JUDGMENT OF THE COURT (Second Chamber)
6 April 1995 *

In Case C-299/93,

Ernst Bauer, an official of the Commission of the European Communities, residing in Ispra, Italy, represented by Giorgio Gozzi, lawyer practising at the Court of Cassation, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 8-10 Rue Mathias Hardt,

applicant,

v

Commission of the European Communities, represented by Gianluigi Valsesia, Principal Legal Adviser, assisted by Alberto dal Ferro, of the Vicenza Bar, with an address for service in Luxembourg at the office of Georgios Kremlis, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for a declaration that the request for surrender of tenanted residential premises and the increase in the rent payable for those premises were unlawful, and for compensation for the additional rent paid on the basis of that

* Language of the case: Italian.

increase and for material and non-material damage incurred as a result of the early surrender of the premises,

THE COURT (Second Chamber),

composed of: F. A. Schockweiler, President of the Chamber, G. F. Mancini (Rapporteur) and G. Hirsch, Judges,

Advocate General: G. Cosmas,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 7 February 1995,

gives the following

Judgment

By application lodged at the Court Registry on 28 May 1993 Ernst Bauer, an official of the Commission of the European Communities serving at the Joint Research Centre in Ispra, brought an action against the Commission of the European Communities under an arbitration clause agreed pursuant to Article 153 of the EAEC Treaty for a declaration that the request for surrender of tenanted residential premises and the increase in the rent payable for those premises were

unlawful, and for compensation for the additional rent paid on the basis of that increase and for material and non-material damage incurred as a result of the early surrender of the premises.

2 On 1 February 1965 Mr Bauer took a tenancy of an apartment situated at 14 Via Enrico Fermi, Ispra, forming part of property made available to the European Atomic Energy Community by the Italian Government for ninety-nine years under the terms of the agreement concerning the establishment of the Joint Research Centre, signed in Rome on 22 July 1959 (*Official Gazette of the Italian Republic* No 212, 31 August 1960).

3 The tenancy relationship was founded on a series of contracts the last of which dated 1 June 1969 was entered into for a period of one year, from 1 June 1969 to 31 May 1970, and was tacitly renewable from year to year unless terminated by one of the parties by registered letter with recorded delivery at least three months before the end of the period. It provided that the tenancy was to be terminated before the end of the term if the employment relationship between the tenant and the Joint Research Centre at Ispra were terminated or if the operational requirements which dictated the provision to the tenant of the apartment should no longer subsist.

4 Under the terms of Article 16 of the tenancy agreement 'the Court of Justice of the European Communities shall have sole jurisdiction concerning disputes arising under this agreement. The agreement shall be governed by Italian law.'

5 On 31 January 1990 the Commission informed Mr Bauer by registered letter with recorded delivery that it was terminating the tenancy agreement in relation to the premises in question with effect from 1 June 1990 in order to carry out renovation works in the residential dwellings made available to the Joint Research Centre. Mr Bauer was requested to vacate the premises before 1 April 1991. That request

was reiterated in registered letters of 29 April 1991, 30 July 1992 and 28 September 1992, the date on which the premises had to be vacated being postponed until 31 December 1992.

6 On 22 October 1992 Mr Bauer lodged a complaint under Article 90(2) of the Staff Regulations of officials against the decisions contained in the letters of 30 July and 28 September 1992. The Commission did not reply to those complaints.

7 In the meantime, by registered letter of 5 August 1992 the Commission sought an adjustment in the monthly rent with effect from 1 August 1992 of LIT 135 602, including heating and electricity, to bring it to LIT 397 265. On 4 November 1992 Mr Bauer lodged a fresh complaint under Article 90(2) of the Staff Regulations against the decision contained in that letter. Once again the Commission did not reply.

8 By letter of 6 March 1993 Mr Bauer turned down the proposal made by the Commission, in particular in letters of 14 January and 3 March 1993, that it would make available to him for two years on the basis of a new contract another apartment having the same characteristics. On the other hand he stated that he was prepared to occupy another dwelling under the conditions contained in the contract of 1 June 1969 which he alleged was due to expire only in May 1994. He confirmed this readiness in a fresh letter of 31 March 1993.

