# REPORT FOR THE HEARING
delivered in Joined Cases 23 and 24/87 *

## I — Facts and procedure

By contracts dated respectively 8 May and 1 April 1981, Mareile Tziovas, née Aldinger, and Gabriella Schettini, née Virgili, were recruited as members of the temporary staff of the European Parliament. They were assigned to the Group of the European People's Party (the 'PPE Group'). Their contracts of employment specified Luxembourg as the place of employment.

Following discussions in 1984, on 10 July 1985 the Bureau of the PPE Group decided to transfer a number of parliamentary-committee advisers and their secretaries to Brussels, as soon as the necessary offices were available. At its meeting on 17 June 1986, that decision was confirmed by the President of the PPE Group, but it was decided, for social reasons, to defer its implementation until July 1987. The transfer to Brussels was again confirmed by the President of the PPE Group on 1 July 1986. At that time, it was also 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.

Notice to that effect was given orally to the Staff Committee and to the persons concerned by the Secretary-General at the staff meeting held in Luxembourg on 29 June.

The Staff Committee has confirmed a number of requirements already put forward in 1985, by letter of 19 July 1985, and in 1986, by letter of 23 May 1986.

The Secretary-General has been instructed to inform the staff concerned in writing.

Consequently, the Research and Documentation Department and the Financial Department will remain in Luxembourg.'

By a letter dated 16 July 1986, Sergio Guccione, the Secretary-General of the Group, acting in accordance with instructions from the President, informed the staff concerned, including Mrs Tziovas and Mrs Schettini, that the transfer to Brussels would take place in July 1987 at the end of the academic year. In that letter, Mr Guccione stated that he was ready to consider, with each individual affected, ways of resolving any personal problems which they might have and that, in proceeding with the transfer, account had been taken of the suggestions put forward by the Staff Committee.

By letter of 7 September 1986 addressed to the Secretary-General of the Group, Mrs Tziovas stated that she took note of the proposal to transfer her in July 1987. She nevertheless asked the Secretary-General to 'take account of [her] interests in greater detail', and thus, having regard to her family situation and in accordance with the principle that transfers should be voluntary (mentioned in a communication from the Secretary-General of the European Parliament — Document PE 107 136), 'to extend [her] employment in Luxembourg at least until the expiry of [her] husband's employment contract' (which was due to

* Language of the Case: French.

expire at the beginning of 1989) and 'in response to this request, to undertake, in accordance with Article 90 *et seq.* of the Staff Regulations of Officials and Other Servants, the negotiations' referred to in Mr Guccione's letter of 16 July 1986.

By a letter dated 17 September 1986, Mrs Schettini also wrote to the Secretary-General of the PPE Group, submitting an 'official complaint within the meaning of Article 90 *et seq.* of the Staff Regulations' against the notice of her transfer to Brussels. Mrs Schettini referred to the applicability to her case of the principle contained in Document PE 107 136 that transfers should be voluntary, and stated that her 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'.

On 29 October 1986, the President of the PPE Group replied to the abovementioned letters from Mrs Tziovas and Mrs Schettini.

In his replies, the President of the PPE Group noted that the applicants had sent their letters pursuant to Article 90 of the Staff Regulations, which concerned complaints against a decision of the appointing authority, and that he considered those letters as being addressed to him personally as the appointing authority. He confirmed that he had re-examined the applicant's 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 effectiveness of the servicing of parliamentary work'. He pointed out, finally, that the time-limit for transfer of 1 July 1987 reflected the wish to take full account of the personal and family problems of the officials concerned.

Following those letters from the President of the PPE Group, Mrs Tziovas and Mrs Schettini brought the present actions, which were received at the Court Registry on 28 January 1987.

By order of 13 May 1987 the First Chamber of the Court joined the cases for the purposes of the procedure and the judgment.

By documents lodged on 1 April 1987, the Parliament raised an objection of inadmissibility in each case. By decision of the Court of 6 July 1987, the decision on those objections was reserved for the final judgment.

By applications lodged on 4 June 1987, Mrs Tziovas and Mrs Schettini applied for the operation of the contested decisions to be suspended.

By orders of the President of the First Chamber dated 22 June 1987 (ECR 2841 and 2847), the decisions contained in the letters of 16 July 1986 from the Secretary-General of the PPE Group and in those of 29 October 1986 from the President of the PPE Group ordering the transfer of the applicants to Brussels as from 1 July 1987 were suspended and the costs of the applications for interim measures were reserved.

