JUDGMENT OF THE COURT (THIRD CHAMBER)
25 NOVEMBER 1982 [1]

Victor Evens
v Court of Auditors of the European Communities

(Official — Resettlement allowance)

Case 79/82

1. *Officials — Staff Regulations — Interpretation — Methods — Reference to repealed rules — Unacceptable method of interpretation*

2. *Officials — Remuneration — Resettlement allowance — Conditions for grants — Official rejoining his family — Allowance at the rate of two months' basic salary not paid to the official — Lawfulness*
   (Staff Regulations, Annex VII, Art. 6)

1. The provisions of the Staff Regulations at present in force must be interpreted with regard to their context and purpose and not in the light of rules which have been repealed.

2. Although Article 6 (1) of Annex VII to the Staff Regulations gives the right to a resettlement allowance equal to two months' basic salary to an official entitled to the household allowance and does not mention any requirement that the official's family must resettle, the amount of the resettlement expenses will nevertheless generally be higher where there is a change in the place of residence of the official and his family than where he rejoins his family.

   It is therefore consistent with the purpose of Article 6 not to grant the resettlement allowance at the rate of two months' basic salary to an official who has received the household allowance and who does not resettle together with his family.

In Case 79/82

VICTOR EVENS, a former official of the Court of Auditors of the European Communities, residing in Liège, represented by Michel Mersch and Philippe

1 — Language of the Case: French.

Fraipont, of the Liège Bar, and Victor Biel of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 18A Rue des Glacis,

applicant,

v

COURT OF AUDITORS OF THE EUROPEAN COMMUNITIES, represented by its Secretary, Jean-Aimé Stoll, acting as Agent, assisted by Alex Bonn, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 22 Côte d'Eich,

defendant,

APPLICATION for the payment of a resettlement allowance,

THE COURT (Third Chamber)

composed of: U. Everling, President of Chamber, P. Pescatore and Y. Galmot, Judges,

Advocate General: Sir Gordon Slynn
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Facts

1. The applicant, Victor Evens, who is married and the father of two children,

has been an official since 1953 first at the Assembly of the European Coal and Steel Community (hereinafter referred to as "the ECSC") then with the European Parliament in Luxembourg. An installation allowance equal to four months' basic salary was paid to him pursuant to the provisions of the ECSC in force when he took up his employment by reason of the fact that he and his family who came from the Walloon part of the province of Brabant (Belgium) had settled in Luxembourg.

In 1967 the applicant was transferred to the Audit Board in Brussels. He settled with his family in Liège, in their present home. On that occasion an installation allowance equal to two months' basic salary was paid to him pursuant to Article 5 of Annex VII to the Staff Regulations because he had settled with his family near his new place of employment.

In 1978 the applicant was transferred to the Court of Auditors in Luxembourg. The applicant took up residence in Luxembourg in a small furnished flat and his family continued to live in Liège. On that occasion an installation allowance equal to one month's basic salary was paid to him pursuant to Article 5 (4) of Annex VII to the Staff Regulations.

The applicant was retired with effect from 1 June 1981. He then settled in Liège where his family had continued to live.

The proceedings between the applicant and the Court of Auditors relate to the amount of resettlement allowance payable on that occasion.

2. By letter dated 3 June 1981 received at the Court of Auditors on 9 June 1981 the applicant requested that he be granted by way of a resettlement allowance "a sum at least equal to the ECSC salary for four months and the EAEC basic salary for two months as at 31 May 1981" and submitted a certificate of residence from the municipality of Liège as evidence that he was living there and an extract from the population registers of the municipality of Liège as evidence that his name was entered therein together with that of his wife and son.

The last paragraph of Article 2 of Regulation No 259/68 of the Council of 29 February 1968 (Official Journal, English Special Edition 1968 (I), p. 30) provides that Article 99 of the 1962 ECSC Staff Regulations "shall remain applicable .... on the entry into force of this regulation".

The third paragraph of the aforesaid Article 99 is worded as follows:

"By way of derogation from the provisions of Article 6 of Annex VII, the amount of the resettlement allowance payable to an official integrated under Article 93 and who terminates his service after these Regulations enter into force shall not be less than the amount which the official would have received under Article 12 of the former General Regulations of the ECSC."