9 By letter of 18 May 1993 the Commission informed Mr Bauer that renovation work was to commence on 24 May 1993 and required him to surrender the premises as soon as possible. On 6 July 1993, that is after this action was

brought, Mr Bauer surrendered the premises in question in order to move into an apartment which he had just bought, also in Ispra.

Jurisdiction of the Court

10 It must be observed as a preliminary matter that even if Mr Bauer referred in his application to two complaints lodged under Article 90(2) of the Staff Regulations, this dispute does not concern decisions by the appointing authority in the context of the civil-service status binding Mr Bauer to the Commission but the relationship under the tenancy agreement of 1 June 1969. In that respect the application is founded on the provisions of Article 153 of the Treaty and the arbitration clause contained in Article 16 of that agreement.

11 Under the terms of Article 54 of Italian law No 392 of 27 July 1978 on tenancies of residential property (Official Gazette of the Italian Republic No 211 of 29 July 1978) any clause stipulating that disputes concerning the determination of rent are to be settled by arbitrators is null and void. However, even if this provision can apply to the abovementioned arbitration clause, it follows from the judgment in Case C-209/90 *Commission* v *Feilhauer* [1992] ECR I-2613, paragraph 13, that the Court's jurisdiction to determine a dispute concerning a contract falls to be determined solely with regard to Article 181 of the EEC Treaty, which is in the same terms as Article 153 of the Euratom Treaty, and the terms of the arbitration clause, and this cannot be affected by provisions of national law which purport to oust its jurisdiction.

12 Accordingly, the Court has jurisdiction, under Article 153 of the Treaty and Article 16 of the agreement of 1 June 1969 to determine this dispute.

Termination of the agreement

13 First, Mr Bauer requests the Court to declare unlawful and of no effect the demands of 30 July and 28 September 1992 whereby the Commission required him to surrender the premises in question.

14 The Court notes that by those demands the Commission required the applicant to surrender the dwelling in question following the termination by registered letter of 31 January 1990. Under those circumstances Mr Bauer's application in actual fact seeks a declaration that the termination is unlawful and not the demands for surrender of the apartment in consequence of termination.

15 It is undisputed that Mr Bauer surrendered the premises of his own volition on 6 July 1993, that is to say shortly after he brought his action in the present case. Under those circumstances, and without prejudice to his claim for compensation for loss allegedly suffered as a result of the early surrender of the premises let, which forms the subject matter of the third head of claim, the applicant no longer has any interest in obtaining a declaration by the Court that the termination of the contract was unlawful or that the notice of termination contained in the letter of 31 January 1990 is void. It follows that the first head of claim must be dismissed.

Repayment of sums paid by way of increased rent

16 Secondly, Mr Bauer sought an order requiring the Commission to repay to him the sums paid between 1 August 1992 and the date of surrender of the rented premises by way of increased rental demanded by the Commission by letter of 5 August 1992. He claims essentially that under Articles 1, 3 and 65 of Italian law No 392 of

27 July 1978 mentioned above contracts current on the date of entry into force of that law, namely 30 July 1978, and not subject to extension by operation of law, were given a period of validity under the law of four years with effect from the beginning of the tenancy or the last renewal of the contract, subject to tacit renewal for further periods of four years. Those provisions are said to apply to the contract of 1 June 1969 which is therefore for a period of four years with effect from 1 June 1978 and was renewed for four year periods until 31 May 1994. Prior to the latter date the Commission was not entitled, it is claimed, to demand any increase in rent.

