JUDGMENT OF THE COURT (First Chamber)
14 July 1988 *

In Joined Cases 23 and 24/87

Mareile Tziovas, née Aldinger, a member of the temporary staff of the European Parliament, residing in Luxembourg, represented by Vic Elvinger, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 6 rue Heine,

and

Gabriella Schettini, née Virgili, a member of the temporary staff of the European Parliament, residing in Mamer, represented by Lydie Lorang, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 6 rue Heine,

applicants,

v

European Parliament, represented by Francesco Pasetti Bombardella, Jurisconsult, and by Manfred Peter, Head of Division, acting as Agents, 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 annulment of a series of decisions whereby the Parliamentary Group of the European People's Party transferred to Brussels the employees assigned to duties with the parliamentary committees,

THE COURT (First Chamber)

composed of: G. Bosco, President of Chamber, R. Joliet and F. Schockweiler, Judges,

Advocate General: Sir Gordon Slynn
Registrar: B. Pastor, Administrator

* Language of the Case: French.

having regard to the Report for the Hearing and further to the hearing on 2 June 1988,

after hearing the Opinion of the Advocate General delivered at the sitting on 22 June 1988,

gives the following

Judgment

1 By applications lodged at the Court Registry on 28 January 1987, Mareile Tziovas and Gabriella Schettini brought two actions for the annulment of a series of decisions whereby the Parliamentary Group of the European People's Party (hereinafter referred to as the 'PPE Group') transferred to Brussels the employees assigned to duties with the parliamentary committees.

2 Mrs Tziovas and Mrs Schettini were engaged by the European Parliament by contracts dated 8 May and 1 April 1981 respectively and were assigned to the PPE Group in Luxembourg.

3 Following discussions in 1984, the Bureau of the PPE Group decided on 10 July 1985 to transfer the advisers concerned with the proceedings of the parliamentary committees and their secretaries to Brussels as soon as the necessary offices became available. That decision was confirmed on two occasions by the President of the PPE Group at meetings of 17 June and 1 July 1986. At the latter meeting the President of the PPE Group stated that 'to take full account of the social problems of the persons concerned, and in particular educational problems, the transfer will take place in July 1987'.

4 By a letter dated 16 July 1986, Sergio Guccione, the Secretary-General of the PPE Group, told the employees concerned, including the applicants, that the transfer to Brussels would take place in July 1987 at the end of the school year. In that letter he also stated that he was willing to consider ways of resolving any personal

problems which the persons concerned might have, at the same time emphasizing that the suggestions of the Staff Committee would be taken into account when the transfer measures were implemented.

5 Mrs Tziovas and Mrs Schettini replied by letters dated 7 and 17 September 1986 respectively. In her letter Mrs Tziovas stated that she 'took note' of her transfer to Brussels, planned for July 1987. She nevertheless asked the appointing authority to 'take account of her interests in greater detail' and accordingly, having regard to her family situation, 'to extend her employment in Luxembourg at least until the expiry of her husband's employment contract' at the beginning of 1989.

6 Mrs Schettini, in her letter, submitted 'an official complaint within the meaning of Article 90 *et seq.* of the Staff Regulations' against the notice of her transfer to Brussels, stating that the complaint was not directed 'against the transfer itself' but rather was intended to obtain 'a sufficient postponement' in order to 'resolve certain problems of a family nature'.

7 On 29 October 1986 the President of the PPE Group replied to the applicants' letters in his capacity of appointing authority. He confirmed that he had re-examined their cases but emphasized that the transfer decisions in question had been adopted pursuant to 'the organizational powers conferred by the Staff Regulations (and in particular Article 7) upon the appointing authority' and that the transfer to Brussels was 'in conformity with requirements relating to the rationalization and efficiency of the servicing of parliamentary work'. He pointed out, finally, that the time-limit of 1 July 1987 for the transfer had been adopted in order 'to take full account of the personal and family problems' of the staff concerned.

