Reports of Cases

JUDGMENT OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL

(Second Chamber)

17 March 2016*

(Civil service — Member of the temporary staff recruited by the EEAS — Installation allowance — Daily subsistence allowance — Place of origin — Place of recruitment — Change in the place of residence — Action for annulment — Action for damages — Unlimited jurisdiction)

In Case F-2/15,

ACTION brought under Article 270 TFEU, applicable to the EAEC Treaty pursuant to Article 106a thereof,

Gergő Pasqualetti, member of the temporary staff of the European External Action Service, residing in Brussels (Belgium), represented by A. Véghely, lawyer,

applicant,

v

European Commission, represented initially by J. Currall and T. S. Bohr, acting as Agents, and subsequently by T. S. Bohr, acting as Agent,

defendant,

THE CIVIL SERVICE TRIBUNAL (Second Chamber)

composed of K. Bradley, President, M. I. Rofes i Pujol (Rapporteur) and J. Svenningsen, Judges,

Registrar: P. Cullen, Administrator,

having regard to the written procedure and further to the hearing on 18 February 2016,

gives the following

Judgment

1 By application lodged at the Tribunal Registry on 8 January 2015, and entered in the register on 12 March 2015 after having been put in order, Mr Pasqualetti has sought the annulment of the decision of 4 March 2014 of the European Commission refusing him entitlement to the installation allowance and the daily subsistence allowance when he took up his appointment, on 16 February 2014, at the European External Action Service (EEAS).

* Language of the case: English.

Legal context

2 Article 20 of the Staff Regulations of Officials of the European Union ('the Staff Regulations'), applicable to members of the temporary staff pursuant to Article 11 of the Conditions of Employment of other Servants (CEOS), provides as follows:

'An official shall reside either in the place where he is employed or at no greater distance there from as is compatible with the proper performance of his duties. The official shall notify the Appointing Authority of his address and inform it immediately of any change of address.'

3 Annex VII to the Staff Regulations contains the rules on remuneration and reimbursement of expenses.

4 Article 5 of Annex VII to the Staff Regulations, on the installation allowance and applicable to members of the temporary staff by virtue of Article 22 of the CEOS, is worded as follows:

'1. An installation allowance equal to two months' basic salary in the case of an official who is entitled to the household allowance, and equal to one month's basic salary in other cases shall be paid to an established official who furnishes evidence that a change in the place of residence was required in order to satisfy the requirements of Article 20 of the Staff Regulations.

...'

5 The rules on entitlement to the daily subsistence allowance are in Article 10 of Annex VII to the Staff Regulations, applicable to members of the temporary staff under Article 22 of the CEOS. Article 10 of that annex provides as follows:

'1. Where an official furnishes evidence that a change in the place of residence is required in order to comply with Article 20 of the Staff Regulations, such official shall be entitled for a period specified in paragraph 2 of this Article to a subsistence allowance per calendar day as follows:

— EUR 39.48 for an official who is entitled to the household allowance;

— EUR 31.83 for an official who is not entitled to the household allowance.

...

In no case shall the daily subsistence allowance be granted beyond the date on which the official removes in order to satisfy the requirements of Article 20 of the Staff Regulations.'

6 Under Article 24 of the CEOS:

'1. A member of the temporary staff engaged for a fixed period of not less than one year, or deemed by the authority referred to in the first paragraph of Article 6 to be engaged for an equivalent period if his contract is for an indefinite period, shall receive an installation allowance as provided in Article 5 of Annex VII to the Staff Regulations amounting, for an expected period of service of:

— not less than one year but less than two years, to one-third;

— not less than two years but less than three years, to two-thirds;

— three years or more, to three-thirds,

of the rate laid down in Article 5 of Annex VII to the Staff Regulations.

…’

7 Article 25 of the CEOS is worded as follows:

‘Article 10 of Annex VII to the Staff Regulations, concerning the daily subsistence allowance, shall apply …’

Factual background to the dispute

8 The applicant worked at the Hungarian Ministry of Foreign Affairs from 30 September 2005. On 1 January 2010, he was seconded to the Permanent Representation of Hungary to the European Union in Brussels as a diplomat, until the 2014 rotation exercise, which was planned for August 2014. On 16 February 2014, the applicant was recruited as a member of the temporary staff by the EEAS under Article 2(e) of the CEOS, thus ending his secondment before its term.

