OPINION OF ADVOCATE GENERAL BOT

delivered on 7 June 2007 [1]

1. These cases concern the appeals brought by Ms Salvador García, Ms Herrero Romeu and Mr Salazar Brier, officials of the Commission of the European Communities, and by Mr de Bustamante Tello, an official of the Council of the European Union, against the judgments of the Court of First Instance of the European Communities, delivered on 25 October 2005, [2] dismissing their actions for annulment of the decisions of the Commission [3] and the Council [4] refusing to grant them the expatriation allowance and the installation and daily subsistence allowances which, in the view of the appellants, are associated with that allowance.

2. The expatriation allowance is paid to Community officials who have been obliged to transfer their residence from the country where they habitually reside to the country where they are employed when they enter the service of the European Communities. Under the provisions of Article 4(1) of Annex VII to the Staff Regulations of Officials of the European Communities, [5] the grant of that allowance is subject to the condition that the official did not already have his residence or main occupation within the territory of the State of employment before he entered the service.

3. However, the same provision states that, for the purposes of that condition, 'circumstances arising from work done for another State or for an international organisation' are not to be taken into account.

4. It is the scope of that exception which is the subject-matter of the disputes in these cases. The appellants complain that the Court of First Instance held that the concept of work done for another State applies only to work done for the central authorities of

1 — Original language: French.

2 — In Case C-7/06 P, Case T-205/02 *Salvador García* v *Commission* [2005] ECR-SC I-A-285 and II-1311; in Case C-8/06 P, Case T-298/02 *Herrero Romeu* v *Commission* [2005] ECR II-4599, ECR-SC I-A-295 and II-1349; in Case C-9/06 P, Case T-83/03 *Salazar Brier* v *Commission* [2005] ECR-SC I-A-311 and II-1407; and in Case C-10/06 P, Case T-368/03 *de Bustamante Tello* v *Council* [2005] ECR-SC I-A-321 and II-1439 ('the contested judgments').

3 — In Case C-7/06 P, decision of 28 June 2001; in Case C-8/06 P, decision of 19 November 2001, and in Case C-9/06 P, decision of 25 July 2002.

4 — In Case C-10/06 P, decision of 24 January 2003.

5 — 'The Staff Regulations'.

another State and therefore does not cover that done for a regional authority, such as a Spanish autonomous community, or, a fortiori, that done for a company constituted under private law entrusted with defending the interests of an autonomous community at Community level, even though that company is entrusted with a task in the public interest. One of these cases also raises the question whether the duties of an assistant to a Member of the European Parliament can be considered to be work done for an international organisation, within the meaning of the provision in question.

5. Since these four cases relate principally to the same legal issue, I shall examine them together in this Opinion.

6. I will argue that the concept of work done for another State is not limited, in my opinion, solely to duties performed for the central authorities of a State, but also covers those performed for a regional authority and those performed for a body which, irrespective of its legal form, has been given responsibility, by the public authorities, for providing, under the supervision of those authorities, a public service such as managing or defending the interests of a regional authority at Community level.

7. I shall also argue that the duties of an assistant to a Member of the European Parliament, when the assistant has been employed directly by the Member, that is to say that he has had a direct legal relationship with the latter, must be regarded as work done for an international organisation, within the meaning of Article 4(1) of Annex VII to the Staff Regulations.

8. I shall demonstrate that the Court of First Instance, in the contested judgments, made an error of law in the interpretation of the concept of work done for another State, and I shall set out the inferences which should be drawn from that error of law in each of the cases under consideration.

I — Legal framework

9. Under Article 62 of the Staff Regulations, the remuneration of officials of the European Communities is to comprise basic salary, family allowances and other allowances.

10. Those allowances include the expatriation allowance, the amount of which is fixed, in Article 69 of the Staff Regulations, at 16% of the total of the basic salary, household allowance and dependent child allowance to

which the official is entitled. The expatriation allowance is paid throughout the official's period of active employment.

11. The allowance in question was established by Regulation No 31 (EEC), 11 (EAEC) of 18 December 1961 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, which entered into force on 1 January 1962. [6]

12. The expatriation allowance replaces the separation allowance. That separation allowance, the amount of which was equal to 20% of the basic salary, was granted to officials who before taking up their duties resided permanently for more than six months in a place more than 25 kilometres from the seat of the institution in the case of officials of the European Coal and Steel Community and more than 70 kilometres in the case of officials of the European Economic Community and the European Atomic Energy Community.

13. The conditions for granting the expatriation allowance are laid down in Article 4(1) of Annex VII to the Staff Regulations. Those conditions have remained unchanged since that allowance was introduced in 1961. That provision is worded as follows:

'An expatriation allowance shall be paid ...:

(a) to officials:

— who are not and have never been nationals of the State in whose territory the place where they are employed is situated, and

— who during the five years ending six months before they entered the service did not habitually reside or carry on their main occupation within the European territory of that State. For the purposes of this provision, circumstances arising from work done for another State or for an international organisation shall not be taken into account;

6 — OJ, English Special Edition 1959-1962, p. 135.

(b) to officials who are or have been nationals of the State in whose territory the place where they are employed is situated but who during the 10 years ending at the date of their entering the service habitually resided outside the European territory of that State for reasons other than the performance of duties in the service of a State or of an international organisation.

...'

14. Under Article 4(2) of Annex VII to the Staff Regulations, an official who is not and has never been a national of the State in which he is employed and who does not fulfil the qualifying conditions for entitlement to the expatriation allowance is entitled to a foreign residence allowance equal to one quarter of the expatriation allowance.

15. As to the installation allowance and the daily subsistence allowance, they are provided for in Articles 5 and 10 respectively of Annex VII to the Staff Regulations.

16. Article 5 of that annex, in the version applicable at the material time, provides that an established official who qualifies for the expatriation allowance is entitled to an installation allowance equal to one month's basic salary.

17. Article 10 of that annex provides that an official who furnishes evidence that he must change his place of residence in order to satisfy the requirements of Article 20 of the Staff Regulations is entitled to a daily subsistence allowance the amount of which is determined in accordance with that Article 10.

II — The facts in the present cases

18. The facts in the four cases under consideration may be summarised as follows.

A — *Case C-7/06 P*

19. Ms Salvador García, a Spanish national, entered the service of the Commission in Brussels as an official on 16 April 2001.

20. Prior to that, she had been a student in Brussels from September 1991 to July 1992, than a trainee at the Commission from October 1992 to February 1993.

21. From 1 October 1993 to 31 December 1994, she worked in that city for the government of the Spanish Autonomous Community of Navarre then, from 21 February 1995 to 20 August 1995, at the Sociedad de Desarrollo de Navarra, Sodena SA, [7] a company entrusted with the economic development of that autonomous community.