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

## II — Conclusions of the parties

*Mrs Tziovas* claims that the Court should:

(1) Annul the decisions adopted:

within the PPE Group in June 1984,

by the Bureau of the PPE Group on 10 July 1985,

by the President of the PPE group on 17 June and 1 July 1986,

by the Secretary-General of the PPE Group on 16 July 1986,

and annul the adverse decision of the President of the PPE Group dated 29 October 1986;

(2) Order the defendant to pay the costs.

*Mrs Schettini* claims that the Court should:

(1) Annul the decisions adopted:

within the PPE Group in June 1984,

by the Bureau of the PPE Group on 10 July 1985,

by the President of the PPE Group on 17 June and 1 July 1986,

by the Secretary-General of the PPE Group on 16 July 1986,

and annul the adverse decision of the President of the PPE Group dated 29 October 1986;

(2) Allow the applicant a sufficient postponement, having regard to her personal circumstances, but at least until 1 January 1989;

(3) Order the defendant to pay the costs.

The *European Parliament* claims that the Court should:

Declare the actions inadmissible;

Or else declare them to be unfounded;

Dismiss them;

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

## III — Submissions and arguments of the parties

*Admissibility*

The European Parliament contends that the applications are inadmissible. It maintains that the letters sent by Mrs Tziovas and Mrs Schettini on 7 and 17 September 1986

respectively must be regarded not as complaints through official channels under Article 90 (2) of the Staff Regulations but as requests under Article 90 (1). It claims that the letters do not contest the transfer decision and that their true purpose, as is moreover apparent from their terms and content, is only to obtain a further postponement of the transfer to Brussels.

The Parliament also states that, in referring to postponement of the transfer, Mrs Tziovas and Mrs Schettini merely responded to the offer made by the Secretary-General of the PPE Group in his letter of 16 July 1986 to consider ways of resolving the personal problems of officials affected by the transfer.

The European Parliament also states that the President of the PPE Group, in his letter of 29 October 1986, rejected the applicants' requests for postponement of their transfer. Since Mrs Tziovas and Mrs Schettini did not submit a complaint against that decision under Article 90 (2) of the Staff Regulations, it follows that their actions are inadmissible for lack of a prior complaint through official channels.

The applicants counter the objection of inadmissibility raised by the Parliament by stating in the first place that Article 90 (1) of the Staff Regulations relates only to measures in respect of which the employee took the initiative, whereas Article 90 (2) concerns complaints against measures for which the initiative was taken by the Administration. In the present case, the applicants state that, by their letters of 7 and 17 September 1986, they reacted to the Parliament's decision requiring their transfer to Brussels. In those circumstances, the letters in question can only be regarded as complaints under Article 90 (2) of the Staff Regulations.

Moreover, the President of the PPE Group, by expressing a view in his letters of 29 October 1986 on the validity of all the decisions adopted by the authorities within the PPE Group regarding the transfer of its officials to Brussels showed that he intended to reply not to a request within the meaning of Article 90 (1) but to a complaint under Article 90 (2).

The applicants emphasize finally that the reference in their abovementioned letters to the principle that transfers should be voluntary, mentioned in Document PE 107 136, showed beyond possible doubt that their intention was to oppose their transfer to Brussels.

*The substance*

Primarily, the applicants maintain that the transfer to Brussels constitutes a breach of the clause in their employment contract which states that their place of employment is Luxembourg.

In the alternative, the applicants observe that all the abovementioned decisions of the PPE Group concerning their transfer to Brussels are illegal because they were adopted:

(i) without prior consultation of the Joint Committee;

(ii) in breach of the principle that transfers should be voluntary, as outlined in the communication from the Secretary-General of the Parliament dated 16 July 1986 (Doc. PE 107 136);

(iii) without a prior hearing of the persons concerned, as required by Article 38 of the Staff Regulations;

(iv) without taking account, in choosing the officials to be transferred, of the criteria of rationalization and efficiency of the service, since, in view of the fact that several advisers had been transferred without their secretary or assistant, departmental unity was not maintained.

The applicants also draw attention to specific defects by which each of the decisions in question is vitiated.

In particular, the decision of the PPE Group of June 1984 is unlawful since it was not adoptd by the competent authority as defined by Article 10 of the internal rules of the Group.

The decision of the Bureau of the PPE Group dated 10 July 1985 is unlawful since it was void *ab initio* (being based on an untruthful statement by the President of the Group to the effect that the persons concerned had consented to their transfer to Brussels) and that it was adopted by an unlawfully constituted authority (the number of Vice-presidents in the Bureau exceeded the number indicated in Article 11 of the internal rules of the PPE Group).