9 Throughout his secondment, the applicant lived with his wife and three children in a furnished apartment in Brussels provided free of charge by the Hungarian Government. Following his recruitment by the EEAS, he left that apartment and moved together with his family to an apartment leased at his own expense, the lease for which took effect on 1 May 2014.

10 On 4 March 2014, the Commission Office for the Administration and Settlement of Individual Entitlements (PMO) established the applicant’s place of origin and recruitment as Brussels on the basis of the information he had provided to the administration and decided that he was not entitled to payment of the installation allowance or the daily subsistence allowance (‘the contested decision’).

11 At the applicant’s request, the appointing authority revised its initial decision inasmuch as it established the applicant’s place of origin as Brussels, and ultimately established it as Budapest (Hungary) by decision of 16 May 2014 with retrospective effect as of 16 February 2014, the date on which the applicant took up his appointment.

12 On 3 June 2014, the applicant submitted a complaint within the meaning of Article 90(2) of the Staff Regulations before the appointing authority, in which he sought, inter alia, the recognition of his entitlement to receive the installation allowance and daily subsistence allowance with immediate payment of the sums due, plus default interest.

13 The complaint was rejected by a decision of the appointing authority dated 2 October 2014, of which the applicant was notified the same day.

Forms of order sought and procedure

14 The applicant claims that the Tribunal should:

— annul the contested decision in so far as it refuses to grant him entitlement to the installation allowance and the daily subsistence allowance;

— order the Commission to pay him the installation allowance and the daily subsistence allowance to which he is entitled by virtue of taking up his appointment, plus interest calculated as of the dates on which those sums became payable;

— order the Commission to pay the costs.

15 The defendant contends that the Tribunal should:

— dismiss the action;

— order the applicant to pay the costs.

16 By letter from the Registry dated 24 November 2015, the report for the hearing was served on the parties. In that report, the Commission was requested to provide, at the hearing, the reasons which, in the light of the judgment of 16 January 2007 in *Borbély* v *Commission* (F-126/05, EU:F:2007:12, 'the judgment in *Borbély*'), justified in the Commission's view its refusal to grant the applicant entitlement to the installation allowance and the daily subsistence allowance.

17 By letter from the Registry dated 22 January 2016, the Commission was requested to provide those reasons in writing by 29 January 2016 at the latest. The Commission, which did not comply with that request within the time-limit set, stated those reasons at the hearing.

18 The hearing, which was initially planned for 9 December 2015, was postponed until 16 December 2015 and then, at the applicant's request, until 19 January 2016. The Tribunal was obliged to postpone the hearing due to reasons connected with the organisation of its judicial business and fixed the date of the hearing as 18 February 2016.

Law

The claim for annulment of the contested decision

Arguments of the parties

19 In support of his claim for annulment, the applicant submits that the Commission committed an error of assessment in determining his financial entitlements in so far as it did not take account of the fact, first, that he remained in his permanent, indefinite post at the Hungarian Ministry of Foreign Affairs, by which he was remunerated and, secondly, that his diplomatic secondment in Brussels was for a limited, predefined period. He adds that he maintained his residence and, as a diplomat, the centre of his interests in Hungary, as was indeed recognised by the Commission itself when it adopted the decision of 16 May 2014 fixing his place of origin as Budapest.

20 The applicant submits that, during his diplomatic secondment at the Permanent Representation of Hungary to the European Union in Brussels, his status was governed by the Vienna Convention on Diplomatic Relations, under which he enjoyed immunity from jurisdiction, including so far as concerns the obligation to register as a citizen of the European Union and to establish his permanent residence in Belgium.

21 The applicant asserts that, for the duration of his secondment to Brussels, both he and his family maintained their permanent residence in Hungary, in the apartment in which they lived before moving to Brussels. He also kept his residence for tax purposes, as well as stable family and social ties, in Hungary, the country in which he intended to settle with his family after the end of his diplomatic secondment to Brussels. He adds that it was with that end in view that in 2013 he purchased, with his spouse, the apartment which they had previously been renting in Budapest, an apartment which they subsequently refurbished and extended. He also points out that in his place of diplomatic secondment he merely lived in a furnished apartment provided by his employer, which he moreover had to move out of when he took up his appointment with the EEAS. The applicant for

those reasons claims that he was required to change his place of residence, for the purposes of Articles 5 and 10 of Annex VII to the Staff Regulations, to satisfy the obligation under the Staff Regulations to reside in the place where he was employed.