22. Between 1 September 1995 and 30 June 1996, Ms Salvador García worked as an assistant to a Member of the European Parliament.

23. During July and August 1996, she did voluntary work with a non-governmental organisation in Peru.

24. From 2 September 1996 to 28 February 1997, she worked in Brussels at ECO, a company to which the Commission had entrusted technical assistance assignments.

25. From 1 March 1997 to 31 March 1999, she was employed in that city by the Sociedad de Desarrollo Exterior de Navarra, Sodexna SA, [8] a company entrusted with the external economic development of the Autonomous Community of Navarre then, from 1 April 1999 to 15 April 2001, she held the post of delegate of the government of that autonomous community.

26. By decision of 28 June 2001, the Commission decided that the appellant did not qualify for the expatriation allowance and the allowances associated therewith.

27. In its decision of 27 March 2002 rejecting the complaint lodged by the appellant, the Commission took the view that the activities carried out by her in Brussels, as an assistant to a Member of the European Parliament, in the service of Sodena and Sodexna and for the government of the Autonomous Community of Navarre, could not be considered to be 'work done for another State or for an international organisation', within the meaning of Article 4(1) of Annex VII to the Staff Regulations.

28. The Commission considered that those activities must therefore be taken into

7 — Company for the development of Navarre ('Sodena').

8 — External Development Company of Navarre ('Sodexna').

account and that the five years mentioned in the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations, known as the 'reference period', extended from 16 October 1995 to 16 October 2000. It inferred from this that during that period the appellant had lived and carried on her main occupations in Belgium.

B — *Case C-8/06 P*

29. Ms Herrero Romeu, a Spanish national, entered the service of the Commission in Brussels as an official on 16 November 2001.

30. Prior to that, she had worked in Brussels, from January 1993 to November 2001, in the delegation of the Patronat Català Pro Europa, [9] a body entrusted with managing the interests of the government of the Spanish Autonomous Community of Catalonia within the Community institutions.

31. By decision of 19 November 2001, the Commission decided that the appellant did not qualify for the expatriation allowance and the allowances associated therewith.

32. It rejected the complaint lodged by the appellant by decision of 10 June 2002 on the ground that her main occupation in the service of the Patronat could not be considered to be 'work done for another State'. It inferred from this that the reference period had to be fixed as being from 15 May 1996 to 15 May 2001 and that during that period the appellant had lived and carried on her main occupation in Belgium.

C — *Case C-9/06 P*

33. Mr Salazar Brier, a Spanish national, entered the service of the Commission in Brussels as an official on 1 June 2002.

34. Prior to that, he had worked, between 3 October 1994 and 31 August 1998, as an employee of the Sociedad Canaria de Fomento Económico, Sofesa SA, [10] a company entrusted with managing the interests of the Spanish Autonomous Community of the Canary Islands and managing the representative office of the government of that autonomous community in Brussels, then, from 1 September 1998 until 31 May 2002, as a temporary official of the government of that autonomous community.

9 — 'The Patronat'.

10 — Canary Islands Economic Development Company ('Sofesa').

35. The Commission, in the record sheet specifying Mr Salazar Brier's entitlements, drawn up on 25 July 2002, decided that he did not qualify for the expatriation allowance and the allowances associated therewith.

36. The complaint lodged by him was the subject of an implied rejection on 24 February 2003 then of an express rejection by decision of 24 March 2003. The Commission took the view that the appellant's work at Sofesa and for the government of the Autonomous Community of the Canary Islands did not constitute 'work done for another State'. It inferred from this that the reference period had to be fixed as being from 1 December 1996 to 30 November 2001 and that during that period the appellant had lived and carried on his main occupation in Belgium.

D — *Case C-10/06 P*

37. Mr de Bustamante Tello, a Spanish national, entered the service of the Council in Brussels as an official on 1 January 2003.

38. Prior to that, between 2 December 1991 and 31 July 1996, he had carried on his occupation in Brussels in the service of the Instituto de Fomento de la Región de Murcia, [11] a public law body of the Autonomous Community of the Region of Murcia entrusted inter alia with monitoring Community legislation and programmes of interest to that autonomous community.

39. Between August 1996 and December 2002, he had also worked in Brussels as director of the Oficina de la Comunidad Autónoma de la Región de Murcia ante las Comunidades europeas, [12] an administrative body of the Autonomous Community of the Region of Murcia responsible for managing the latter's interests at Community level.

40. By decision of 24 January 2003, the Council decided that the appellant did not qualify for the expatriation allowance and the allowances associated therewith.

41. In its decision of 28 July 2003 rejecting the appellant's complaint, the Council took the view that his occupational activities at the INFO and the ORM could not be

11 — Murcia Regional Development Institute ('the INFO').

12 — European Communities Office of the Autonomous Community of the Region of Murcia ('the ORM').

considered to be 'work done for another State'. It inferred from this that the reference period had to be fixed as being from 1 July 1997 to 30 June 2002 and that during that period the person concerned had habitually resided and worked in Belgium.

III — The contested judgments

42. By applications lodged at the Registry of the Court of First Instance on, respectively, 4 July 2002, 1 October 2002, 3 March 2003 and 4 November 2003, Ms Salvador García, Ms Herrero Romeu, Mr Salazar Brier and Mr de Bustamante Tello brought before that court actions for annulment of the decisions of the Commission and the Council by which they had been refused the expatriation allowance and the allowances associated therewith.

43. The applicants also claimed that the defendant institutions should be ordered to pay the costs.

44. In support of their claim concerning the expatriation allowance, the applicants put forward three pleas in law, the first alleging infringement of Article 4(1) of Annex VII to the Staff Regulations, the second alleging an error of assessment of the facts and the third alleging breach of the principle of equal treatment.

45. Ms Salvador García, Ms Herrero Romeu and Mr Salazar Brier also complained that the Commission had infringed the obligation to state grounds.

46. In support of their claim concerning the daily subsistence allowance and the installation allowance, the applicants argued that, under the judgment in *Commission* v *Lozano Palacios*,[13] they would automatically have been paid those allowances if they had been found eligible for the expatriation allowance.

47. The Court of First Instance dismissed the applications and ordered the parties to bear their own costs.

48. It rejected the pleas put forward in support of the claims concerning the expatriation allowance as being inadmissible or unfounded.

49. As regards the first plea, alleging infringement of Article 4(1) of Annex VII to the Staff Regulations, the Court of First Instance held that it was unfounded on the following grounds.

13 — Case C-62/97 P [1998] ECR I-3273.

