JUDGMENT OF THE COURT (FIRST CHAMBER)
3 MAY 1972[1]

Wiebe de Haan
v Commission of the European Communities

Case 33/71

Summary

Officials — Removal in the interests of the service — Expenses — Reimbursement — Conditions

(Staff Regulations of Officials of the European Communities, Annex VII, Article 9)

Article 9 of Annex VII to the Staff Regulations aims to indemnify officials for actual and necessary expenses following a removal in the interests of the service.

Although that provision must be interpreted widely and an official who has already changed in his place of residence pending his establishment or transfer must not be excluded from the application thereof, such an interpretation is however only justified so as to prevent the official from having to bear the expenses incurred out of his salary.

In Case 33/71

WIEBE DE HAAN, an official of the Commission of the European Communities, residing at 13 Struikenlaan, Sint-Genesius-Rode, 1640 Brussels, represented by Marcel Slusny, Advocate at the Cour d'appel, Brussels, with an address for service in Luxembourg at the Chambers of Ernest Arendt, Advocate, 34b rue Philippe-II,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Louis de la Fontaine, acting as Agent, with an address for service in Luxembourg at the offices of Émile Reuter, Legal Adviser to the Commission, 4 boulevard Royal,

defendant,

1 — Language of the Case: French.

Application for the reimbursement of the expenses of the removal by the applicant on 16 August 1968 from Ispra to Brussels,

THE COURT (First Chamber),

composed of: J. Mertens de Wilmars, President of Chamber, A. M. Donner (Rapporteur) and R. Monaco, Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Summary of the facts and procedure

The facts which form the basis of this action and the procedure may be summarized as follows:

Since 1 June 1961 the applicant has been assigned to the offices of the EAEC at Ispra. By letter of 12 June 1968 the Director-General for Personnel and Administration of the Commission of the European Communities informed him that he was transferred to the Directorate-General for Energy in Brussels as from 20 June 1968, the date on which his previous assignment ended. Following that note, the applicant terminated a tenancy agreement for a house at Ispra and rented a house at Sint-Genesius-Rode under a lease dated 27 July 1968.

By letter of 2 August 1968 the applicant was informed that the decision transferring him to the Directorate-General for Energy at Brussels had been made in error.

On 5 August, the head of Personnel and Internal Administration at Ispra confirmed to the applicant the communication made to him on 2 August 1968 and requested him to remain in Ispra until further notice.

On 8 August 1968 the applicant, in a memorandum addressed to the Personnel and Administration Division, informed the administration of the financial consequences of the mistake it had made.

During August the applicant was given permission to go to Brussels on mission until further notice, it being understood that the allowance which he would receive for mission expenses would be paid by the Directorate-General for Energy.

On 16 August 1968, the applicant moved from Ispra to Brussels.

By letter of 25 March 1970, the Director-General for Personnel and Administration informed the applicant that if he had not yet moved he was authorized to do so because he would be permanently transferred to Brussels as from 1 April 1970.

From 16 August 1968 to 1 April 1970, the applicant received a sum in excess of Bfrs 350 000 as mission expenses. On 1 April 1970 the installation allowance was paid to the applicant.

By letter of 10 November 1970 addressed to the Director of the Individual Rights Division, the applicant claimed reimbursement of the removal expenses laid down in Article 9 of Annex VII to the Staff Regulations of Officials of the European Communities.

By note of 13 January 1971, the Director

of the Individual Rights Division informed him that he was not entitled to reimbursement of removal expenses.
By letter of 1 March 1971 registered at the Secretariat of the Commission on 16 March 1971, the applicant sent the appointing authority an application for reimbursement of removal expenses. Considering that the period of two months laid down in Article 91(2) of the Staff Regulations of Officials started to run on 16 May 1971, the applicant brought the matter before the Court by application lodged at the Registry on 29 June 1971.
The written procedure followed the normal course. The Court (First Chamber) after hearing the report of the Judge-Rapporteur and the views of the Advocate-General, decided to open the oral procedure without any preparatory inquiry.
The parties presented oral argument at the hearing on 3 February 1972.
The Advocate-General delivered his opinion at the hearing on 21 March 1972.

II — Conclusions of the parties

The *applicant* claimed that the Court should:

1. Primarily
   (a) Rule that the implied rejection by the Commission of the European Communities of his complaint though official channels of 1 March 1971 is null and void;

   (b) In exercise of its unlimited jurisdiction in contentious matters, order the opposite party to pay to the applicant the sum of Bfrs 80 000 in application of Article 9 of Annex VII to the Staff Regulations, subject to increase in the course of the proceedings;

2. Alternatively
   (a) Rule that the opposite party is responsible for the mistake made by its administration in transferring the applicant to Brussels on 12 June 1968 as from 20 June 1968 and in informing him on 2 August 1968, when he had already rented a house in the suburbs of Brussels, that the decision was erroneous;
   (b) Order the opposite party to pay damages assessed at Bfrs 80 000, subject to increase in the course of the proceedings;

3. In any case
   — Order the opposite party to pay the costs of the action.

The *defendant* contented that the Court should:

(a) Declare the application to be wholly unfounded;
(b) Order the applicant to pay the costs.

