

JUDGMENT OF THE COURT (Fourth Chamber)
7 March 1990 *

In Joined Cases C-116/88 and C-149/88

André Hecq, an official of the Commission of the European Communities, residing at Mondercange, Luxembourg, represented by Jacques Putzeys, S. Gehlen and Xavier Leurquin, of the Brussels Bar, with an address for service in Luxembourg at the office of George Nickts, 87 avenue Guillaume,

applicant,

v

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

defendant,

APPLICATION for the annulment of the decision of the Head of the Buildings Department to relieve the applicant of responsibility for heating and sanitation in the Commission buildings in Brussels and to give him the sole task of carrying out an audit of the Overijse complex, and for annulment of the decision of the Director-General for Personnel and Administration to post the applicant to Luxembourg,

THE COURT (Fourth Chamber)

composed of: C. N. Kakouris, President of Chamber, T. Koopmans and M. Díez de Velasco, Judges,

Advocate General: J. Mischo
Registrar: B. Pastor, Administrator

* Language of the case: French.

having regard to the Report for the Hearing and further to the hearing on 9 November 1989,

after hearing the Opinion of the Advocate General delivered at the sitting on 12 December 1989,

gives the following

Judgment

- ¹ By an application lodged at the Court Registry on 14 April 1988, André Hecq, an official in Grade B 3 of the Commission of the European Communities, sought, pursuant to Article 91 of the Staff Regulations of Officials, the annulment of the decision of 22 April 1987 of the Head of the Buildings Department to relieve him of responsibility for heating and sanitation in certain Commission buildings in Brussels and to give him the sole task of 'carrying out an audit, broken down by building trade, of the Overijse complex', and for the restoration of all the rights he had under the Staff Regulations before 22 April 1987 (Case C-116/88).
- ² By an application lodged at the Court Registry on 25 May 1988, Mr Hecq brought another action seeking the annulment of the decision of 31 July 1987 of the Director-General for Personnel and Administration to assign him with effect from 1 November 1987 to the Administration Division of the Personnel and Administration in Luxembourg and General Services Directorate in Luxembourg and the restoration of all the rights he had under the Staff Regulations before the decision at issue was adopted (Case C-149/88).
- ³ Those two applications followed two other applications brought by Mr Hecq which were dismissed by the judgments of 23 March 1988 in Case 19/87 [1988] ECR 1681 and of 14 December 1988 in Case 280/87 [1988] ECR 6433. In the first

judgment it was found that there had been an appreciable deterioration in the working atmosphere in the department to which Mr Hecq belonged at the time, that that deterioration had led to changes in the department in question and that the information available to the Court did not enable it to determine who was responsible for the deterioration in the working atmosphere.

4 The decision of 22 April 1987, which is the subject-matter of Case C-116/88, was made in the following circumstances: from 6 February 1987 to 4 May 1987 the applicant was not at work for health reasons. During that period, Mr Petersen, Head of the Buildings Department, gave to other officials responsibility for the buildings which were formerly in the charge of the applicant. When the applicant returned to work Mr Petersen asked him by a memorandum of 22 April 1987 to carry out an audit of the Overijse complex. The memorandum stated that the audit was to be a comprehensive inventory of the complex, broken down by building trade, and was to propose possible steps to put the complex in order so as to improve its functioning. All proposals were to be accompanied by estimates so that their impact on the budget could be assessed.

5 The decision of 31 July 1987, which is the subject-matter of Case C-149/88, was taken in the following circumstances: on 22 July 1987 the applicant met the Director-General for Personnel and Administration, Mr Hay, at the latter's request, in order to discuss the applicant's reassignment. By a memorandum of 29 July 1987, Mr Hay offered the applicant the choice between two new assignments, one of which was with the Telecommunications and Distributed Hardware Department in Brussels and the other with Division IX-E-2 (Buildings and Equipment Section) in Luxembourg. Mr Hecq did not express a preference and on 31 July 1987 Mr Hay notified the applicant of his decision to assign him to Division IX-E-2 of the Commission in Luxembourg with effect from 1 November 1987.

6 Reference is made to the Report for the Hearing for a fuller account of the facts of the case and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

(a) Admissibility of the action in Case C-116/88

- 7 The Commission contends that the first of the two actions is devoid of purpose since the decision at issue ceased to produce any effect on 1 November 1987, the date on which the applicant was reassigned to Luxembourg. In the absence of an existing interest, the action is inadmissible.
- 8 That submission cannot be upheld. It emerges from the documents before the Court that the memorandum of 22 April 1987 does not merely give the applicant new temporary duties but also removes him from his former duties. Such a decision is capable of adversely affecting an existing interest of the applicant.
- 9 In the alternative, the Commission claims that the action is inadmissible also because the decision cannot adversely affect the applicant since it is a measure designed to improve the organization of the services without affecting the rights of the official concerned under the Staff Regulations. However, since the applicant claims precisely that the decision was not based on the interest of the service, that argument of the Commission falls to be considered in the examination of the substance of the case.