50. It stated that, according to settled case-law, the fundamental purpose of the expatriation allowance is to compensate for the extra expense and inconvenience of taking up permanent employment in a country with which the official has established no lasting tie before his entry into service and that, for such a lasting tie to be established, thus entailing the loss to the official of the benefit of the expatriation allowance, the legislature requires that the official should have had his habitual residence or carried on his main occupation for a period of five years in the country of the place where he is employed.

51. The Court of First Instance then pointed out that the exception provided for in the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations, in favour of persons who have done work for another State or for an international organisation during the reference period, was established in order to take account of the fact that, in those circumstances, those persons cannot be deemed to have established a lasting tie with the country in which they are employed due to the temporary nature of the secondment in that country.

52. It held that, in view of the dates on which the applicants had entered the service of the Commission or the Council, the reference period had to be fixed, in the case of Ms Salvador García, as being from 16 October 1995 to 15 October 2000, in the case of Ms Herrero Romeu, as being from 16 May 1996 to 15 May 2001, in the case of Mr Salazar Brier, as being from 1 December 1996 to 30 November 2001 and, in the case of Mr de Bustamante Tello, as being from 1 July 1997 to 30 June 2002.

53. It pointed out that, for the greatest part of those reference periods, the applicants had carried on their main occupations in Brussels, as follows:

— Ms Salvador García, firstly, at Sodexna and in the service of the government of the Autonomous Community of Navarre in Brussels and, secondly, as an assistant to a Member of the European Parliament;

— Ms Herrero Romeu, as a member of the delegation of the Patronat;

— Mr Salazar Brier, at Sofesa then in the service of the government of the Autonomous Community of the Canary Islands;

— Mr de Bustamante Tello, at the ORM.

54. The Court of First Instance stated that the issue to be determined in the context of the applicants' actions is whether the work done by each of them in Brussels during the reference period must be considered to be 'work done for another State' within the meaning of Article 4(1)(a) of Annex VII to the Staff Regulations, and, as regards the post of assistant to a Member of the European Parliament, held by Ms Salvador García, whether that post must be treated as 'work done for an international organisation' within the meaning of the same provision.

55. It explained that Community law and, in particular, the Staff Regulations provide sufficient guidance to allow the scope of Article 4 of Annex VII to the Staff Regulations to be defined and, therefore, to establish an independent interpretation of the meaning of 'State' in relation to the different national laws.

56. It stated, first, that the Court of Justice has held that it is apparent from the general scheme of the EC Treaty that the term 'Member State', for the purposes of the institutional provisions, refers only to government authorities of the Member States and cannot include the governments of regions or autonomous communities, irrespective of the powers they may have. If the contrary were true, it would undermine the institutional balance provided for by the Treaties, which, inter alia, govern the conditions under which the Member States, that is to say, the States party to the Treaties establishing the Communities and the Accession Treaties, participate in the functioning of the Community institutions. [14]

57. The Court of First Instance held, secondly, that, according to settled case-law, the provisions of the Staff Regulations, which have the sole purpose of regulating legal relations between the institutions and officials by establishing reciprocal rights and duties, employ precise wording and there is no reason to extend their scope by analogy to situations to which they do not expressly refer. [15]

58. It pointed out that, in Article 4 of Annex VII to the Staff Regulations, the legislature chose the word 'State' although, at the time when the Staff Regulations were adopted, Member States with a federal or regional structure, such as the Federal Republic of Germany, already existed alongside the States with a centralised internal structure. It inferred from this that, if the Community legislature had wanted to introduce political subdivisions or local authorities into that article, it would have done so expressly.

14 — The Court of First Instance referred to the orders in Case C-95/97 *Région wallonne* v *Commission* [1997] ECR I-1787, paragraph 6, and Case C-180/97 *Regione Toscana* v *Commission* [1997] ECR I-5245, paragraph 6.

15 — The Court of First Instance cited Case 48/70 *Bernardi* v *Parliament* [1971] ECR 175, paragraphs 11 and 12; Case 123/84 *Klein* v *Commission* [1985] ECR 1907, paragraph 23; and Case T-74/98 *Mammarella* v *Commission* [1999] ECR-SC I-A-151 and II-797, paragraph 38.

59. It concluded, in the light of the foregoing considerations, that the term 'State' used in Article 4 of Annex VII to the Staff Regulations relates only to the State as a legal person and unitary subject of international law and to its government bodies. It argued that an interpretation such as that put forward by the applicants could lead to regarding as States all public entities which have their own legal personality and to which a central government has transferred internal powers, including town councils or any body to which an administration has delegated duties.

60. It inferred from this that the concept of 'work done for another State', referred to in Article 4 of Annex VII to the Staff Regulations, had to be interpreted as not covering work done for governments of political subdivisions of a State.

61. In the judgments in *Salvador García* v *Commission* and *Salazar Brier* v *Commission*, the Court of First Instance added that the activities of the applicants in the service of publicly owned companies falling within one of the categories of commercial undertakings cannot, a fortiori, be considered to be work done for a State. According to the Court of First Instance, such commercial public undertakings, whether public or private limited liability companies, do not, by their very nature, form part of the administrative organs of the State, even if they have the capacity to manage and represent certain public interests or are entrusted with tasks in the public interest.

62. It inferred from those considerations that the work done by the applicants during the reference periods cannot be considered to be work done for another State within the meaning of Article 4 of Annex VII to the Staff Regulations.

63. It made clear that that assessment cannot be called into question by the applicants' argument based on the existence of an autonomous meaning of 'State' in Community law which encompasses decentralised bodies. According to the Court of First Instance, although, in the context of a failure of a Member State to fulfil its obligations, it is incumbent on all the authorities of a State, whether central or territorial or decentralised, to ensure observance of the rules of Community law within the sphere of their respective competence, an action following which the Court of Justice may declare that a Member State has failed to fulfil its obligations may be brought only against the government of that State, even if the failure is the result of the action or omission of the authorities of a region or an autonomous community. The case-law referred to by the applicants thus cannot be relied upon in support of their proposition for a broad interpretation of the meaning of 'State'.

64. The Court of First Instance explained the reasons why the applicants' arguments based on the powers that the autonomous communities have in their own right in the Spanish legal system had to be rejected.

65. It also rejected the applicants' argument based on the fact that they were covered by the same health insurance and tax schemes as the staff working in the Permanent Representation of the Kingdom of Spain to the European Union in Brussels.

66. Finally, it stated, as regards the applicants' argument based on the participation of representatives of the autonomous communities in the consultation committees of the Commission, that to benefit from the exception provided for in the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations, the official concerned must have had direct legal links with the State or international organisation in question. It noted that the applicants expressly accepted at the hearing that they had never joined or were part of the Spanish delegation which participated in meetings with Council and Commission bodies which took place throughout the reference periods. Neither did the applicants submit that they had direct legal ties with the central government of the Kingdom of Spain which would allow them to be considered to have done work for that State during those periods.