Article 12 of the former General Regulations of the ECSC of 1956 had provided that

"On termination of their employment established officials who have received the installation allowance provided for in Article 11 (a) and the second subparagraph of Article 11 (c) above shall be entitled to a resettlement allowance equal to four months' salary in the case of an official who is a head of household ...".

By letter dated 2 July 1981 the President of the Court of Auditors replied that the above-mentioned transitional provisions obviously referred to basic salaries under the former Staff Regulations in force before 1 January 1962 so that those provisions would be to the applicant's disadvantage. The application for a resettlement allowance equal to two-months' basic salary on the ground of

resettlement with his family was rejected because his file showed that he had settled in Luxembourg without the member of his family who had maintained their home in Liège on his transfer to the Court of Auditors. The resettlement related therefore only to one person so that the allowance must be confined to one month's basic salary pursuant to Article 6 (4) of Annex VII to the Staff Regulations.

The applicant subsequently received by way of a resettlement allowance pursuant to Article 6 of Annex VII to the Staff Regulations the sum of LFR 191 966 representing one month's basic salary, which was subsequently increased by LFR 606 after the basic salaries were adjusted with effect from 1 July 1980.

3. By letter dated 18 August 1981 received at the Court of Auditors on 19 August 1981 the applicant submitted a complaint pursuant to Article 90 (2) of the Staff Regulations against the refusal contained in the letter of 2 July 1981 and alleged that according to the clear wording of Article 6 of Annex VII to the Staff Regulations he was entitled to two months' basic salary by way of a resettlement allowance since before three years had expired he was living with his family more than 70 km from Luxembourg.

Following a letter from the President of the Court of Auditors dated 22 September 1981 calling upon him to adduce evidence that his family had in fact been resettled in a place situated not less than 70 km from the place where he had been employed the applicant stated through his advocate that the certificates annexed to his original request of 3 June 1981 contained the requisite evidence.

By letter dated 3 December 1981 which the applicant received on 7 December 1981 the President of the Court of Auditors rejected the complaint and contended that the applicant had not adduced evidence of any transfer of his family, which had been settled in Liège without interruption since 1967, and that accordingly there could be no lump-sum reimbursement of expenses.

II — Procedure and conclusions

1. By application received at the Court Registry on 25 February 1982 the applicant brought the present action in which he claims that the Court should:

Order the Court of Auditors to pay to the applicant a sum equal to one month's basic salary at the rate in force on 31 May 1981, namely LFR 191 996 together with interest calculated at the customary rate in Belgium from 1 June 1981 to the date of payment in full;

Order the defendant to pay the costs.

2. In his reply lodged on 29 June 1982 the applicant increased the claim to LFR 192 602 and referred to the adjustment in the basic salaries of officials which had taken place in the meantime.

3. The Court of Auditors contends that the Court should:

Dismiss the application as unfounded; and

Make an order as to costs in accordance with the applicable provisions of the Staff Regulations.

4. The written procedure followed the normal course.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court (Third Chamber) decided to open the oral procedure without any preparatory inquiry.

III — Submissions and arguments during the written procedure

1. The *applicant* claims that Article 6 of Annex VII to the Staff Regulations entitles him to a resettlement allowance at the rate not of one but two months' basic salary. The wording of that provision is clear and provides that the rate of the allowance is two months in the case of the official entitled to the household allowance and one month in other cases. No administrative interpretation or analogy may override that wording. In contrast to Article 5 of Annex VII, which concerns the installation allowance, Article 6 contains no requirement that there must be a transfer of the family's place of residence. The word "resettlement" means the official's return to his place of origin independently of any transfer of his family's place of residence. It is not permissible, in support of the contrary view, to refer to the concept of "reimbursement of expenses" and to Article 71 of the Staff Regulations since what is in question is a lump-sum reimbursement in respect of which the administration was not entitled to call for any evidence of expenses incurred and since a provision granting a right to reimbursement may not be interpreted as a prohibition of any payment which does not reimburse expenses.