22 The applicant further claims that during his diplomatic secondment he had two residences, namely in Budapest, which remained the centre of his interests and that of his close family and their habitual residence, and in Brussels, which was the place of his main professional activity, that possibility being allowed under the case-law of EU judicature.

23 The applicant submits that Budapest should have been deemed to be his place of recruitment. He relies on the judgment of 12 December 1996 in *Mozzaglia* v *Commission* (T-137/95, EU:T:1996:201; 'the judgment in *Mozzaglia*') to claim that, in order to be entitled to the installation allowance and daily subsistence allowance, it is sufficient to prove a change in the place of residence without having to show the actual expenses incurred. The applicant adds in that regard that, in any event, the installation allowance would have compensated him for the fact that, on account of his recruitment to the EEAS, he had lost the right to live in his previous accommodation.

24 Basing his arguments on the judgment of 12 December 1996 in *Gammeltoft* v *Commission* (T-132/95, EU:T:1996:200; 'the judgment in *Gammeltoft*'), the applicant also takes the view that the fact that his wife and their three children lived with him during his secondment does not show that he did not maintain his habitual residence in Budapest.

25 The applicant concludes that, at the time of his recruitment by the EEAS, he had his habitual residence where he had the centre of his interests, in Budapest, and that he had to change that place of residence to satisfy the requirements of Article 20 of the Staff Regulations.

26 The Commission submits that the grant of both the installation allowance and the daily subsistence allowance is subject to the condition that, in order to satisfy the requirements of Article 20 of the Staff Regulations, the official or member of staff concerned can no longer live in his previous residence and is obliged to change his place of residence.

27 According to the Commission, the residence which must be taken into account for the purposes of Articles 5 and 10 of Annex VII to the Staff Regulations is the habitual residence, that is to say the residence at which the person concerned maintains the centre of his interests. Consequently, the Commission considers irrelevant the circumstances put forward by the applicant to prove that, on his recruitment, his habitual residence and thus the centre of his interests was in Budapest, not Brussels. Accordingly, in its view, the applicant may not profitably support his arguments by relying on his status as a diplomat, and therefore the absence of any obligation for him to have his name entered on the Brussels population register, or the temporary nature of his diplomatic posting, or the fact that he was remunerated by the Hungarian Ministry of Foreign Affairs, or the purchase of an apartment in Hungary, or the fact that he occupied furnished accommodation in Brussels provided by the Hungarian diplomatic services.

28 The Commission takes the view that the centre of the applicant's interests, inasmuch as it determines his place of origin, is located in Hungary, but that it is located in Brussels for the purposes of the application of Articles 5 and 10 of Annex VII to the Staff Regulations. It adds that all the relevant facts must be assessed to ascertain the centre of the applicant's interests and his habitual residence. Thus, in the Commission's opinion, the fact that, during his secondment, the applicant resided with his wife and children in Brussels and the fact that he did not make trips to Hungary with a particularly high degree of frequency show, contrary to what the applicant claims, that his social life and main social ties and therefore his habitual residence were in Brussels.

29 The Commission adds that the judgments in *Mozzaglia*, *Borbély* and *Gammeltoft* are not relevant to the present case and concludes, for the purposes of the application of Articles 5 and 10 of Annex VII to the Staff Regulations, that the applicant had his habitual residence in Brussels prior to taking up his appointment at the EEAS and that he was therefore not obliged to change his place of residence to satisfy the requirements of Article 20 of the Staff Regulations on his recruitment by the EEAS.

30 The Commission consequently contends that the claim for annulment should be dismissed.

Findings of the Tribunal

31 It is apparent from the wording of Articles 5(1) and 10(1) of Annex VII to the Staff Regulations, applicable to members of the temporary staff pursuant to Article 22 of the CEOS, that an official who furnishes evidence that a change in the place of residence was required in order to satisfy the requirements of Article 20 of the Staff Regulations, in particular that of residing either in the place where he is employed or at no greater distance therefrom as is compatible with the proper performance of his duties, is entitled to the installation allowance and the daily subsistence allowance respectively.

