JUDGMENT OF THE COURT (Fourth Chamber)
14 December 1988 *

In Case 280/87

André Hecq, an official of the Commission of the European Communities, residing at Bonlez (Belgium), represented by Jacques Putzeys and Xavier Leurquin, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of G. Nickts, 87 avenue Guillaume,

applicant,

v

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

defendant,

APPLICATION for the annulment of the decision to withdraw from the applicant responsibility for heating and sanitation in the Commission's building in Square Frère Orban, Brussels,

THE COURT (Fourth Chamber)

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

Advocate General: J. Mischo
Registrar: H. A. Rühl, Principal Administrator

having regard to the Report for the Hearing and further to the hearing on 20 October 1988,

* Language of the Case: French.

after hearing the Opinion of the Advocate General delivered at the sitting on 27 October 1988,

gives the following

Judgment

1 By an application lodged at the Court Registry on 22 September 1987, André Hecq, an official of the Commission of the European Communities in Grade B 3, brought an action for the annulment of the decision adopted by an unknown person on an unknown date withdrawing from the applicant responsibility for heating and sanitation in the Commission's building in Square Frère Orban, Brussels, and for an order that he be reinstated in all his rights under the Staff Regulations as they stood before 1 February 1986.

2 According to the information provided by the Commission in reply to a question put by the Court, the decision to withdraw the 'Orban' building from the applicant's responsibility was adopted on 27 January 1987 by Bjørn Petersen, head of the Buildings Department. The purpose of the decision was to bring the building in question, the management of which was posing a series of technical problems, under the responsibility of another section covering a number of technical specialities and operating on a team system with one person in charge of each type of technical problem. The decision did not involve a reassignment of Mr Hecq who remained in the same department, responsible for the management of several buildings, the number of which was merely reduced by one.

3 Reference is made to the Report for the Hearing for a fuller account of the background to the dispute 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.

4 In a previous action, the applicant sought the annulment of the decisions giving him responsibility for heating and sanitation in the new buildings occupied or to be occupied by the Commission from December 1984 (Case 19/87). Those decisions

concerned six buildings, including the 'Orban' building. By judgment of 23 March 1988, the Court (Fourth Chamber) dismissed that application. Following that judgment the applicant withdrew, in the present case, his submission that the contested decision was the direct consequence of previous illegal acts.

5 The only submissions to be considered are therefore that the contested decision was not adopted in the interests of the service and did not state the grounds on which it was based and that the administration was in breach of its duty to have regard to the interests of its officials inasmuch as the decision at issue was adopted without taking the applicant's interests into account or giving him an opportunity of first putting his point of view.

6 The Commission's defence is based, essentially, on the argument that the contested decision is no more than a management decision, adopted for technical reasons. In that regard, it explained that, while no criticism whatever could be levelled at the applicant's performance of his technical duties, the organization of technical work at the 'Orban' building had proved to be inefficient. It was not possible to establish supervision at various levels or coordination between the different trades involved, and the system of technical subdivision initially planned did not operate, all of which led to technical failures, including a breakdown in the heating of the 'Orban' building which caused considerable inconvenience. In view of those circumstances, it was necessary to give responsibility for the building to the section covering different technical specialities in the Buildings Department, which was better equipped to deal with a large variety of technical problems.

7 When considering that argument, it should first be noted that the applicant has not denied in any detailed manner the existence of the technical problems alleged by the Commission and has not claimed that the decision to withdraw responsibility for the 'Orban' building from him amounted in reality to a disguised disciplinary measure the purpose of which was to alter the nature of his employment. It should, however, also be noted that the contested decision was adopted at a time when relations between the applicant and his superiors had again deteriorated and that the Commission's reply to the applicant's complaint refers both to problems of technical management and to the poor working atmosphere. That reply mentions on the one hand an absence of 'flexible and easy coordination between trades' and

of 'supervision of the various levels properly carried out' in the building in question, and on the other hand the need to 'maintain good working conditions within the department and coherence and credibility in the eyes of outsiders'.

8 While it is true that the Commission has been unable to explain the link between the technical problems to which it referred and the need to improve the working atmosphere, it must also be noted that the applicant has not adduced any evidence capable of invalidating the version of the facts given by the Commission with regard to the nature of the technical problems in existence at that time in the 'Orban' building.

9 It follows from the foregoing that the contested decision must be regarded as having no other effect than that of removing one building from the list of those for which the applicant was responsible and, therefore, that it is to be regarded as no more than a management decision falling within the discretionary power which each administration has to allocate duties among the members of its staff.

10 It is true that the exercise of that discretionary power is subject to a limitation in so far as it may not affect the official's position under the Staff Regulations or infringe the principle that the post to which an official is assigned should correspond to his grade (see in that regard the judgment of 17 May 1984 in Case 338/82 *Albertini and Montagnani* v *Commission* [1984] ECR 2123). It has not, however, been established that the applicant's rights were affected in such a manner.

11 The contested decision cannot, therefore, be regarded as constituting a measure adversely affecting the applicant within the meaning of the Staff Regulations; the administration was not in that case obliged to give the official concerned a hearing or to state the grounds on which the decision was based.

12 At the hearing, the applicant asked the Court to declare of its own motion that Mr Petersen, the person who took the contested decision, had no power to take that decision. The powers of a head of department to adopt management decisions do not, however, fall within the category of questions which the Court can examine of its own motion.

13 Since there is no other information in the documents before the Court to suggest that the contested decision is illegal, the application must be dismissed.

Costs

14 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. However, Article 70 of those Rules provides that institutions are to bear their own costs in proceedings brought by servants of the Communities.

On those grounds,

THE COURT (Fourth Chamber)

hereby:

(1) Dismisses the application;

(2) Orders the parties to bear their own costs.

Koopmans Kakouris Diez de Velasco

Delivered in open court in Luxembourg on 14 December 1988.

J.-G. Giraud
Registrar

T. Koopmans
President of the Fourth Chamber