67. In the judgment in *Salvador García* v *Commission*, the Court of First Instance also examined the question whether the applicant's occupation as an assistant to a Member of the European Parliament should be considered to be work done for an international organisation within the meaning of Article 4 of Annex VII to the Staff Regulations.

68. It held that it was not necessary to answer it, for the following reasons. In the Court's view, even if that occupation had to be considered to be work done for an international organisation and if the corresponding period had to be excluded from the reference period, the latter would start on 16 December 1994 and, on that date, the applicant had already been registered in the commune of Saint-Gilles since 17 December 1993 and working for the government of the Autonomous Community of Navarre in Brussels since 1 October 1993. Those facts therefore show that the applicant's habitual residence had been in Brussels since at least 16 December 1994.

69. Finally, in the contested judgments, the Court of First Instance inferred from the fact that the applicants were not entitled to receive the expatriation allowance that their claim relating to the installation allowance and the daily subsistence allowance, based on the automatic nature of entitlement to those allowances where the expatriation allowance is granted, must be rejected.

IV — The appeals

70. The appellants claim that the Court of Justice should declare their appeals admissible and annul the contested judgments.

71. Ms Salvador García and Mr Salazar Brier also claim that, where appropriate, their case should be referred back to the Court of First Instance.

72. The four appellants claim, finally, that the defendant institutions should bear all the costs of the proceedings before the Court of Justice and of those before the Court of First Instance.

73. The Commission contends that those claims should be rejected in Cases C-7/06 P to C-9/06 P.

74. The Council, in Case C-10/06 P, contends that the Court should dismiss the appeal as being inadmissible and, in the alternative, as unfounded, and that the appellant should be ordered to pay the costs.

A — *Arguments of the parties*

1. The appellants

75. The appellants base their appeals on the same plea in law, alleging infringement by the Court of First Instance of the provisions of the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations.

76. In the context of that plea, the applicants put forward four complaints.

77. In the four cases under consideration, the appellants complain that the Court of First Instance, firstly, gave a strict interpretation of the exception at issue and, secondly, failed to have regard to its underlying objective and context.

78. In Cases C-7/06 P and C-9/06 P, Ms Salvador García and Mr Salazar Brier also complain that the Court of First Instance excluded from the concept of work done for another State work done as employees of a commercial public company, whether it be a public or private limited liability company, entrusted with a task in the public interest, without having inquired whether that company was controlled by the State.

79. Finally, in Case C-7/06 P, Ms Salvador García complains that the Court of First Instance failed to interpret the concept of work done for an international organisation and that, consequently, it did not hold that the occupation of assistant to a Member of the European Parliament was covered by that concept.

(a) The strict interpretation of the exception at issue

80. The appellants complain that the Court of First Instance gave a strict interpretation of the provision at issue even though, since it is an exception to an exception, it should have given a broad interpretation of it.

81. They submit that, by ruling thus in the contested judgments, the Court of First Instance departed from its previous case-law, in particular *Vardakas* v *Commission*.[16]

(b) The failure to have regard to the underlying objective and context of the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations

82. The appellants point out that the exception provided for in the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations in favour of persons who have done work for another State or for an international organisation was established in order to take account of the fact that those persons cannot be deemed to have established a lasting tie with the country in which they are employed due to the temporary nature of their secondment in that country.

83. They also state that, from that perspective, it was held, in *Vardakas* v *Commission*, that the expatriation of a person is independent of the special status which, as a member of the staff of a public international organisation, he enjoys under international law.

84. They infer from this that the contested judgments, in so far as they exclude from that exception work done for the State through autonomous communities, overlook the rationale of that provision and, moreover, give rise to discrimination between officials who have done work for the State through the central administration as part of a permanent representation and those who have done such work through autonomous communities. In the opinion of the appellants, in those two situations, the official has not established a lasting tie with the country in which he was employed before he entered the service of the Community, due to the temporary nature of the secondment in that country. What matters, in the final analysis, is whether or not the tie established between the official and his country of employment is of a lasting nature.

85. In their view, there is no difference between the situations of those two categories of persons which is capable of justifying that discriminatory treatment. Furthermore, those categories of persons

16 — Case T-4/92 [1993] ECR II-357.

perform similar duties, consisting of dealings with the Commission, sending information, etc., all in the service of the State, in a context where the participation of the autonomous communities in the Community sphere grows ever wider.

86. The appellants maintain that, in providing for that exception, the legislature intended that the presumption of absence of lasting ties with the country of employment should apply where the duties in that country corresponded to tasks in the public interest.

87. Finally, contrary to the view taken by the Court of First Instance, that interpretation would not lead to considering all public entities which have their own legal personality to be States. The scope of the exception would remain limited to entities having competence in the Community sphere, as is the case with the autonomous communities.

(c) The exclusion of work done for a company entrusted with a task in the public interest

88. Ms Salvador García and Mr Salazar Brier maintain that, by excluding from the concept of work done for another State work done as employees of a company entrusted with a task in the public interest, without inquiring whether, in the light of its composition, of its functions provided for by legislation and of its dependency on the authorities, that company falls within the concept of the State, the Court of First Instance failed to have regard to the case-law, in particular *Beentjes*,[17] and *Commission* v *Ireland*.[18]

(d) The failure of the Court of First Instance to consider the occupation of assistant to a Member of the European Parliament to be work done for an international organisation

89. Finally, Ms Salvador García, in Case C-7/06 P, argues that, if the Court of Justice were to hold that the Court of First Instance made an error of law in the analysis of her activities in the service of the government of the Autonomous Community of Navarre in Brussels and of Sodexna, the question of the classification of her duties as assistant to a Member of the European Parliament should be examined.

17 — Case 31/87 [1988] ECR 4635, paragraph 12.
18 — Case C-353/96 [1998] ECR I-8565, paragraph 26.

2. The Commission's defence in Cases C-7/06 P to C-9/06 P

90. The Commission puts forward the following arguments.

(a) The complaint arising from the strict interpretation of the exception at issue

91. The Commission contends that the Court of First Instance did not give a restrictive interpretation of the exception at issue. It argues that the Court of First Instance was fully entitled to take the view that the concept of work done for a State requires direct legal ties to have existed between the person concerned and that State. However, the appellants did not have any direct legal ties with the Kingdom of Spain.