32 It has, in particular, been held that the word 'residence' within the meaning of those provisions of the Staff Regulations must always be construed as referring to the centre of interests of the official concerned, namely the place where he has established and intends to maintain the permanent or habitual centre of his or her interests. Furthermore, that word implies, irrespective of the purely quantitative element of the time spent by the person concerned in a particular country, not only the actual fact of living in a given place, but also the intention of thereby achieving the continuity which stems from a stable way of life and from the course of normal social relations (judgment in *Borbély*, paragraphs 33 and 49).

33 The applicant is claiming the allowances in dispute pursuant to that case-law, submitting that, notwithstanding his secondment to Brussels from 1 January 2010 to 15 February 2014, he had not moved the centre of his interests to that city but had maintained it in Budapest.

34 The Tribunal notes in this connection that the centre of the applicant's interests, for the purpose of the case-law relating to the conditions for the grant of the installation allowance and the daily subsistence allowance, was, at least between 30 September 2005 and 31 December 2009, established as Budapest.

35 On 30 September 2005, the applicant took up an appointment at the Hungarian Ministry of Foreign Affairs, located in Budapest, where he lived in a rented apartment.

36 He was then seconded to Brussels, to the Permanent Representation of Hungary to the European Union. The pre-determined duration of that secondment was for approximately four and a half years and it began to run on 1 January 2010.

37 Since the applicant took up his appointment at the EEAS on 16 February 2014, the question arises whether, following his secondment to Brussels, that city had become, prior to 16 February 2014, the centre of his interests for the purposes of the European Union case-law.

38 To answer that question, it is necessary to take account of all the facts submitted before the Tribunal whose accuracy has not been expressly disputed by the Commission.

39 First, it must be noted that the applicant's arrival in Brussels does not reflect any choice on his part, but results from a decision of his employer, the Hungarian Ministry of Foreign Affairs.

40 Secondly, the Tribunal notes that, despite his secondment to Brussels, the applicant retained the apartment which he rented in Budapest until 11 April 2013, when he purchased it with his wife. Thus, for the duration of his secondment to Brussels he retained a residence in Budapest, which caused him to incur expenses, in particular rent until April 2013 and then the expenses commonly incurred by property owners.

41 Thirdly, it is apparent from the table submitted by the applicant and not contested by the Commission that, from 2010 to 2014, the applicant's family spent at least the Easter, summer, autumn and winter holidays, that is 95 days per year in total, in Hungary and that the applicant spent there at least, whether for private or professional reasons, 56 days in 2010, 40 days in 2011, 54 days in 2012 and 22 days in 2013. The applicant thus returned to Hungary regularly, which also shows that he continued to have significant ties in that country.

42 The Commission's argument in this connection that from 2010 to 2014 the applicant did not make trips to Hungary with a particularly high degree of frequency, which in its view proves that his social life was based more in Brussels than in Hungary, cannot be accepted. Regard must be had to the fact that the applicant's ability to travel to Hungary was limited by his allotted days of leave and the constraints imposed by his work and the schooling requirements of his children.

43 Fourthly, contrary to the Commission's contention, the fact that the applicant purchased with his wife a property in Budapest, which he even refurbished and extended in the summer of 2013, his statements to this effect being supported by evidence, is not irrelevant. The applicant's secondment was for a pre-defined period of approximately four and a half years and, in principle, at the end of his secondment the applicant would have been required to return to Hungary. That circumstance must furthermore be seen in the light of the fact that not only had the applicant failed to make a similar purchase in Brussels, but that he also lived there in a furnished apartment provided by the Hungarian Government.

44 Fifthly, the fact that the applicant's spouse was not in paid employment during her husband's secondment in Brussels supports the applicant's argument that he did not intend to continue living in Brussels beyond the duration of his secondment.

45 In those circumstances, the Tribunal concludes that the applicant did not move the centre of his interests from Budapest to Brussels prior to taking up his appointment at the EEAS on 16 February 2014.