III — Submissions and arguments of the parties

The submissions and arguments of the parties may be summarized as follows:

(a) *The primary claim*

The *applicant* maintains that Article 9 of Annex VII to the Staff Regulations does not in any way imply that an official must have prior authorization by the administration to move, but merely that the reimbursement of removal expenses by the latter will not exceed the amount of an estimate approved in advance. The sole objective of Article 9 of Annex VII to the Staff Regulations is in fact to prevent the institution in question from having to reimburse removal expenses of too great an amount. The applicant complied with that provision by delivering to the Commission two estimates, the lower of which he himself chose. Since he had terminated his lease in Ispra and had rented a house in Sint-Genesius-Rode on 28 July 1968, he was unable to await a possible decision by the Commission.
The opinion of the Commission that previous approval of an estimate is the necessary condition for obtaining reimbursement cannot be accepted in view of the objective of that provision. The applicant is therefore entitled to claim reimbursement of the removal expenses as

from the date of his permanent transfer to Brussels, that is, 1 April 1970.

According to the *defendant*, Article 9 of Annex VII to the Staff Regulations makes the right to reimbursement of removal expenses conditional upon the need to move so as to enable the official in question to reside at his place of employment, in accordance with the provisions of Article 20 of the Staff Regulations. Since the applicant's place of employment was Ispra at the date of the move, he only moved for his personal convenience and at his own risk and not in order to comply with the duty laid down in Article 20 of the Staff Regulations. Accordingly, Article 9 of the same annex expressly prohibits the applicant's claim.

The *applicant* claims that a number of officials at Ispra who were also on mission in Brussels for a considerable time obtained payment of their removal expenses. Moreover, it is difficult to explain why the installation allowance laid down in Article 5(2) of Annex VII to the Staff Regulations was in fact granted to the applicant whilst the removal allowance was refused him.

The *defendant* replies that the position of the officials mentioned by the applicant differs from his own since their removals only took place after their transfer to Brussels, that is, after the end of their period on mission.

During the oral procedure, the *defendant* observed that during the period from 16 August 1968 to 1 April 1970, the applicant was entrusted with the same duties as those which he would have to take up if the administration had not revoked the decision communicated to the applicant by letter of 12 June 1968. The performance of those duties necessitated occasional short stays by the applicant in Ispra.

(b) *The alternative claim*

The *applicant* maintains that as a result of a mistake made by the administration he suffered damages amounting to the removal expenses, that is, Bfrs 80 000. Those damages are due to the difficulties which he encountered in terminating his lease in Ispra which led to legal proceedings with his landlord. The costs incurred in that case amounted to approximately Lit. 550 000.

The *defendant* states that it cannot be made liable for the fact that the landlord did not fulfil his obligations towards the applicant. Moreover, the alleged losses are amply compensated for by the mission expenses which the applicant received during the period from 16 August 1968 to 31 March 1970 when he already resided in Brussels.

The *applicant* replies that the allowance for mission expenses is a flat-rate amount which is paid to an official regardless of the actual expenses which he incurs. His installation in Brussels whilst awaiting his transfer does not affect the validity of that allowance. Moreover, the defendant itself is responsible for the continuance of the uncertain situation in which the applicant found himself during that period.

Finally, the applicant observes that his application is not based exclusively on the infringement of Article 9 of Annex VII to the Staff Regulations and on the wrongful act or omission on the part of the administration but that it can also be based upon unjust enrichment.

The *defendant* contests the admissibility of the latter ground of claim because it was not put forward in the originating application. A mere allusion in the application cannot be considered as the statement of the grounds on which the application is based as required by the Rules of Procedure. In addition the ground of claim is unfounded since the Commission, by refusing to reimburse the removal expenses, merely applied Article 9 of Annex VII to the Staff Regulations. The applicant cannot therefore prove financial loss corresponding to the alleged gain by the Commission.

During the oral procedure, the *applicant* once more maintained that the plea of unjust enrichment was already put forward, if only informally, in the application. As for the question whether the actual concept of unjust enrichment has been accepted by the Court, the applicant deduces from the judgment of 11 July 1968 in Case 26/67, Danvin v Commission

([1968] ECR 315 *et seq.*) that the Court has, at least by implication, acknowledged the existence of that concept in Community law.

Grounds of judgment

1 By application lodged at the registry on 29 June 1971, the applicant has brought before the Court an application directed against the implied refusal by the Commission of the European Communities to reimburse him removal expenses under Article 9 of Annex VII to the Staff Regulations.

2 The application is primarily for the annulment of the contested refusal and for an order that the Commission pay the applicant the sum of Bfrs 80 000.

3 Alternatively, the application is for an order that the Community, represented by the Commission, pay the same sum as damages for the wrongful act of its departments in transferring the applicant on 12 June 1968 to a Directorate-General of the EAEC, with residence in Brussels, and then revoking that transfer on 20 August 1968 when the applicant had meanwhile rented a house in the greater Brussels area.