The applicant also refers to Article 99 (3) of the 1962 ECSC Staff Regulations which Article 2 of Council Regulation No 259/68 has maintained in force after the entry into force of the present Staff Regulations and under which he may claim a resettlement alowance in a sum at least equal to that which he would have received if the provisions of Article 12 of the former General Regulations of 1956 had remained applicable to him. The latter provision subjects the right to the resettlement allowance to receipt of the original installation allowance at the beginning of the official's career. Although it was held in the judgment of the Court of 11 July 1974 in Case 10/74 *Becker* v *Commission* [1974] ECR 867 that the clause for calculating the allowance was no longer applicable the judgment in no way affected the clauses concerning entitlement to the allowance. Accordingly since the resettlement allowance was classified in the ECSC system as not coming within the category of reimbursable expenses it does not constitute a reimbursement of expenses. In the present case, therefore, it is necessary to refer to the full rate of the original allowance received in 1953 at the beginning of the applicant's career and not to the subsequent allowances. Reference to subsequent allowances is moreover excluded by the fact that Article 6 of Annex VII to the Staff Regulations refers to Article 5 (1) and not to Article 5 (2).

2. The *Court of Auditors* maintains that Article 6, like the whole of Section 3 of Annex VII, concerns the reimbursement of expenses at a flat rate and defines the scope of the general rule laid down in Article 71 of the Staff Regulations. It is

in that perspective that Article 6 (4) of Annex VII requires the official to adduce evidence of his own resettlement along with that of his family. Without such transfer of the place of residence there can be no reimbursement of expenses and thus no allowance. The provision contained in Article 5 (4) reducing the installation allowance by half in the case of an official settling without his family was not reproduced in the section relating to the resettlement allowance because that rule applied for the very same reasons to the resettlement allowance and it was thus considered unnecessary to state this explicitly. In the present case evidence of the applicant's resettlement with his family has not been adduced and it is apparent from the file on the case that his family has been living in Liège since 1967. If the provision contained in Article 6 (4) were taken literally the applicant would not be entitled to any allowance as he has failed to adduce evidence that his family had transferred its place of residence. The application of Article 5 (4) in regard to the resettlement allowance is moreover consistent with the principles of the proper management of public funds and to the administrative theory and practice of the Community institutions.

According to the judgment of the Court of 11 July 1974 *(Becker)* the transitional provisions of the ECSC system cannot be relied on by the applicant because the amount of the allowance under the present Staff Regulations is more than the allowance of four month's basic salary calculated according to the former salary scales. Since the aim of the transitional provision was to prevent an official from finding himself in a less favourable position than he would have been under the former system, it is no longer applicable.

IV — Oral procedure

At the sitting on 11 November 1982 the parties presented oral argument.

The Advocate General delivered his opinion at the same sitting.

Decision

1 By application at the Court Registry on 25 February 1982 Victor Evens, a former official of the Court of Auditors of the European Communities, brought an action for the grant of a resettlement allowance, following his retirement equal to two months of his basic salary.

2 The applicant, who is married and the father of two children, became an official of the Assembly of the ECSC in Luxembourg in 1953. Pursuant to the ECSC provisions then in force an installation allowance equal to four months' salary was paid to him because he and his family settled in

Luxembourg. When in 1967 he was transferred to the Audit Board in Brussels he settled with his family in Liège and received an installation allowance equal to two months' basic salary. When he was transferred to the Court of Auditors in 1978 the applicant settled in Luxembourg but his family continued to live in Liège and for that reason he only received an installation allowance equal to one month's basic salary.

3 The applicant was retired with effect from 1 June 1981. He then went back to live with his family in Liège. On that occasion the Court of Auditors granted him a resettlement allowance equal to his basic salary for one month. On the other hand it refused to grant him a resettlement allowance equal to two months' basic salary on the ground that his family which had continued to live in Liège had not had to resettle in that city.

4 The difference of one month's basic salary between the resettlement allowance claimed by the applicant and the sum granted by way of such allowance by the Court of Auditors is the issue in the present case.

5 In support of his action the applicant claims that according to the clear wording of Article 6 of Annex VII to the Staff Regulations he is entitled to a resettlement allowance of two months' basic salary since he received the household allowance and he has resettled with his family in Liège. The applicant refers moreover to the transitional provisions of Regulation No 259/68 of the Council of 29 February 1968, Article 99 (3) of the 1962 ECSC Staff Regulations and to Article 12 of the former General Regulations of the ECSC of 1956.