46 That conclusion cannot be called into question by the arguments put forward by the Commission in support of its refusal to grant the applicant the allowances in dispute, according to which the centre of the applicant's interests and his social life had moved from Budapest to Brussels inasmuch as his wife and children had been living with him in Brussels since the beginning of his secondment.

47 First, the Tribunal cannot identify any significant difference between the applicant's case and that set out in the judgment in *Borbély*, in which the Tribunal recognised the individual as being entitled to the installation allowance and the daily subsistence allowance once she was recruited as a probationary official.

48 Both the applicant and Ms Borbély were Hungarian diplomats at the material time, employed for an indefinite period by the Hungarian Ministry of Foreign Affairs, who had been seconded to the Permanent Representation of Hungary to the European Union in Brussels for a fixed period. For both of them, the secondment ended before its term because, in the applicant's case, he was recruited as a member of the temporary staff at the EEAS and, in Ms Borbély's case, she was appointed a probationary official at the Commission. Like Ms Borbély, the applicant lived in Brussels in furnished accommodation provided free of charge by his employer. Just as Ms Borbély was required to do, when she took up her appointment at the Commission, the applicant had to leave his accommodation on

taking up his appointment to the EEAS and move to accommodation rented at his own expense. In both cases, the place of origin was established as Brussels and, following a request from the person concerned, changed to Budapest. Both Ms Borbély and the applicant purchased an apartment in Budapest while they were working in Brussels at the Permanent Representation, with a view to settling there at the end of their secondment, and travelled from Brussels to their country of origin with some degree of frequency.

49 Admittedly, after living together with her spouse for a year and a half in Brussels, Ms Borbély subsequently pursued her marital life in Budapest and Hanover (Germany), where her husband's employment was based, whereas the applicant's family, after following him to Brussels, remained there throughout his secondment, his children attending school in that city. However, the Commission cannot derive arguments from Ms Borbély's family circumstances.

50 The fact that, during Ms Borbély's secondment, her husband had resided with her in Brussels for a year and a half before establishing his employment for an unspecified duration in Hanover did not lead the Tribunal to find that Ms Borbély had successively moved the centre of her interests from Budapest to Brussels and then from Brussels to Hanover, in accordance with the place in which her marital life took place, but on the contrary led it to find that throughout her secondment she had retained the centre of her interests in Budapest.

51 Secondly, nor can the Tribunal find any material difference between the applicant's case and that set out in the judgment in *Gammeltoft*, in which the Court of First Instance held that the person concerned, a Danish member of the temporary staff who, prior to taking up his appointment at the Commission had worked in Brussels as a national expert on secondment and then as a member of the auxiliary staff, had maintained the centre of his interests in his country of origin, despite the fact that his family had joined him in Brussels 19 months after the beginning of his secondment and that he had rented out his apartment in Denmark.

52 In any event, whether national civil servants on secondment in Brussels establish a residence in that city with their spouse and children and, when they do so, whether they do so at the beginning of the secondment or during it, falls within the scope of the right of the persons concerned to respect for their private and family life, recognised under Article 7 of the Charter of Fundamental Rights of the European Union, and is not decisive for the purposes of deciding whether they have maintained the centre of their interests, and in particular their social relations, in their country of origin or whether they have transferred it to the country to which they have been seconded, which entails ascertaining their country of residence when they become officials or other staff members of a EU institution. In addition, the interpretation advocated by the Commission would have the effect of penalising an individual who, prior to joining the EU civil service, establishes a residence in his future country of employment with his family, as against an individual whose family remains in his country of origin.

53 The Commission furthermore submits that the judgment in *Gammeltoft* lacks relevance on the ground that the interpretation in that case of Article 5(1) of Annex VII to the Staff Regulations, on the installation allowance, concerns wording which differs from the version applicable in the present case.

54 That view cannot, however, be accepted. It is in fact true that the wording of the version of Article 5(1) of Annex VII to the Staff Regulations applicable to the facts in *Gammeltoft* differs from that applicable in the present case to the effect that, in the version in force until 2004, there were two situations in which the person concerned was entitled to the installation allowance, namely, if he qualified for the expatriation allowance or if he furnished evidence of having been obliged to change his place of residence in order to satisfy the requirements of Article 20 of the Staff Regulations. The fact remains that, although since 2004 it is no longer relevant for the purposes of receiving the installation allowance whether the person concerned qualifies for the expatriation allowance, it is still necessary to prove a change in the place of residence, which the applicant has done in the present case.