(b) The failure of the Court of First Instance to have regard to the underlying objective and context of the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations

92. The Commission contends, firstly, that the applicants' line of argument is based on an invalid premiss.

93. In its view, the applicants are confusing two different notions, namely the underlying objective of the exception contained in Article 4 of Annex VII to the Staff Regulations and that of the use of the term 'State' which appears in that exception. The issue discussed before the Court of First Instance and which is now before the Court of Justice is the interpretation of the term 'State'. The underlying objective of the exception, relating to the non-existence of lasting ties with the country of employment, is not relevant for the purpose of interpreting the concept of 'State' referred to in that provision.

94. The Commission infers from this that the Court of First Instance did not make an error of law by basing its view on the fact that, in Article 4 of Annex VII to the Staff Regulations, the Community legislature chose the term 'State' even though there already existed, at the time when the Staff Regulations were adopted, Member States with a federal or regional structure, such as the Federal Republic of Germany, so that, if that legislature had intended to include political subdivisions or local authorities in that article, it would have done so expressly.

95. Secondly, the Commission contends that the appellants' allegation that the Court of First Instance discriminated between officials who have done work for the State through the central administration as part of a permanent representation and those who

have carried out activities for the State through autonomous communities is unfounded.

96. The two situations are not comparable as regards the duties performed, since, as the Court of First Instance stated, the delegations of the Spanish autonomous communities in Brussels are responsible for managing the interests of the administrations which they represent, and those interests do not necessarily coincide with those of other autonomous communities and with those of the Kingdom of Spain as a State.

97. Thirdly, the Commission contends that the appellants' claim that, in the case of work done for an autonomous community, the official concerned has not established lasting ties in the country of employment due to the temporary nature of his appointment in that country is not relevant. In the Commission's view, it is necessary to adhere to the decision of the Community legislature which did not intend to include in the exception at issue the political subdivisions of a State, such as the governments of regions, autonomous communities or other local bodies.

98. Fourthly, the Commission opposes the appellants' argument that the exception in Article 4 of Annex VII to the Staff Regulations must apply to all activities performed in the service of the public interest, as opposed to those carried out on behalf of private interests.

99. It submits that that interpretation of the exception in question not only goes against the legislature's intention, but would also lead to regarding as States all public entities which have their own legal personality and to which a central government has transferred internal powers, including town councils or any body to which an administration has delegated duties.

100. The Commission further states that, as regards the appellants' argument based on the idea that '[w]hat matters, ultimately, is whether or not the links established between the official and his country of employment are of a lasting nature and [that it can be stated] that, as between the professional and personal situation of one person who has done work for the State through an autonomous community and another who has done so through the central administration (permanent representation), there is no difference capable of justifying that discriminatory treatment', this is a new issue, or at least one which was not put in this way before the Court of First Instance and the

admissibility of which therefore raises doubts. The Commission leaves this point to the discretion of the Court.

(c) The complaint arising from the erroneous nature of the exclusion of work done as an employee of a public company, put forward in Cases C-7/06 P and C-9/06 P

101. The Commission contends that this complaint is unfounded because the judgments in *Beentjes* and *Commission* v *Ireland*, to which the appellants refer, relate to Council Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the award of public works contracts,[19] the underlying objective of which is different from that of the exception at issue.

102. The Commission adds that a person who has worked for a public company has not had direct legal ties with the State, whereas the existence of such ties constitutes a mandatory condition, laid down by the case-law, for the application of the exception at issue.

19 — OJ, English Special Edition 1971 (II), p. 682.

(d) The failure of the Court of First Instance to consider the occupation of assistant to a Member of the European Parliament to be work done for an international organisation

103. The Commission submits that the Court of First Instance did not fail to rule on whether the occupation of assistant to a Member of the European Parliament, carried on by Ms Salvador García, must be regarded as work done for an international organisation, since it held that the answer to that question does not affect the granting of the expatriation allowance, given that the appellant had her habitual residence in Brussels before and after carrying on that occupation.

104. In addition, in the Commission's view, such an activity does not come within the scope of the exception at issue, because the appellant, in the course of that activity, did not have direct legal ties with the Parliament.

3. The Council's defence in Case C-10/06 P

105. The Council contends, primarily, that Mr de Bustamante Tello's appeal is inadmissible, because he merely reproduces the

arguments which he put before the Court of First Instance and asks the Court of Justice merely to re-examine them.

106. In the alternative, it contends that the appeal should be dismissed as being unfounded.

107. As regards the first complaint, concerning the strict interpretation of the exception at issue and the alleged failure to have regard to the position adopted by the Court of First Instance in *Vardakas* v *Commission*, the Council submits that the appellant relies on that judgment out of its context and thus goes against settled case-law according to which the Community law provisions conferring entitlement to financial benefits must be strictly interpreted. [20]

108. The Council further contends that the interpretation of the concept of work done for another State, advocated by the appellant, is contrary to settled case-law of the Court of Justice, according to which the term 'Member State', for the purposes of the institutional provisions, refers only to government authorities of the Member States and cannot include the governments of regions or autonomous communities, irrespective of the powers they may have. The Council infers from this that, if the contrary were true, it would undermine the institutional balance provided for by the Treaties.

109. As regards, next, the alleged failure to have regard to the underlying objective and context of the provision at issue, the Council contends that the position of the Court of First Instance is perfectly consistent with the institutional balance provided for by the Treaties. In the view of that institution, to follow the appellant's argument would have the effect of widening the concept of State to include not only autonomous communities or other, similar regional authorities, but also municipal and local authorities and public undertakings; the limits of such an extension would be difficult to foresee.

B — *Assessment*

1. Admissibility of the appeal in Case C-10/06 P

110. The reproduction, in an appeal, of the pleas in law and arguments relied on before the court adjudicating on the substance does not, as such, constitute a ground of inadmissibility of that appeal. It is because that appeal must not have the purpose of

20 — The Council refers to Case T-498/93 *Dornonville de la Cour* v *Commission* [1994] ECR-SC I-A-257 and II-813, paragraph 38.

obtaining a second assessment of the action on the substance that the party bringing the appeal must not confine itself merely to reproducing the pleas in law and arguments relied on at first instance and thus seeking a mere re-examination of its application by the Court of Justice.

111. However, provided that the appellant challenges the interpretation or application of Community law by the Court of First Instance, the points of law raised and examined at first instance may be discussed again in the course of the appeal. [21] As the Court of Justice has stated on several occasions, if an appellant were not able to base an appeal on pleas in law and arguments already relied on before the Court of First Instance, that remedy would be deprived of part of its purpose. [22]

112. In this case, it is apparent from an examination of the appeal brought by Mr de Bustamante Tello that he is not seeking a re-examination of his application by the Court of Justice. He is challenging the assessments by the Court of First Instance of the two complaints arising from the strict interpretation of the exception at issue and from the failure to have regard to its underlying objective and context. He identifies the grounds of the judgment of the Court of First Instance to which his challenge specifically relates.

