JUDGMENT OF THE COURT (Fourth Chamber)
28 May 1998 *

In Case C-62/97 P,

Commission of the European Communities, represented by Julian Currall, of its Legal Service, acting as Agent, assisted by Denis Waelbroeck, of the Brussels Bar, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Second Chamber) of 12 December 1996 in Case T-33/95 *Lozano Palacios* v *Commission* [1996] ECR-SC II-1535, seeking to have that judgment set aside,

the other party to the proceedings being:

María Lidia Lozano Palacios, official of the Commission of the European Communities, residing in Brussels, represented by Jean-Noël Louis, of the Brussels Bar, with an address for service in Luxembourg at the offices of Fiduciaire Myson SARL, 30 Rue de Cessange,

* Language of the case: French.

THE COURT (Fourth Chamber),

composed of: H. Ragnemalm, President of the Chamber, P. J. G. Kapteyn and K. M. Ioannou (Rapporteur), Judges,

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

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 27 January 1998,

gives the following

Judgment

1 By application lodged at the Registry of the Court of Justice on 12 February 1997, the Commission of the European Communities brought an appeal pursuant to Article 49 of the EC Statute of the Court of Justice and the corresponding provisions of the ECSC and Euratom Statutes against the judgment of 12 December 1996 in Case T-33/95 *Lozano Palacios* v *Commission* [1996] ECR-SC II-1535 (hereinafter 'the judgment under appeal'), in so far as the Court of First Instance held that Ms Lozano Palacios was entitled to the installation allowance provided for in the first subparagraph of Article 5(1) of Annex VII to the Staff Regulations of Officials of the European Communities (hereinafter 'the Staff Regulations'), solely on the ground that she had been granted the expatriation allowance.

Facts and procedure before the Court of First Instance

2 It appears from the judgment under appeal that Ms Lozano Palacios, who is of Spanish nationality, was an official with the Spanish Ministry of Social Affairs when she was seconded to the Commission in Brussels for a period of two years

(1 May 1991 to 30 April 1993) in accordance with Commission Decision EEP/894/88 of 26 July 1988 laying down the rules applicable to national experts on detachment to the Commission (hereinafter 'the NED rules'). That period was later extended until 15 February 1994.

3 While on detachment Ms Lozano Palacios continued to be paid by the Spanish Ministry of Social Affairs and to discharge her tax obligations in Spain. However, pursuant to Article 7(7) of the NED rules, she was required to reside at her place of employment. She therefore lived in Brussels, where she rented a flat.

4 In June 1993 she was placed on the list of suitable candidates following Open Competition COM/A/757. On 10 March 1994 she was appointed as a probationary official at the Commission and posted to Brussels with effect from 16 February 1994.

5 By decision of 12 April 1994, the Commission determined her place of recruitment and place of origin as Brussels. As a consequence, the Commission refused to pay her the installation allowance provided for in Article 5(1) of Annex VII to the Staff Regulations; her travel expenses or removal expenses pursuant, respectively, to Articles 7(1)(a) and 8(1), and 9(1) of that Annex; or the daily subsistence allowance provided for in Article 10(1) thereof. However, she was granted the expatriation allowance provided for in Article 4(1) of Annex VII.

6 Ms Lozano Palacios submitted a complaint against that decision under Article 90(2) of the Staff Regulations. She asked for her place of recruitment to be determined as being Madrid and for the centre of her interests, within the meaning of Article 7(3) of Annex VII, to be determined as being Albacete (Spain) and, in consequence of those determinations, requested that she be granted the installation allowance, the daily subsistence allowance and reimbursement of both her removal and travel expenses.

7 By decision of 11 November 1994 (hereinafter 'the contested decision'), the Commission expressly rejected that complaint.

8 By decision of 7 February 1995, the Commission rectified Ms Lozano Palacios' 'place of origin' with retroactive effect from 16 February 1994; this was determined as Albacete, her parents' place of residence.

9 By Commission decision of 8 December 1994, Ms Lozano Palacios was made an established official with effect from 16 November 1994.

10 On 16 February 1995 she brought an action before the Court of First Instance in respect of the contested decision.

The judgment under appeal

11 The Court of First Instance found that, at the time of her recruitment by the Commission, Ms Lozano Palacios had no residence other than her Brussels residence. The Court of First Instance therefore confirmed that the contested decision, in so far as it determined her place of recruitment as Brussels, was valid and rejected her claims for the daily subsistence allowance (paragraphs 52 to 55), reimbursement of removal expenses (paragraph 71) and travel expenses (paragraph 76).

12 However, the Court of First Instance annulled the contested decision in so far as it refused to grant Ms Lozano Palacios the installation allowance provided for in the first subparagraph of Article 5(1) of Annex VII to the Staff Regulations (paragraph 66). That article provides:

'1. An installation allowance equal to two months' basic salary in the case of an official who is entitled to the household allowance or to one month's basic salary in other cases shall be paid to an established official who qualifies for 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.

...

2. An installation allowance of the same amount shall be paid to any official who is transferred to a new place of employment and is thereby obliged to change his place of residence in order to comply with Article 20 of the Staff Regulations.

