

91 (1) of the Staff Regulations in a dispute of a financial character, the Court may, whilst rejecting both a claim for annulment and a claim for the grant of an allowance provided for by the Staff Regulations, as the conditions for such a grant are not fulfilled, of its own motion

make a finding that the defendant institution is guilty of maladministration and order it to make good the damage thereby caused to the official. In such a case, the Court may, having regard to all the circumstances of the case, assess the damage *ex aequo et bono*.

REPORT FOR THE HEARING

delivered in Joined Cases 176 and 177/86 *

1 — Facts and procedure

Legal background to the dispute

According to Article 14a of Annex VII to the Staff Regulations of Officials of the European Communities ('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 such allowance may be granted, the maximum amount of such allowance and the rules for granting it are to be laid down by the Council. By virtue of that provision, the Council adopted Regulation No 6/66/Euratom, 121/66/EEC of 28 July 1966 laying down the list of places for which a rent allowance may be granted, the maximum amount of that allowance and the rules for granting it (Official Journal, English Special Edition, 1965-66, p. 212). Article 2 of that regulation includes Paris amongst the places of employment for which the rent allowance may be granted. According to Article 3 of the regulation, 'before granting any allowance', the appointing authority is to ascertain 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. Where appropriate, it may set a limit on the amount of rent taken into account for calculating the allowance. Finally, Article 4 provides that the rent allowance is to be granted to officials up to and including Grade B 2 whose monthly rent amounts to more than 18% of their total emoluments.

Background to the dispute

The applicants were assigned to the Commission's Delegation to the Organization for Economic Cooperation and Development (OECD) in Paris.

Mrs Houyoux was transferred to Paris from 1 July 1982 until 30 April 1985 as a secretary in Grade C 2. She did not apply for the rent allowance in respect of that period until 21 October 1985. On 14 November 1985 the Commission refused to grant her the allowance on the ground that it could not be allocated with retroactive

* Language of the Case: French.

effect. On 8 January 1986 Mrs Houyoux submitted a complaint within the meaning of Article 90 (2) of the Staff Regulations, which evoked no response.

November 1985 refusing to grant her a rent allowance;

Order the Commission to pay her a rent allowance for the period from 1 July 1982 to 30 April 1985, together with interest at 8% per annum on the amount of each payment from the date on which it fell due to the date on which it is actually paid;

Annul the decision rejecting the complaint submitted by her on 8 January 1986;

Order the Commission to pay the costs.

Mrs Guery, the other *applicant*, claims that the Court should:

Declare the application admissible and well founded;

Annul the Commission's decision communicated by a memorandum dated 16 October 1985 in so far as the rent allowance therein granted to her takes effect only as from 1 June 1985;

Declare that the decision shall take effect as from 1 July 1981;

Order the Commission to pay her the balance of the rent allowance due as a result of the decision granting the allowance taking effect as from 1 July 1981, together with interest at 8% per annum on the amount of each payment from the date on which it fell due to the date on which it is actually paid;

Annul the implied decision rejecting the complaint lodged by her on 20 December 1985;

Order the Commission to pay the costs.

Mrs Guery was assigned to Paris from 1 July 1981 until 31 August 1985 as a secretary in Grade C 3. She applied for the rent allowance on 3 June 1985. On 16 October 1985 the Commission granted her the allowance as from 1 June 1985, June being the month in which the request was submitted, whilst refusing to grant it in respect of the preceding period. On 20 December 1985 Mrs Guery lodged a complaint within the meaning of Article 90 (2) of the Staff Regulations, which remained unanswered.

Procedure

Mrs Houyoux's application was lodged at the Court Registry on 16 July 1986.

Mrs Guery's application was lodged at the Court Registry on the same date.

By order of 23 September 1986, the Fourth Chamber of the Court joined the two cases for the purposes of the written procedure, the oral procedure and the judgment.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

2 — Conclusions of the parties

Mrs Houyoux, the *applicant*, claims that the Court should:

Declare the application admissible and well founded;

Annul the Commission's decision communicated by a memorandum dated 14

The *Commission*, the *defendant*, contends that the Court should:

Dismiss the applications as unfounded;

Make an appropriate order as to costs.