21 — See Case C-210/98 P *Salzgitter* v *Commission* [2000] ECR I-5843, paragraph 43.

22 — Case C-41/00 P *Interporc* v *Commission* [2003] ECR I-2125, paragraph 17. See also, for a recent application, Case C-229/05 P *PKK and KNK* v *Council* [2007] ECR I-439, paragraph 32.

113. I am therefore of the opinion that Mr de Bustamante Tello's appeal must be declared admissible. In addition, I note that the appeals brought by the three other appellants are worded identically to that of Mr de Bustamante Tello and that the Commission does not dispute their admissibility.

2. Admissibility of the appellants' argument based on the idea that '[w]hat matters, ultimately, is whether or not the links established between the official and his country of employment are of a lasting nature'

114. I am of the opinion that this argument is admissible. Even though it was not put before the Court of First Instance in those terms, it is not a new plea in law within the meaning of Article 42(2) of the Rules of Procedure of the Court of Justice, which would alter the subject-matter of the dispute brought before the Court of First Instance and examination of which by the Court of Justice would oblige the latter to exceed its jurisdiction in an appeal, which is limited to reviewing the decision given at first instance.

115. These are merely considerations by which the appellants seek to demonstrate that the Court of First Instance failed to have regard to the underlying objective of the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations. They are therefore

arguments put forward in support of the plea alleging infringement by the Court of First Instance of that provision and there is no requirement that each argument put forward on appeal must previously have been discussed at first instance. [23]

3. Substance

116. The appeals brought by the appellants lead me, before addressing the substance, to consider two legal points. The first, which is common to the four cases, relates to the concept of 'work done for another State' referred to in the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations.

117. I shall indicate why, in my opinion, that concept does not cover only work done for government authorities of Member States, but must be understood as also referring to work done for a regional or local authority and work done for a body which, irrespective of its legal form, has been given responsibility, by the public authorities, for providing, under the supervision of those authorities, a public service such as managing or defending the interests of a regional or local authority at Community level.

23 — *PKK and KNK* v *Council*, paragraph 66.

118. The second question is specific to Case C-7/06 P. In the judgment in *Salvador García* v *Commission*, the Court of First Instance held that, in the light of its analysis of the activities carried out by the applicant in the service of the company Sodexna and the Autonomous Community of Navarre during the reference period, it was not necessary for it to rule on whether her duties as an assistant to a Member of the European Parliament should be considered to be work done for an international organisation within the meaning of Article 4(1) of Annex VII to the Staff Regulations.

119. If the Court of Justice shares my position with regard to the interpretation of the concept of work done for another State, the classification of the duties of an assistant to a Member of the European Parliament under the provision in question of the Staff Regulations could be relevant to the outcome of the proceedings in Case C-7/06 P. I shall explain in what circumstances those duties must, in my view, be considered to be work done for an international organisation within the meaning of that provision.

(a) The concept of 'work done for another State'

120. Since the Staff Regulations do not refer to the laws of the Member States for the purpose of determining the meaning and

scope of the concept of 'work done for another State' referred to in the second indent of Article 4(1)(a) of Annex VII to those regulations, that concept, as the Court of First Instance stated in the contested judgments, must be given an independent and uniform interpretation in the Community.

121. In those judgments, the Court of First Instance based its view that the concept in question was to be understood as covering only work done on behalf of the government or central authorities of a State on two grounds. Firstly, according to the Court of First Instance, the concept of 'Member State', within the meaning of the institutional provisions, refers only to government authorities of the State. Secondly, the provisions of the Staff Regulations, which establish the reciprocal rights and duties of the Community institutions and officials employ precise wording and there is no reason to extend their scope by analogy to situations to which they do not expressly refer. If the legislature had intended to refer to political subdivisions in the provision at issue, it would have done so expressly, because, at the time when that provision was adopted, States with a federal or regional structure, such as the Federal Republic of Germany, were members of the Communities.

122. Those grounds do not seem convincing to me for the following reasons.

123. So far as concerns the first ground, I would point out that the Staff Regulations do not define the concept of 'work done for another State' referred to in the second indent of Article 4(1)(a) of Annex VII to those regulations. Moreover, nor has the concept of State been defined in Community law. It has been defined by the Court of Justice in the course of its task of interpreting the Treaties, and that interpretation is not unambiguous. The concept of State has a broad or narrow meaning depending on the context in which it is being applied and on whatever appears to be necessary for the effective application of Community law.

124. Accordingly, it is settled case-law that the concept of 'Member State' in the second paragraph of Article 230 EC, which lists the parties entitled to bring a direct action for annulment against any Community act of secondary legislation, covers only government authorities of the States.[24] Regional and local authorities of the Member States and bodies under their control have such a legal remedy only against an act which is of direct and individual concern to them.

125. To the same effect, the exceptions to the prohibitions on obstacles to the freedoms of movement for persons, provided for in Articles 39(4) EC and 45 EC, according to which those prohibitions are not to apply to 'employment in the public service' or to

24 — Order in *Région wallonne* v *Commission*, paragraph 6.

activities connected with the exercise of official authority, are given a strict interpretation. Thus, according to the case-law, that exception does not cover all employment in the public service, but only posts involving participation in the exercise of the sovereign functions of States, that is to say, tasks entailed by the exercise of powers conferred by public law and by the responsibility for safeguarding the general interests of the State. [25]

126. Conversely, when determining the scope of the liability of the Member States for the implementation of Community law, the Court of Justice adopts a broad interpretation of the concept of State. In order to ensure that enforcement of Community law does not depend on the political, institutional and administrative organisation of the Member States and in order not to interfere in that organisation, the Court of Justice applies the principle of international law that the subject of law which enters into commitments and which is bound to comply with its commitments is the State as such, viewed as a single organic and functional entity. [26]

127. Under that approach, the concept of Member State is not limited only to government authorities of the States. In order to ensure the effective and uniform application of Community law, the Court has extended that concept to include all agencies and public authorities of the States, such as regional and local authorities. It has also held that the concept in question also covers bodies established under private law which are subject to their control.

128. Thus, the Court has held that the proceedings provided for in Article 226 EC may be initiated whatever the agency of the Member State whose action or inaction is the cause of the failure to fulfil its obligations. It has attributed to Member States not only the conduct of their central organs, including that of constitutionally independent authorities, [27] but also that of their regional and local authorities, such as a region of a federal State or a municipality. [28] It has also attributed to them the conduct of bodies established under private law endowed with

25 — Case C-405/01 *Colegio de Oficiales de la Marina Mercante Española* [2003] ECR I-10391, paragraph 39.