3. The installation allowance shall be calculated by reference to the official's marital status and salary either on the effective date of his establishment or on the date of his transfer to a new place of employment.

The installation allowance shall be paid on production of documents establishing the fact that the official ... has settled at the place where he is employed'.

13 The Court of First Instance noted that the first subparagraph of Article 5(1) of Annex VII to the Staff Regulations provides that to be entitled to an installation allowance, an official must meet one of two conditions, that is to say, he must qualify for the expatriation allowance, or he must furnish evidence of having been obliged to change his place of residence in order to comply with Article 20 of the Staff Regulations (paragraph 58).

14 Given that the installation allowance is primarily intended to offset the expenses inevitably incurred by a duly established official who passes from a precarious status to a permanent status and must therefore equip himself for living in and becoming integrated in his place of employment in a permanent and lasting manner for an indeterminate but substantial period of time (Case 140/77 *Verhaaf* v *Commission* [1978] ECR 2117, paragraph 18), and that Ms Lozano Palacios had

been granted the expatriation allowance, the Court of First Instance concluded from the wording of Article 5(1) of Annex VII to the Staff Regulations that she was entitled to the installation allowance (paragraphs 61, 63 and 64).

15 The Court of First Instance did not accept the Commission's argument that in order to be so entitled an official is additionally required to show that he was obliged to change his residence, since such a requirement would in effect convert the alternative conditions laid down by the Community legislature in Article 5(1) into a single stipulation (paragraph 61).

16 The Court of First Instance also rejected the Commission's argument that, in order to qualify for the installation allowance, the official concerned must additionally show the existence of 'actual expenses'. The Court of First Instance pointed out that the benefit provided for by Article 5(1) of Annex VII to the Staff Regulations is of a flat-rate nature and that, when it is established that the official has settled at his place of employment, he does not have to show the existence of actual expenses (paragraph 62).

The appeal

17 In its appeal, the Commission submits that the Court of First Instance erred in law in its interpretation of Article 5(1) of Annex VII to the Staff Regulations, concerning the conditions for granting the installation allowance.

18 On that point, the Commission first refers to the context in which Article 5(1) is set, emphasising that Article 71 of the Staff Regulations, which refers to Annex VII

thereto, provides that an official is to be entitled '... to reimbursement of expenses incurred by him on taking up appointment'. The Commission adds that the installation allowance is one of those covered by Section 3 of Annex VII to the Staff Regulations, which is entitled 'Reimbursement of expenses'. It follows that, like the other allowances in Section 3, the installation allowance was intended to cover expenses actually incurred or likely to arise. That is the only interpretation consistent with the rule against unjust enrichment and with the proper management of public funds.

19 Secondly, according to the Commission, the aim and purpose of the installation allowance also support that interpretation. Thus, the Court of Justice has consistently held that the purpose of the allowance is 'to enable an official to bear, in addition to removal expenses, the inevitable expenses incurred through integrating in new surroundings for an indeterminate but substantial period of time' (*Verhaaf* v *Commission*). By contrast, Ms Lozano Palacios had already been settled in Brussels for nearly three years before her appointment as a probationary official and was therefore already integrated in her place of employment.

Findings of the Court

20 As the Advocate General aptly observed in point 13 of his Opinion, it is clear from the wording of Article 5(1) of Annex VII to the Staff Regulations that the installation allowance is payable to an established official who qualifies for the expatriation allowance.

21 Thus the installation allowance, which is flat-rate and indivisible in nature, is automatically payable to an official at the time of his establishment — provided that he

is entitled to the expatriation allowance and that it is established that he has settled in the place of employment — and there is no need for that official to show the existence of actual expenses. That is also the clear sense of the second subparagraph of Article 5(3) of Annex VII to the Staff Regulations.

22 This interpretation is borne out by the purpose of the installation allowance, which is designed to offset the inevitable expenses entailed for the official concerned in passing from a precarious status (usually that of a probationary official) to the stable position of an established official, which requires an effort on his part to become integrated, for an indeterminate but substantial period of time, in his place of employment. Entitlement to that allowance is not affected by the fact that in most cases the official continues when established to be settled in the same place as before. By the same token, when an official is granted the installation allowance after being established, the daily subsistence allowance — which is intended to offset the disadvantages stemming from the precarious situation of a probationary official — is discontinued.

23 It follows from all the above considerations that the Court of First Instance was correct in holding that Ms Lozano Palacios was entitled to the installation allowance. The appeal must therefore be dismissed.

Costs

24 Under Article 69(2) of the Rules of Procedure, which applies to appeal proceedings by virtue of Article 118 thereof, the unsuccessful party is to be ordered to pay the costs, if they have been applied for. Since the Commission has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fourth Chamber)

hereby:

1. Dismisses the appeal;

2. Orders the Commission of the European Communities to pay the costs.

Ragnemalm Kapteyn Ioannou

Delivered in open court in Luxembourg on 28 May 1998.

R. Grass

Registrar

H. Ragnemalm

President of the Fourth Chamber