4 Finally, in the course of the proceedings, the applicant claimed the same sum on the ground of unjust enrichment.

The primary claim

5 It appears from the file put before the Court that the transfer of the applicant to Directorate-General XVII, of which he was notified on 12 June 1968, was in fact revoked on 2 August 1968 on administrative grounds.

6 However, in view in particular of the arrangements already made by the applicant with regard to his residence, the latter was seconded from Ispra to Brussels on mission pending subsequent regularization in order to perform there in that administrative position the duties allotted to him.

7 The applicant took up residence in Brussels from August 1968 and had his furniture and personal effects moved there.

8 Throughout the period of his secondment he received daily subsistence allowances granted under Articles 11 and 13 of Annex VII to the Staff Regulations to staff travelling on mission.

9 Altogether he received more than Bfrs 300 000 on that account.

10 As from 1 April 1970, he was permanently transferred to Directorate-General XVII and requested at that time reimbursement of the expenses of his removal in 1968 on the basis of Article 9 of Annex VII.

11 Article 20 of the Staff Regulations provides that an official shall reside either in the place where he is employed or at no greater distance therefrom as is compatible with the proper performance of his duties.

12 Article 9 of Annex VII to those Regulations prescribes that the expenses incurred in respect of removal of furniture and personal effects shall be reimbursed to an official who is obliged to change his place of residence in order to comply with the said Article 20 and who has not been reimbursed in respect of the same expenses from another source.

13 The applicant was refused that reimbursement because he had been living in the greater Brussels area since August 1968 so that the removal in question could not be considered as being the result of the transfer which took place in 1970.

14 Since the removal in 1968 cannot be the result of a transfer which was decided on in 1970, it cannot be considered as the result of obligations arising out of that transfer.

15 However, the applicant claims that that removal must be considered on the grounds of natural justice as closely linked to his transfer since the latter only amounted to the regularization of mistakes concerning him made in 1968, so that the expenses incurred in 1968 must still be reimbursed on the occasion of his official transfer in 1970.

16 The grounds of natural justice relied upon by the applicant do not justify the interpretation which he suggests.

17 Article 9 of Annex VII to the Staff Regulations aims to indemnify officials for actual and necessary expenses following a transfer in the interests of the service as appears from the requirement of the production of an estimate for approval by the administration and from the condition that the official is not reimbursed in respect of the same expenses from another source.

18 Although that provision must be interpreted widely and official who has already changed his place of residence pending his establishment or transfer must not be excluded from the application thereof, such an interpretation is however only justified so as to prevent the official from having to bear the costs incurred out of his salary.

19 This is not so in the present case, since the applicant, because of the particular

circumstances of his removal to Brussels, has for a long period received special allowances the amount of which greatly exceeds the expenses incurred in respect of his removal.

20 Therefore the Commission, the defendant, was justified in relying upon the provisions of Article 9 of Annex VII and in refusing the reimbursement requested.

21 Therefore the primary claim is unfounded.

The alternative claim

22 The claim would only be justified if it were proved that the alleged wrongful act or omission on the part of the Community had caused actual loss to the applicant.

23 However, it follows from the abovementioned considerations that, because of the particularly generous administrative arrangement made in his case, the applicant has not suffered any loss.

24 Under these circumstances, the arguments which the applicant claims to base on the unjust enrichment by the Commission rebound upon him, since the actual expenses which he had to bear were more than compensated for by the grant of flat-rate allowances unrelated to such expenses.

25 Moreover, it is necessary to point out to the applicant the irrelevance of his arguments based on a comparison with the allowances received by colleagues residing at Ispra who were also seconded on mission to Directorate-General XVII from 1968 and were permanently transferred there at the same time as the applicant.

26 In fact, both the mission expenses received by those colleagues and the reimbursement of expenses incurred with regard to their removal in 1970 correspond to expenses actually borne, so that those allowances were owed them both in law and in justice.

27 Therefore the alternative claim must also be dismissed.

Costs

28 Under Article 69(2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs.

29 The applicant has failed in his arguments.

30 However, under Article 70 of the Rules of Procedure, institutions shall bear their own costs in proceedings commenced against them by servants of the Communities.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to the Staff Regulations of Officials, especially Article 20 and Articles 9, 11 and 13 of Annex VII;
Having regard to the Protocol on the Statute of the Court of Justice;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT (First Chamber)

hereby:

1. **Dismisses the application as unfounded;**
2. **Orders the parties to bear their own costs.**

Mertens de Wilmars Donner Monaco

Delivered in open court in Luxembourg on 3 May 1972.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President of the First Chamber

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 21 MARCH 1972[1]

Mr President,
Members of the Court,

The applicant in the case on which I shall deliver my opinion today worked for many years at the Joint Nuclear Research Centre at Ispra as a scientific officer of the European Atomic Energy Community. By letter of 12 June 1968 from the Directorate-General for Personnel and Administration he was informed that, within the context of the change in its organization

1 — Translated from the German.