26 — See, to that effect, Joined Cases C-46/93 and C-48/93 *Brasserie du pêcheur and Factortame* [1996] ECR I-1029, paragraph 34.

27 — See, with regard to a breach of obligations attributable to the legislature, Case 77/69 *Commission* v *Belgium* [1970] ECR 237, paragraph 15, and, with regard to a breach of obligations attributable to a judicial body, Case C-129/00 *Commission* v *Italy* [2003] ECR I-14637, paragraphs 29 and 32.

28 — See, with regard to the German *Länder*, Case C-383/00 *Commission* v *Germany* [2002] ECR I-4219, paragraph 18; with regard to a Belgian region, Case C-423/00 *Commission* v *Belgium* [2002] ECR I-593, paragraph 16; and, with regard to a French municipality, Case 197/84 *Steinhauser* [1985] ECR 1819.

legal personality, whose activities are directly or indirectly subject to their control. [29]

129. Similarly, the Court has accepted that clear and precise provisions of a directive may be applied directly, in proceedings, against regional or local authorities of Member States. [30] It has held that they may also be applied against organisations or bodies, whatever their legal form, which are subject to the authority or control of the State or against a public authority such as a regional or local authority, [31] or which have been given responsibility, by the public authorities, for providing a public service under the supervision of those authorities. [32]

130. Accordingly, the concept of 'State aid', referred to in Article 87(1) EC, as interpreted by the case-law, is not confined to aid granted directly by the government authorities of the Member States. It also covers aid granted by their regional or local authorities, at any level, [33] and by private bodies acting under their supervision. [34]

131. I can also cite the definition of the concept of 'contracting authorities' in the directives adopted in the field of public procurement, to which the appellants refer, and which are intended to be the framework for the conduct of States in awarding this type of contract in order to safeguard competition. [35]

132. It follows that, when it is a question of ensuring the effective application of Com-

29 — In Case 249/81 *Commission* v *Ireland* [1982] ECR 4005, the Court declared well founded the action for failure to fulfil obligations brought against Ireland on account of the 'Buy Irish' campaign conducted by the Irish Goods Council, a private limited liability company governed by Irish law. The Court held that the private law status of that company did not allow the Irish Government to escape its liability for that campaign contrary to Community law since that government appointed the members of the management committee of that company, granted it public subsidies in order to cover its expenses and, finally, defined the content of the advertising campaign conducted by it (paragraph 15).

30 — Case 103/88 *Fratelli Costanzo* [1989] ECR 1839.

31 — Case C-188/89 *Foster and Others* [1990] ECR I-3313, paragraph 18, and order in Case C-297/03 *Sozialhilfeverband Rohrbach* [2005] ECR I-4305, paragraphs 27 and 30.

32 — Joined Cases C-253/96 to C-258/96 *Kampelmann and Others* [1997] ECR I-6907, paragraph 46, and Case C-157/02 *Rieser Internationale Transporte* [2004] ECR I-1477, paragraph 24.

33 — Case 248/84 *Germany* v *Commission* [1987] ECR 4013, paragraph 17, concerning aid granted by a German *Land*.

34 — Case 78/76 *Steinike & Weinlig* [1977] ECR 595, paragraph 21.

35 — The term 'contracting authorities' is defined as being the State, regional or local authorities, bodies governed by public law, associations formed by one or more of such authorities or bodies governed by public law. The term 'body governed by public law' refers to any body established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, and having legal personality and financed, for the most part, by the State, or regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities or by other bodies governed by public law (see Article 1(b) of Council Directives 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209, p. 1); 93/36/EEC of 14 June 1993 relating to the coordination of procedures for the award of public supply contracts (OJ 1993 L 199, p. 1); and 93/37/EEC of 14 June 1993 relating to the coordination of procedures for the award of public works contracts (OJ 1993 L 199, p. 54)).

munity law, activities carried out in the service of regional or local authorities or private companies which are under the supervision of the government authorities of a Member State or of those regional or local authorities are attributable to that State, within the meaning of Article 226 EC, the third paragraph of Article 249 EC or Article 87(1) EC. That is why, given the absence of any restriction, in the Staff Regulations, regarding the scope of the concept of work done for another State, I do not believe that that concept should necessarily be understood, in the light of its wording, as referring only to work done for the central authorities of Member States.

133. As regards the second ground, that if the Community legislature had intended to include regional and local authorities in the exception at issue, it would have mentioned them expressly, I do not consider it decisive either. We have seen that the case-law has given a broad interpretation of the concept of 'State' referred to in Article 226 EC in the context of actions for failure to fulfil obligations, in the third paragraph of Article 249 EC in connection with the direct effect of directives, or in Article 87(1) EC with regard to the concept of State aid, even though those articles of the Treaty also do not expressly refer to regional or local authorities or to other bodies which may be linked to the State.

134. I therefore do not consider it possible to infer from the case-law, according to which the provisions of the Staff Regulations are formulated with precise wording and must not be extended to cover cases which are not expressly referred to, that the exception at issue refers only to work done for the government authorities of another State.

135. By contrast, the arguments put forward by the appellants in support of their proposition seem to me to be more convincing.

136. As they submit, the scope of the concept of work done for another State must be determined in the light of the underlying objective of that provision. Contrary to the view taken by the Commission, the concept of State, contained in that phrase, must not, in my opinion, be detached from the latter and given a separate interpretation. The concept of work done for another State must be considered as a whole and interpreted, in accordance with the method laid down by the case-law, in the light of the scheme and objectives of the rules of which it forms part. [36]

137. As has been consistently held, the purpose of the expatriation allowance is to

36 — Case C-63/00 *Schilling and Nehring* [2002] ECR I-4483, paragraph 24, and Case C-491/01 *British American Tobacco (Investments) and Imperial Tobacco* [2002] ECR I-11453, paragraphs 203 to 206 and case-law cited. See, for a recent application, Case C-283/05 *ASML* [2006] ECR I-12041, paragraphs 16 and 22.

'compensate officials for the extra expense and inconvenience of taking up employment with the Communities if they have been thereby obliged to change their residence and move to the country of employment and to integrate themselves in a new environment'. [37]

138. The conditions for granting that allowance depend on the extent to which the official is integrated in the State where he is employed. The criterion for that integration, adopted by the Community legislature, is residence or work in the State of employment for a significant period before entering the service of the Communities. An official who was already living or working in the State where he is employed is deemed to be integrated there and is entitled, provided that he is not and has never been a national of that State, only to a foreign residence allowance equal to one quarter of the expatriation allowance.

139. The expatriation allowance is therefore paid, pursuant to Article 4(1)(a) of Annex VII to the Staff Regulations, to an official who is not and has never been a national of the State where he is employed and who did not habitually reside or carry on his main occupation there during the five years ending six months before he entered the service.