8 After receiving those replies, Mrs Tziovas and Mrs Schettini brought the present actions.

9 By order of 13 May 1987 the Court (First Chamber) joined the two cases for the purposes of the procedure and judgment. On 6 July 1987 the Court decided to reserve for the final judgment its decision on an objection of inadmissibility raised by the Parliament.

10 By documents lodged on 4 June 1987 the applicants applied for interim measures suspending the operation of the contested decisions. By orders of the President of the First Chamber of 22 June 1987 (ECR 2841 and 2847), the operation of the decisions contained in the letters of 16 July 1986 from the Secretary-General of the PPE Group and in the letters of 29 October 1986 from the President of the PPE Group ordering the transfer of applicants to Brussels on 1 July 1987 was suspended and the costs of the application for interim measures were reserved.

11 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter ony in so far as is necessary for the reasoning of the Court.

Admissibility

12 The European Parliament pleads that the applications are inadmissible because the letters sent by Mrs Tziovas and Mrs Schettini on 7 and 17 September 1986 respectively do not, by virtue of the terms in which they are expressed, constitute complaints through official channels within the meaning of Article 90 (2) of the Staff Regulations but are requests within the mening of Article 90 (1). Since following the negative response from the President of the PPE Group on 29 October 1986, the applicants brought the matter directly before the Court, it follows in the Parliament's view that their actions are inadmissible for lack of a prior complaint through official channels.

13 That objection must be rejected. Those letters do constitute complaints through official channels in so far as they clearly express the applicants' wish to challenge the appointing authority's decision setting July 1987 as the date for the implementation of the transfer to Brussels, this being confirmed by the fact that, in his reply of 29 October 1986, the President of the PPE Group expressly described those letters as 'complaints against a decision of the (appointing) authority'.

14 However, in those complaints the applicants challenged only the period of prior notice of the transfer, which they considered too short, stating that they did not

wish to challenge the transfer decision as such. But in their applications they made a number of submissions as to the illegality of the actual transfer to Brussels.

15 In those circumstances, without it being necessary to consider whether those submissions as to the illegality of the transfer decision are well founded, it must be pointed out that they were not set out in the complaint and were not made until the written stage of the procedure before the Court. The Court has consistently held, most recently in its judgment in Case 242/85 *Geist* v *Commission* [1987] ECR 2181, that an official may not submit to the Court conclusions whose subject-matter differs from that of those contained in the complaint or put submissions founded on a legal basis other than that relied on in the complaint. It follows that the submissions as to the illegality of the decision on the transfer to Brussels, which were not contained in the prior complaint through official channels, must be declared inadmissible. Accordingly, the only submission to be considered is the claim that the period of notice given by the Parliament for accomplishment of the transfer was insufficient.

The period for the implementation of the transfer

16 The applicants consider that the period of one year allowed them for the implementation of the decision on the transfer to Brussels was unreasonable, having regard in particular to their family needs.

17 That argument cannot be upheld. It should be recalled that, as the Court stated in its judgment of 14 July 1977 (Case 61/76 *Geist* v *Commission* [1977] ECR 1419), 'the transfer of an official of the Community does not constitute an abnormal and unforeseeable event in his career although it may cause him family and financial difficulties, when the places of employment to which he may be assigned are spread over several States and the administration may be required to meet needs of the service which compel it to decide such transfer'.

18 That conclusion applies *a fortiori* in the case of members of the temporary staff whose contracts of employment may be terminated by three months' notice.

19 In those circumstances, it must be concluded that the period of one year allowed for the implementation of the transfer in question is reasonable, having regard to the personal needs of the members of the temporary staff affected by that measure. The applications must therefore be dismissed.

Costs

20 Under Article 69 (2) of the Rules of Procedure the unsuccessful party must be ordered to pay the costs. However, Article 70 of those Rules provides that the institutions are to bear their own costs in proceedings brought by servants of the Community.

On those grounds

THE COURT (First Chamber)

hereby:

(1) Dismisses the applications;

(2) Orders the parties to bear their own costs, including those of the proceedings for interim measures.

Bosco Joliet Schockweiler

Delivered in open court in Luxembourg on 14 July 1988.

J.-G. Giraud
Registrar

G. Bosco
President of the First Chamber