The decisions of the President of the Group dated 17 June and 1 July 1986 are, the applicants maintain, also unlawful, being void *ab initio*, and having been adopted by an improperly constituted authority; moreover, they are vitiated by misuse of power, since the President has authority solely to implement decisions of the Bureau.

The decision of the Secretary-General of the PPE Group dated 16 July 1986, in so far as it does not merely represent a notification of a previous decision, should be annulled, since it is vitiated by misuse of powers in so far as the internal rules of the PPE group do not confer any power upon him to make decisions.

Finally, the decision of rejection adopted by the President of the PPE Group on 29 October 1986 should be annulled as having been adopted without authority and in breach of the previous decision of 16 July 1986.

In the further alternative, the applicants claim that a further postponement of their transfer to Brussels should have been granted to them because of their personal circumstances.

The Parliament observes that, as regards the argument concerning breach of the contract of employment, the place of employment can be changed unilaterally, provided that three months notice is given. In any event, the transfer decision is a matter within the discretion regarding the assignment of staff which is enjoyed by the Appointing Authority under Article 7 of the Staff Regulations (which, pursuant to Article 10 of the Conditions of Employment of Other Servants, is applicable by analogy to members of the temporary staff).

As regards the propriety of the decisions in question, the Parliament considers that only the decisions of the President of the PPE

Group dated 17 June and 1 July 1986 are open to a review of legality by the Court, since the decision of June 1984 is nonexistent, the decision of the Bureau of 10 July 1985 is a measure of a general nature against which an action cannot be brought, and the letter from the Secretary-General of the Group dated 16 July 1986 is merely a notification of a previous decision.

In any event, with respect to the grounds on which all the contested decisions are alleged to be unlawful, the Parliament states that:

(i) the Joint Committee issued its opinion on 18 July 1985 and noted with satisfaction, at its meetings of 17 and 19 June 1986, that the President had followed that opinion when adopting his decisions (of 17 June and 1 July 1986) on the transfer to Brussels;

(ii) the communication from the Secretary-General of the Parliament (Doc. PE 107.136) to which the applicants refer is addressed to the staff of the Secretariat-General of the Parliament and does not concern employees of the political groups,

(iii) the applicants were given an opportunity to express their views concerning the transfers; in any event, Article 38 of the Staff Regulations is not applicable by analogy to members of the temporary staff;

(iv) since the decision concerning the transfer to Brussels covered all the parliamentary-committee advisers and also their secretaries, the criticism as to the application of irrational criteria concerning the choice of the staff to be transferred is without foundation.

The Parliament also denies that each of the decisions in question is vitiated by defects. In particular, as far as the alleged decision of June 1984 is concerned, the Parliament observes that the criticisms of it are pointless, since no decision was taken on that date.

The Parliament denies that the decision of the Bureau of the PPE Group dated 10 July 1985 can be challenged and rejects the applicants' allegations concerning the discussions which took place within the Bureau of the PPE Group; it also points out that when the decision was adopted the Bureau was properly constituted, since the number of Vice-presidents had been increased by decisions of 18 and 26 July 1984.

As regards the two decisions of the President of the PPE Group dated 17 June and 1 July 1986, the Parliament maintains that they were adopted strictly in conformity with the internal rules of the PPE Group conerning the division of powers amongst the various authorities of the Group. Pursuant to Article 10 of those rules, the Bureau of the Group was responsible, in this case, for adopting the decision on the principle of transferring services to Brussels and, under Article 12 of the rules, the President was empowered to adopt the decision to implement the transfer.

As regards the letter of 16 July 1986 from the Secretary-General of the PPE Group, the Parliament claims that it contained no independent decision and merely informed

the persons concerned of the transfer decision adopted by the President.

Finally, the Parliament states that the decision of the President of the PPE Group of 29 October 1986 emanates from the Appointing Authority and is not in conflict with the letter from the Secretary-General of the PPE Group dated 16 July 1986.

As regards the criticisms concerning the postponement of the transfer for one year, the Parliament contends that, under Article 7 of the Staff Regulations, transfers of officials are carried out solely in the interests of the service, a fact which is confirmed by the judgment of the Court of 14 July 1977 in Case 61/76 (*Geist* v *Commission* [1977] ECR 1419). In any event, in this case the Parliament took full account of the personal problems of the staff concerned, by ultimately giving them notice of 12 months and fixing a date which was compatible with the educational needs of their children.

G. Bosco
Judge-Rapporteur