55 It follows from all the foregoing that, for the purposes of the application of Articles 5 and 10 of Annex VII to the Staff Regulations, the applicant's place of residence before he took up his appointment at the EEAS on 16 February 2014 was Budapest. Since he was required to change it to Brussels in order to comply with the requirements of Article 20 of the Staff Regulations, he was entitled to both the installation allowance and the daily subsistence allowance (judgment in *Borbély*, paragraph 65).

56 The Commission adds, so far as concerns the right to the daily subsistence allowance, that the grant of that allowance is subject to an additional requirement, namely that the official or other member of staff concerned must furnish evidence of having been exposed to expense as a result of the need to travel to or establish a provisional residence in the place of employment. The Commission contends that the applicant has not satisfied that latter requirement inasmuch as he has not furnished any evidence to that effect.

57 That reasoning cannot be accepted.

58 It is true that in the judgment of 19 March 2013 in *Infante Garcia-Consuegra* v *Commission* (F-10/12, EU:F:2013:38, 'the judgment in *Infante Garcia*'), relied on by the Commission, it was held that the daily subsistence allowance is granted subject to two conditions: first, that the applicant must have been obliged to change his place of residence in order to satisfy the requirements of Article 20 of the Staff Regulations, and second, that the applicant must have been exposed to expense and inconvenience occasioned by the need to travel and establish a provisional residence at the place of employment. In that judgment, the EU judicatures held, on the basis of the judgments of 5 February 1987 in *Mouzourakis* v *Parliament* (280/85, EU:C:1987:66, 'the judgment in *Mouzourakis*') and 10 July 1992 in *Benzler* v *Commission* (T-63/91, EU:T:1992:88, 'the judgment in *Benzler*'), that those two conditions are cumulative and that therefore the daily subsistence allowance cannot, in particular, be paid to an official who does not furnish evidence that he has been exposed to such expense or inconvenience (judgment in *Infante García*, paragraph 29).

59 It must however be stated that the facts of the cases which gave rise to the judgments in *Infante García*, *Mouzourakis* and *Benzler* are very different to those of the present case.

60 Thus, in the case which gave rise to the judgment in *Benzler*, the applicant had terminated the lease of her apartment in Germany at a date prior to that on which she lodged her application for a post at the Commission, in Brussels, where her parents lived and where she had been resident beforehand. The EU judicature therefore held that, on her recruitment by the Commission in Brussels, she had not been exposed to expense occasioned by the need to establish a residence other than that which she had occupied previously. In that case, the applicant was thus refused payment of the daily subsistence allowance on the ground that she did not meet the condition of having been obliged to change her place of residence in order to satisfy the requirements of Article 20 of the Staff Regulations.

61 As regards the case which gave rise to the judgment in *Mouzourakis*, the applicant, resident in Brussels, was, on his recruitment by the European Parliament, posted initially to Luxembourg (Luxembourg) and then to Brussels. Given that the applicant did not ever remove from Brussels to Luxembourg and that during his periods of work in Luxembourg he maintained his marital home in Brussels, the EU judicature found that the applicant had not been obliged to change his place of residence on account of being posted to Brussels, since he was returning home.

62 In the case which gave rise to the judgment in *Infante García*, the applicant, an official at the Commission, was first posted to Luxembourg and then to Brussels, before then being re-posted to Luxembourg, where he established a residence in an apartment which he had purchased at the time of his first posting to Luxembourg and which was available at the time of his new posting there. Accordingly, the EU judicature effectively required the applicant to furnish evidence that he had been exposed to expense or inconvenience as a result of the requirement to transfer to Luxembourg.

63 The case-law identified in the judgments in *Mouzourakis* and *Infante García* is not applicable in the present case.

64 In the case before the Tribunal, as in the cases which gave rise to the judgments in *Borbély* and *Mozzaglia*, the applicant is a national civil servant on secondment for a pre-determined period who, immediately prior to taking up his appointment at the EEAS, actually resided at the place of employment on account of that secondment but who had maintained his habitual residence and the centre of his interests in his country of origin. Having been obliged to change his habitual residence on his recruitment by the EEAS, he thus established a residence for the first time in Brussels, in order to comply with Article 20 of the Staff Regulations. Accordingly, it is sufficient for the applicant to prove that he has changed his place of residence, which he has done, in order to be entitled to obtain the daily subsistence allowance.