(b) The decision of 22 April 1987 (Overijse complex)

- 10 The applicant claims first of all that the duties which he was assigned by the decision at issue did not correspond to his grade and post. On the one hand, inasmuch as the audit of the Overijse complex concerned heating and sanitation, the task fell well short of what could be expected of an assistant in Grade B 3/B 2. On the other hand, in so far as the audit of the Overijse complex covered all the building trades, it required greater knowledge than could reasonably be expected of an assistant in Grade B 3/B 2. Secondly, the applicant claims that the decision to assign him to new duties was not based on the interest of the service, as required under Article 7(1) of the Staff Regulations, but on unlawful grounds, as is proved by two memoranda which appear among the documents before the Court. Finally, the applicant contends that the decision at issue, since it is a measure which adversely affects him, ought to have stated the reasons on which it is based, and that the Commission infringed the duty of the administration to have regard to the interests of its officials by adopting the decision in question without having taken into consideration the interests of the applicant and without having allowed him to put forward his view beforehand.

- 11 It must be noted first of all that the Court has held that the Community institutions have wide discretion to organize their departments to suit the task entrusted to them and to assign the staff available to them in the light of such tasks, on condition, however, that the staff are assigned in the interests of the service and in conformity with the principle of assignment to an equivalent post (judgment of 23 June 1984 in Case 69/83 *Lux v Court of Auditors* [1984] ECR 2447).
- 12 With regard to this last point, it should be noted that in the Overijse complex, the applicant was assisted by the building manager, who sent him a detailed list of the work to be carried out. In order to comply with the request made by the Head of the Buildings Department, the applicant was required to review the problems to which the building manager drew attention and to contact potential suppliers, contractors and craftsmen in order subsequently to estimate the cost of the necessary work. The applicant's new duties thus required the carrying out of a technical analysis and a financial estimate; having regard to the nature and the importance of the analysis and the estimate, it cannot be argued that they do not correspond to the applicant's grade and post.
- 13 With regard to the interest of the service, it should be observed that the two memoranda cited by the applicant, which were lodged by the Commission at his request, adduce no factor of such a kind as to support the argument that the assignment of new duties to the applicant was based on unlawful grounds. Moreover, none of the other documents before the Court gives grounds for concluding that the decision was taken for reasons extraneous to the interest of the service. It is clear, however, from the documents before the Court that the Head of the Buildings Department took the view that for the period during which the applicant was on sick leave it was necessary to entrust other officials with the management of the buildings for which he was responsible; that on the applicant's return to work he should carry out an audit of the Overijse complex; and that the tasks entrusted to the applicant in connection with that audit corresponded to his grade and post.
- 14 It follows from the foregoing that the decision at issue is merely a measure of internal organization which does not affect the official's position under the Staff Regulations or infringe the principle that the post to which he is assigned should correspond to his grade. According to the case-law of the Court, the administration is not obliged to state the grounds on which such a decision is based (judgment of 17 May 1984 in Case 338/82 *Albertini and Montagnani v Commission* [1984] ECR 2123) or to give the official concerned a hearing beforehand (judgment of 14 December 1988 in *Hecq II*, cited above).

- 15 As regards the question of taking into consideration the applicant's interests, it cannot be concluded that in the circumstances of the present case described above the Commission did not take any account of them; after the applicant's prolonged absence due to ill health, the Commission immediately entrusted him with a temporary task involving work which corresponded to his grade and post.
- 16 Consequently, none of the submissions directed against the decision of 22 April 1987 can be upheld.

(c) The decision of 31 July 1987 (assignment to Luxembourg)

- 17 Firstly, the applicant maintains that by deciding to assign him to Luxembourg the Commission infringed Articles 5(4) and 7(1) of the Staff Regulations since the new assignment did not correspond to his grade and post. In support of that submission the applicant claims that his duties are very limited, that he has not the slightest decision-making power and that he is no longer responsible for a section of an administrative unit, as he was in Brussels.
- 18 The Commission concedes that when the applicant first took up his new duties the work he was given to do was limited. However, that is explained by the fact that the Cube Building, for which the applicant is responsible, and the overseeing of which involves complex tasks and considerable responsibility, had recently been enlarged and converted. Since the equipment which had been installed was still under guarantee, for an initial period only the staff of the companies which installed the equipment could carry out any work on it. Since his arrival in Luxembourg the applicant has been assigned new duties, such as overseeing the technical installations in the Centre polyvalent de l'enfance and the heating in the Jean Monnet Building, and the preparation of a draft specification for an invitation to tender for the renewal of the maintenance contracts for the lifting equipment in the Jean Monnet Building.
- 19 Although it is true that initially the applicant's duties were limited, they have in the meantime been extended considerably, in accordance with the applicant's capabilities. Moreover, on arrival in Luxembourg the applicant was placed within the same hierarchical context as his colleagues, who are officials in Grades B 4, B 3

and B 1. Consequently, it cannot be said that the administration did not give the applicant duties which corresponded to his post.