3 — Submissions and arguments of the parties

Infringement of the Staff Regulations and Regulation No 6/66/Euratom, 121/66/EEC

In the first place, the *applicants* contend that the *Commission's* decisions infringe the Staff Regulations and Regulation No 6/66/Euratom, 121/66/EEC of 28 July 1966. It follows from Article 14a of Annex VII to the Staff Regulations, Article 2 of the 1966 Regulation and, in particular, from Article 4 of that regulation, that the rent allowance is payable automatically subject to fulfilment of certain objective conditions relating, on the one hand, to the place of employment and, on the other, to the amount paid by the official by way of rent. Entitlement to the allowance does not depend on the submission of an application by an official. In addition, there is no ground for maintaining that the rent allowance may not be granted with retroactive effect, if the conditions laid down were fulfilled during the period preceding the submission of the application.

According to the *Commission*, it follows from the wording of the relevant provisions, in particular from the use of the term 'may', that the allowance is not granted automatically. The appointing authority has a discretion in the matter. Moreover, in order to ascertain whether the application for the allowance is justified, certain information provided by the applicant must necessarily be considered before the allowance is granted. It cannot therefore be granted in respect of a period that has already elapsed since in that case the appointing authority would have had no opportunity to determine, before granting the allowance, whether the conditions for the grant thereof

were fulfilled. The case of Mrs Houyoux provides a striking illustration in that regard since she has mislaid her lease and is able to produce only a statement from the owner of the rented premises, which is dated 12 October 1985 and was therefore drawn up after her assignment to Paris had come to an end.

In their reply, the *applicants* emphasize that the existence of a discretion can in no way affect the possibility of granting the allowance retroactively. Moreover, the administration's power to grant the rent allowance is not discretionary. If the conditions laid down by the regulation for the grant of the allowance are fulfilled, the administration cannot refuse to grant it. With regard to the provision of supporting documents and verification thereof, the *applicants* consider that those are factual circumstances which may be relevant for the purpose of determining whether the conditions laid down are satisfied. However, they do not preclude the grant of the allowance with retroactive effect.

In its rejoinder, the *Commission* acknowledges that the appointing authority's power is circumscribed and that the appointing authority is required to grant the allowance where it establishes, after considering the information furnished by the official, that the necessary conditions have been fulfilled. None the less, the allowance cannot be granted retroactively in view of the need to have beforehand the results of certain verifications. The *Commission* adds that the possibility of granting the allowance with retroactive effect could lead to a situation in which an official may apply for it at any time. A situation of that kind would conflict with the time-limits prescribed by the Staff Regulations, which it would no longer be possible to observe.

Breach of the general principles of law

Secondly, the *applicants* maintain that the decisions in question were adopted contrary to the general principles of law, in

particular, the principles of the protection of legitimate expectation, equality and distributive justice, and in breach of the institution's duty to care for the interests of its officials and its duty of fairness.

The applicants maintain that they had not been informed that they were entitled to the allowance and that the 'vade-mecum' which they had obtained referred solely to the rent allowance payable in respect of places of employment situated outside the Member States of the Community. In addition, the paragraph concerning the allowance for the cost of accommodation refers to Annex V to the vade-mecum, but that annex mentions only the second subparagraph of Article 14 (1) of Annex VII to the Staff Regulations. Article 14a of Annex VII, which is at issue in this case, is therefore passed over in silence in the vade-mecum. The applicants were thus misled by the vade-mecum with regard to their right to the allowance.

Next, the applicants maintain that on 29 January 1985, the central administration in Brussels transmitted a memorandum to the Paris Delegation together with a request for information on any officials who might be eligible for the rent allowance. The Paris Delegation did not supply that information and the request from Brussels was not brought to the applicants' attention.

The Commission considers that the Staff Regulations, a copy of which is given to each official on entering the service, contain sufficient information regarding the rights of officials. According to the Commission,

every official is deemed to be aware of the consequences under the Staff Regulations of a change in the place of employment. The appointing authority is not under a duty to remind officials of those consequences.

Next, the Commission contends that the principles of the protection of legitimate expectation, equality and fairness require the rent allowance to be granted under the same conditions to all the officials concerned, that is to say from the month in which the grant of the allowance is applied for.

With regard to the vade-mecum, the Commission denies that it is under any obligation to set out therein all the possibilities available under the Staff Regulations. In that regard, it adds that, had they read the vade-mecum and the Staff Regulations closely, the officials concerned would have concluded that the use of the phrase 'outside the Member States of the Community' was unfortunate. The applicants could have sought information from the relevant department. According to the Commission, it is the applicants who are guilty of an inexcusable error. If, none the less, the view were to be taken that there was a fault on the part of the administration, in view of the fact that the information provided was incomplete, the responsibility should be shared between the parties, as the applicants were guilty of contributory negligence.

T. Koopmans
Judge-Rapporteur