65 In light of the foregoing considerations, the claim for annulment of the contested decision must be upheld.

The claim seeking that the Commission be ordered to pay the applicant the disputed allowances

66 It is settled case-law that the EU judicature cannot, without encroaching on the prerogatives of the administrative authority, issue directions to an EU institution by ordering it to take the measures necessary for the enforcement of a judgment by which a decision is annulled. However, in disputes of a financial character, the Tribunal has unlimited jurisdiction under the second sentence of Article 91(1) of the Staff Regulations, allowing it to order the defendant institution to pay specified amounts together with default interest, where appropriate (judgment in *Borbély*, paragraph 71).

67 That conclusion is not invalidated by the fact that the applicant has not submitted any calculation of the amounts claimed for the allowances in respect of which the Tribunal has granted the claim for annulment. Pursuant to Article 24 of the CEOS, the applicant is entitled, depending on his expected period of service, to one third, two thirds or three thirds of the installation allowance, as provided for in Article 5 of Annex VII to the Staff Regulations and which corresponds to two or, in some circumstances, one month's basic salary, the amount of which can be objectively ascertained by reference to the applicant's grade. Likewise, the amount of the daily subsistence allowance and the period for which the applicant is entitled to it are set out in Article 10 of Annex VII to the Staff Regulations and Article 25 of the CEOS, the duration for which it is granted being calculated according to whether or not the person concerned receives the household allowance and his period of service. It follows that the amounts of those allowances can be directly and objectively ascertained by applying clear and indisputable parameters. It must therefore be held that the head of claim in question is sufficiently precise and must be declared admissible (see, to that effect, judgment in *Borbély*, paragraph 72).

68 Since the decision refusing the applicant entitlement to those two allowances has been annulled, it follows that the defendant must be ordered to pay the applicant, in accordance with the rules in the Staff Regulations as currently in force, those allowances together with default interest, from the dates on which they became payable respectively until the date of actual payment, at the rate fixed by the European Central Bank for its main refinancing operations and applicable during the period concerned, increased by two points (judgment in *Borbély*, paragraph 73).

Costs

69 Pursuant to Article 101 of the Rules of Procedure, subject to the other provisions of Chapter 8 of Title 2 of those Rules, the unsuccessful party is to bear his own costs and is to be ordered to pay the costs incurred by the other party if they have been applied for in the other party's pleadings. Under

Article 102(1) of those rules, if equity so requires, the Tribunal may decide that an unsuccessful party is to bear his own costs, but is to pay only part of the costs incurred by the other party, or even that he is not to be ordered to pay any costs.

70 It can be seen from the grounds of this judgment that the Commission has been unsuccessful. Furthermore, in his heads of claim the applicant has expressly applied for the Commission to be ordered to pay the costs. As the circumstances of the present case do not justify the application of Article 102(1) of the Rules of Procedure, the Commission must bear its own costs and be ordered to pay the costs incurred by the applicant.

On those grounds,

THE CIVIL SERVICE TRIBUNAL (Second Chamber)

hereby:

1. **Annuls the Commission's decision of 4 March 2014, by which it refused to grant Mr Pasqualetti entitlement to the installation allowance and the daily subsistence allowance, provided for in Article 5(1) and Article 10(1) of Annex VII to the Staff Regulations;**

2. **Orders the European Commission to pay Mr Pasqualetti, in accordance with the rules in the Staff Regulations as currently in force, the allowances referred to in paragraph 1 of the operative part, together with default interest, from the dates on which they became payable respectively until the date of actual payment, at the rate fixed by the European Central Bank for its main refinancing operations and applicable during the period concerned, increased by two points;**

3. **Declares that the European Commission shall bear its own costs and orders it to pay those incurred by Mr Pasqualetti.**

Bradley Rofes i Pujol Svenningsen

Delivered in open court in Luxembourg on 17 March 2016.

W. Hakenberg
Registrar

K. Bradley
President