6 According to the Court of Auditors the provision contained in Article 5 (4) of Annex VII must also apply to the situation covered by Article 6 so that the resettlement allowance is reduced to one month's basic salary in a case such as that of the applicant.

7 It should be observed in the first place that, as the Court held in its judgment of 11 July 1974 in Case 10/74 *Becker* v *Commission* [1974] ECR 867, the

safeguard clause contained in Article 99 (3) of the 1962 Staff Regulations in favour of officials who had previously been subject to the former General Regulations of the ECSC of 1956 is no longer applicable since the present salaries represent more than double the salaries prior to 1962 and an official who terminates his employment after the entry into force of the new system is no longer financially in a less favourable position than if he had left his employment before the entry into force of the new system.

8 It is therefore necessary in the present case to apply Article 6 of Annex VII of the Staff Regulations in so far as it refers to an official who is entitled to the household allowance.

9 Article 6 (1) provides that an official shall be entitled on termination of service "to a resettlement allowance equal to two months' basic salary in the case of an official who is entitled to the household allowance" and does not mention any requirement that the official's family must resettle. On the other hand Article 6 (4) provides that the allowance is to be paid "against evidence that the official and his family .... have resettled". The case of an official entitled to the household allowance who resettles without his family is not expressly provided for in the article.

10 In order to interpret Article 6 it is not permissible, as the applicant proposes, to rely on the provisions of Article 12 of the General Regulations of the ECSC of 1956. The provisions of the Staff Regulations at present in force must be interpreted with regard to their context and purpose and not in the light of rules which have been repealed.

11 It is apparent from Article 71 of the Staff Regulations and from the heading of Section 3 of Annex VII thereto that Article 6 of that annex refers to the reimbursement, on a lump-sum basis, of expenses which are occasioned by the resettlement of the official after the termination of his service and which are not covered by the reimbursement of removal expenses referred to in Article 9 of Annex VII. The amount of those expenses will generally be higher in the case of change of the place of residence of an official and his family than in the case of an official who rejoins his family.

12 A like difference in the expenses to be reimbursed has been taken into account, as regards the installation allowance to be paid on taking up employment, by the first sentence of Article 5 (4) which provides that the official who is entitled to the household allowance and does not settle with his family is to receive only half the allowance to which he would otherwise be entitled. Similarly, it is consistent with the purpose of Article 6 not to grant the resettlement allowance at the rate of two months' basic salary to an official who does not resettle with his family. That interpretation is moreover confirmed by the wording of Article 6 (4) which expressly requires evidence that the official's family has resettled.

13 Since it is common ground that the applicant's family did not change its place of residence with him when he resettled in Liège the Court of Auditors could not therefore lawfully allow the applicant's claim for the grant of a resettlement allowance equal to his basic salary for two months.

14 The application must therefore be dismissed.

Costs

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

On those grounds,

THE COURT (Third Chamber)

hereby:

1. **Dismisses the application;**

2. Orders the parties to bear their own costs.

Everling Pescatore Galmot

Delivered in open court in Luxembourg on 25 November 1982.

For the Registrar

H. A. Rühl

Principal Administrator

U. Everling

President of the Third Chamber

OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN DELIVERED ON 11 NOVEMBER 1982

My Lords,

This is a claim for one month's salary which is brought by Mr Evens against the Court of Auditors. He claims it as being part of the resettlement allowance to which he says he is entitled and which he has not yet received.

The statutory and the factual context in which this claim arises can be stated shortly.

Article 71 of the Staff Regulations currently in force provides that an official shall be entitled, as provided for in Annex VII, to reimbursement of expenses incurred by him, *inter alia*, on taking up appointment and on leaving the service. Annex VII is headed "Remuneration and Reimbursement of Expenses" and Section 3 deals with the reimbursement of expenses. There is first provided an installation allowance in Article 5 which entitles an official to an allowance equal to two months' basic salary, if he is also entitled to the household allowance, or to one month's basic salary in other cases. That allowance is to be paid to an established official who qualifies for the expatriation allowance or who furnishes evidence of having been obliged to change his place of residence in order to comply with Article 20 of the Staff Regulations.