Community. In addition, the central administration in Brussels transmitted to the Paris Delegation a form for completion by officials who were employed there and who applied for a rent allowance, but that document was not brought to the applicants' attention.
- 6 With regard to the applicants' principal submission, the Commission relies on Article 3 of the 1966 Regulation, according to which the appointing authority is to consider 'before granting any allowance' whether the accommodation is suitable for the requirements of the official, having regard to his duties and his family circumstances, and the number of dependants actually living under his roof. Accordingly, it maintains, the allowance can be granted only for the future and cannot have retroactive effect since the appointing authority is unable to ascertain

whether the recipient fulfilled the conditions laid down in respect of a period which has already elapsed.

- 7 In its rejoinder and at the hearing the Commission acknowledged that the appointing authority's powers in the matter are circumscribed and that the appointing authority is required to grant the allowance once it has established, on the basis of the information provided by the official, that the conditions laid down have been fulfilled. However, the decision to grant the allowance cannot have retroactive effect owing to the need to carry out beforehand certain verifications. That need is illustrated by Case 176/86, in which Mrs Houyoux, having mislaid her lease, was able to produce, by way of evidence, only a statement drawn up by the owner of the rented premises after her assignment to Paris had come to an end.
- 8 It must be pointed out, in that regard, that Article 3 of the 1966 Regulation, which is relied upon by the Commission, is justified by the fact that before granting the rent allowance the appointing authority needs to carry out certain verifications. However, it is difficult or even impossible to do so if the official in question has already left the premises in question. A reasonable interpretation of that provision therefore leads to the conclusion that the rent allowance cannot normally be granted if the official in question no longer occupies the premises in respect of which that allowance is claimed.
- 9 However, there is nothing to prevent the allowance from being granted in respect of the period preceding the submission of the official's application where he still occupies the premises in question, since in those circumstances the appointing authority is able to verify any matters which it may consider necessary. Although Article 3 of the 1966 Regulation requires the appointing authority to examine the official's circumstances and the premises 'before granting any allowance', that provision cannot have the effect of depriving the official in question of the benefit of the allowance in respect of the period between the time when he moves into those premises and the time when the appointing authority decides to grant the allowance after carrying out the necessary verifications on the basis of the official's application.
- 10 It follows that the principal submission is unfounded, so far as Mrs Houyoux is concerned, but that the decision granting the rent allowance to Mrs Guery is unlawful in so far as it refuses to grant the allowance for the period between 1 July 1981 and 1 June 1985.

- 11 In those circumstances, it is necessary to consider the alternative submission alleging a breach of the principle of the protection of legitimate expectation with regard to Mrs Houyoux.
- 12 In that regard, the Commission has acknowledged that the facts alleged by the applicants are correct. The vade-mecum for the use of officials who are transferred did indeed contain an error as regards the conditions for the grant of the rent allowance to officials posted within the Community. However, the Commission considers that officials cannot be unaware of the rights conferred upon them by the Staff Regulations, a copy of which, moreover, the Commission took care to give to the applicants when they took up their duties.
- 13 In response to a question from the Court, the Commission also stated that the administrative assistant employed at the Commission's office in Paris received a memorandum dated 29 January 1985 to which the relevant administrative department in Brussels had attached copies of the 1966 Regulation and which stated 'that it would be interesting to know which officials might be eligible' for the allowance. It would appear, however, that the assistant concerned did not take any action on that memorandum.
- 14 It is clear from that information that Mrs Houyoux was misled as to the very existence of a right to a rent allowance and that, as a result of negligence on the part of the Commission, that error was not rectified in good time. The applicant has therefore suffered damage as a result of the Commission's maladministration.
- 15 However, it does not follow from such maladministration that the contested decision must be annulled and that the Commission must be ordered to pay the allowance which it had refused to grant, since the applicant had left the premises in question and mislaid her lease, with the result that the Commission is justified in contending that it was impossible to ascertain whether the conditions laid down by Article 14a of Annex VII to the Staff Regulations and by the 1966 Regulation had in fact been satisfied and, if they had, to determine the amount to which the applicant was entitled.
- 16 However, where, as in this case, the dispute is one of a financial character in which the Court has unlimited jurisdiction, the Court is vested with the power not

only to annul the measure in point but also, where appropriate, to order of its own motion that compensation be paid by the defendant for damage caused by maladministration on its part, and this is so even in the absence of any formal claim for such relief. In such a case, the Court may, having regard to all the circumstances of the case, assess the damage *ex aequo et bono*.

17 According to information provided by the Commission, which is not challenged by the applicants, the rent allowances refused amount, in the case of Mrs Guery, to FF 17 617.24, and, in the case of Mrs Houyounx, to FF 6 801.09.

18 On the basis of all those considerations, it is necessary:

(a) in Case 176/86:

to order the Commission to pay the applicant the sum of FF 3 400 by way of damages for maladministration on its part;

for the rest, to dismiss the application;

(b) in Case 177/86:

to annul the Commission's decision of 16 October 1985 in so far as it limited the grant of the rent allowance to the period after 1 June 1985;

to order the Commission to pay the applicant the sum of FF 17 617.24 by way of rent allowance, together with default interest at the rate of 6% for the period between the date on which the application for the rent allowance was submitted and the date on which it was actually paid.

Costs

19 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Commission has failed in its main submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fourth Chamber)

hereby:

- (1) Orders the Commission to pay Mrs A. Houyoux the sum of FF 3 400 by way of damages for maladministration on its part;
- (2) For the rest, dismisses her application;
- (3) Annuls the Commission's decision of 16 October 1985 in so far as it limited the rent allowance granted to Mrs M.-C. Guery to the period after 1 June 1985;
- (4) Orders the Commission to pay Mrs M.-C. Guery the sum of FF 17 617.24 by way of rent allowance, together with default interest at the rate of 6% for the period between the date on which the application for the rent allowance was submitted and the date on which it was actually paid;
- (5) Orders the sums awarded by this judgment to be paid to the applicants in Belgian francs at the rate of exchange applicable on the day of payment;
- (6) Orders the Commission to pay the costs.

Rodríguez Iglesias

Koopmans

Kakouris

Delivered in open court in Luxembourg on 27 October 1987.

P. Heim

Registrar

G. C. Rodríguez Iglesias

President of the Fourth Chamber