- 20 Secondly, the applicant claims that he was not assigned to Luxembourg in the interest of the service. The reassignment must be regarded as disguised disciplinary action, which is evident in particular from a confidential memorandum of February 1987 of the Head of the Buildings Department and the fact that the decision to discontinue disciplinary proceedings against the applicant coincided with the decision to reassign him to Luxembourg.
- 21 The Commission justifies its decision in particular by the need to improve the deplorable working atmosphere which prevailed in the service in which the applicant worked in Brussels. It claims that as a result of disagreements which the applicant was aware of, that is to say before he went on sick leave, the working atmosphere was detrimental both to the proper functioning of the service and to the personal interests of all concerned, including the applicant.
- 22 The documents before the Court show that the situation within the service in which the applicant worked was very tense and that it did not improve on his return. According to the case-law of the Court (see, in particular, the judgment of 10 July 1975 in Joined Cases 4/74 and 30/74 *Scuppa v Commission* [1975] ECR 919), the transfer of an official in order to put an end to an administrative situation which has become intolerable must be regarded as having been taken in the interest of the service. In the circumstances of the present case it was possible for the administration to take the view that it was in the interest of the service to remove the applicant from the division to which he belonged.
- 23 However, a decision to reassign an official which involves his moving from Brussels to Luxembourg, against his will, must be taken with the necessary diligence and with particular care, in particular having regard to the personal interests of the official concerned. However, the Commission offered the applicant a choice between a post in Zaventem and the one in Luxembourg, but the applicant never made his views known to the Director-General for Personnel and Administration in this regard. In those circumstances, the administration cannot be accused of not having acted with the necessary diligence.

- 24 It follows from the foregoing that the decision to reassign the applicant was taken in the interest of the service, met the requirement that the posts should be equivalent and discharged the Commission's duty to have regard to the interests of its officials. Such a decision cannot be regarded as disguised disciplinary action. Moreover, the applicant has not adduced any proof that there is any link whatsoever between his reassignment and disciplinary proceedings previously brought against him.
- 25 Next, the applicant contends that the decision at issue does not state the grounds on which it is based.
- 26 A decision involving the transfer of an official against his will is a measure adversely affecting the official within the meaning of Article 25 of the Staff Regulations and must therefore state the grounds on which it is based. The Court has consistently held (see in particular the judgment of 29 October 1981 in Case 125/80 *Arning v Commission* [1981] ECR 2539) a decision contains an adequate statement of grounds if the decision which is the subject-matter of the action was taken in circumstances known to the official concerned and enables him to be aware of the scope of the decision taken in his regard.
- 27 It is common ground that in the present case the decision at issue was preceded by meetings in the course of which the Director-General for Personnel and Administration explained to the applicant the situation and the reasons for the planned reassignment.
- 28 Finally, the applicant claims that the decision at issue adversely affects his union rights in so far as he can no longer properly exercise his union mandate in Brussels. The Commission infringed in particular Article 24a of the Staff Regulations and Article 13 of the Agreement on Relations between the Commission of the European Communities and the Trade Unions and Staff Associations of 20 September 1974.
- 29 Under Article 24a of the Staff Regulations, officials are entitled to exercise the right of association; they may be members of trade unions or staff associations of European officials. Article 13 of the abovementioned agreement provides that,

'membership of a trade union or staff association, participation in trade union activity or the holding of office in a trade union shall in no way adversely affect the position or career of an official'.

30 The applicant has not adduced any evidence to suggest that his rights under Article 24a have been infringed by his reassignment or that the decision to reassign him was due to his union activities.

31 It follows from the foregoing considerations that the two applications must be dismissed.

Costs

32 Under Article 70 of the Rules of Procedure, institutions are to bear their own costs in staff cases, without prejudice to the second paragraph of Article 69(3) relating to costs which the Court considers to have been unreasonably or vexatiously caused.

33 In Case C-116/88, the Commission asked the Court to apply the latter provision. It considers that an action for the annulment of a decision which no longer produces effects is unreasonable because any annulment could not be of benefit to the applicant. However, it is unnecessary to grant that request for the reasons set out in this judgment, in particular with regard to admissibility.

On those grounds,

THE COURT (Fourth Chamber)

hereby:

- (1) Dismisses the application;**
- (2) Orders the applicants to bear their own costs.**

Kakouris

Koopmans

Díez de Velasco

Delivered in open court in Luxembourg on 7 March 1990.

J.-G. Giraud

Registrar

C. N. Kakouris

President of the Fourth Chamber