17 The Commission contended that this claim should be rejected by reference to case law of the Court of Cassation (judgment No 1743 of 14 March 1984) according to which Law No 392 of 27 July 1978 does not apply where a public body acting under specific rules makes available to a member of its staff service accommodation on account of the tasks performed by that person and the resulting interest on the part of the public body in assisting that member of staff. Since the Commission may be assimilated to an Italian public body in this case, the tenancy agreement at issue is said to fall within the exception permitted by that case law and thus to be governed by the provisions of the Civil Code concerning tenancies. Consequently, the agreement at issue entered into for a period of one year with effect from 1 June 1969 was tacitly renewed from year to year until its termination by the Commission, with effect from 1 June 1990, by registered letter of 31 January 1990. With effect from the latter date the Commission says it was at liberty to demand an increase in rent.

18 In order to rule on this application it is necessary to establish whether the contract of 1 June 1969 comes within the terms of Law No 392 of 27 July 1978 in view of the abovementioned case law of the Court of Cassation (see also judgment No 7545 of 9 July 1991) pursuant to which service accommodation made available by a public body for letting by its employees under specific rules or as part of their remuneration is not caught by that legislation.

19 In that connection it is true that, owing to the functions which it performs and the nature of the working relationship of its employees, the Commission can be assimilated to an Italian public body in the context of the present case. However, the agreement at issue does not meet the criteria of the case law of the Court of Cassation. It does not take the form of a concession made under specific rules. Moreover, the allocation of the dwelling does not constitute an element of the official's remuneration. Therefore, the agreement at issue is subject to the provisions of Law No 392 of 27 July 1978, and it is not necessary to enquire whether, as the Commission maintains, the case law which it relies upon would in fact entail the application to the concession of service accommodation of the provisions of the Civil Code concerning tenancies.

20 Under the terms of Article 43 of Law No 392 no application concerning the determination or adjustment of the rent may be made if it has not been preceded by the application for conciliation mentioned in the following article. Inadmissibility must be declared even ex officio, at any stage of the procedure and at any tier of jurisdiction. Under Article 44 the application for conciliation is to be submitted to the competent court. Those provisions were repealed by Article 89 of Law No 353 of 26 November 1990 (ordinary supplement to Official Gazette of the Italian Republic No 281 of 1 December 1990) but under Article 3 of decree-law no 571 of 7 October 1994 (Official Gazette of the Italian Republic No 237 of 10 October 1994) converted with modifications by Law No 673 of 6 December 1994 (*Official Gazette of the Italian Republic* No 287 of 9 December 1994), the repeal takes effect only from 30 April 1995.

21 Inasmuch as these provisions do not relate to the procedure applicable before the competent court but merely make the submission of a matter to it subject to a prior condition they are applicable in the present case. In particular claims for the reimbursement of amounts paid in excess of what was payable by way of rent are subject to this condition (settled case law of the Court of Cassation; see judgments Nos 5838 of 5 November 1981, 1461 of 25 February 1983, 2428 of 14 March 1988, 353 of 13 January 1993 and No 10725 of 28 October 1993).

22 Therefore the Court must of its own motion take cognizance of the fact that Mr Bauer's application was not preceded by the application for conciliation prescribed by the Italian law which ought to have been submitted to the Court. Consequently, the applicant's second head of claim is inadmissible.

The claim for damages

23 Thirdly, Mr Bauer seeks an order by the Court requiring the Commission to compensate him for the material and non-material damage suffered owing to the early surrender of the rented premises.

24 Suffice it to observe that, after resisting for more than two years the Commission's demands for surrender, Mr Bauer finally vacated the rented premises of his own volition without the enforcement of any eviction order. Under those circumstances he cannot seek compensation for damage which in any event stems from his own conduct. Consequently, the applicant's third head of claim must be dismissed as ill-founded.

25 It follows from the foregoing that the application must be dismissed in its entirety.

Costs

26 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since Mr Bauer has been unsuccessful, he must be ordered to pay the costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. Dismisses the application;

2. Orders the applicant to pay the costs.

Schockweiler Mancini Hirsch

Delivered in open court in Luxembourg on 6 April 1995.

R. Grass
Registrar

F. A. Schockweiler
President of the Second Chamber