140. Under the exception at issue, by derogation from the conditions set out above, residence or work within the territory of the State of employment is not to be taken into account where it arises from work done for another State or for an international organisation.

141. When I examine the content of that exception in the light of its context, I note that the Community legislature intended to exclude from the relevant period all 'circumstances arising from work done for another State or for an international organisation', without restriction as to the type of work done, the employment relationship with the State or international organisation and the duration of that activity.

142. The Community legislature therefore did not wish to limit the scope of that exception to particular duties or to persons who have been employed by a State or international organisation under a specific scheme or with a specific status. That view has been confirmed by the case-law, which has held that work done as a trainee [38] or as

37 — See, in particular, Case C-452/93 P *Magdalena Fernández* v *Commission* [1994] ECR I-4295, paragraph 20 and case-law cited.

38 — Case 201/88 *Atala-Palmerini* v *Commission* [1989] ECR 3109, paragraph 6, and Case T-60/00 *Liaskou* v *Council* [2001] ECR-SC I-A-107 and II-489, paragraphs 49 and 50.

an independent adviser to a Community institution [39] comes within the scope of the exception at issue.

143. In the light of those considerations, in so far as the concept of 'work done for another State', referred to in Article 4(1)(a) of Annex VII to the Staff Regulations, covers all work done for a State or an international organisation, it seems logical to infer from this that the concept of 'State', referred to in the same provision, must also be given a broad interpretation and therefore apply to work done for the various authorities or bodies which may be linked to a State. [40]

144. That analysis is confirmed, in my opinion, by the objective pursued by the Community legislature through that provision.

145. According to the case-law, the purpose of the exception laid down in that provision is to avoid depriving of the expatriation allowance persons who have established themselves in the country of their future employment in order to do such work there, because that work was not such as to enable them to have a lasting tie with that country. [41] Officials who during the reference period resided or worked in the country of their future employment in the service of another State or of an international organisation are therefore deemed not to have established a lasting tie with that country. [42]

146. The idea underlying that exception was set out by Advocate General Reischl in his Opinion in *Vutera* v *Commission*. According to the Advocate General, 'officials who were in the service of another State or of an international organisation were not, despite spending a prolonged period before entering the service in the country in which they were later employed, habitually resident there in the sense that they developed close, long-term ties with that country. Such persons are, as a rule, sent to a particular country for a limited period only and during that period maintain their close ties with the State which sends them'. [43]

147. The Community legislature therefore intended that work done in the country of employment for another State or for an international organisation should not

39 — Case T-72/94 *Diamantaras* v *Commission* [1995] ECR-SC I-A-285 and II-865, paragraph 52.

40 — This analysis agrees with that adopted by the Court of First Instance in *Vardakas* v *Commission*. In that judgment, the Court of First Instance also inferred from the wording of the exception at issue and from its context that the legislature's intention was to confer a broad entitlement to the expatriation allowance (paragraph 37). It also held, in the light of the fundamental purpose of that allowance, that the term 'international organisation', referred to in the exception at issue, should not be interpreted restrictively (paragraph 41).

41 — Case 211/87 *Nuñez* v *Commission* [1988] ECR 2791, paragraph 11.

42 — See also Case 1322/79 *Vutera* v *Commission* [1981] ECR 127, paragraph 8.

43 — See ECR 143.

deprive the person concerned of the expatriation allowance, because that work is presumed, by its very nature, not to have enabled him to integrate himself into that country. That view is confirmed by Article 4(1)(b) of Annex VII to the Staff Regulations. Under that provision, the expatriation allowance is also paid to officials who are or have been nationals of the State of employment, provided that they have habitually resided in another country during the 10 years preceding their employment for *'reasons other than the performance of duties in the service of a State or of an international organisation'*.[44]

148. Consequently, as the appellants maintain, it is service for the State or for an international organisation which is presumed to prevent the establishment of lasting ties between the person concerned and the country of employment.

149. I therefore do not see why that presumption should apply only to work done for the central governments of Member States. I do not find, either in the grounds stated by the Court of First Instance or in the arguments of the defendant institutions, any evidence that, in general, when persons working for a regional or local authority are posted to another country, they are posted for an unlimited period and do not retain, with their State, the same ties as officials of the central government. As the appellants state, secondment in the country of employment for a regional or local authority is also, in general, of a temporary nature. The concept of 'State', referred to in the phrase at issue, is therefore not limited to central authorities, but also covers, in my view, all the regional and local authorities of States as well as bodies which, institutionally, form part of the central or territorial administration of States.

150. The foregoing analysis is also capable of being applied, in my opinion, to persons working for bodies which, although not formally or institutionally part of the administration of the central government of the State, may be considered to be linked to it, in accordance with the case-law, because, pursuant to a measure adopted by the public authorities, they perform a task in the public interest under the control of the latter.[45]

151. Since it is service for the State which justifies the presumption that there has been no integration in the country of employment and not particular duties or a specific status, that presumption must be capable of applying whatever the form of the body to which the State, in its sovereign organisational, institutional, political and administrative authority, has entrusted the exercise of its powers. Since the concept of work done for another State must be given an independent

44 — Emphasis added.

45 — See *Foster and Others*, paragraph 20.

and uniform interpretation in the Community, the term 'State' referred to in that concept must not be limited to an institutional criterion, which would depend on the administrative organisation of each State, but must also take into account a functional criterion.

152. I note, moreover, that, in this case, the four appellants have stated that, during their period of activity in Brussels in the service of a Spanish autonomous community, they were in circumstances comparable to those of staff working at the Permanent Representation of the Kingdom of Spain to the European Union, in that they were subject to the same sickness insurance scheme and the same tax arrangements. [46] Furthermore, as the staff of that permanent representation, the appellants performed a task in the public interest by defending, at Community level, the interests of their autonomous communities, which are an integral part of the Kingdom of Spain.

46 — The same observation can be made in Case C-211/06 P *Adam* v *Commission*, currently pending before the Court. Ms Adam, a German national, entered the service of the Commission on 1 July 2003. She was refused the expatriation allowance because she had worked in Brussels at the Liaison Office of the Saarland since 1 October 1997, the Commission having taken the view that those duties did not constitute work done for another State. The applicant, in her action against that Commission decision, argued that she was in the same situation as federal employees performing their duties abroad. Thus, like those employees, she had to promise to abide by the Basic Law and her employment contract was subject to the collective agreement applicable to federal employees.

153. I am therefore of the opinion that, with regard to the exception at issue, there is no material difference between a person who has done work for the State through a regional or local authority or though a body acting under the supervision of the latter, and a person who has done so through the central administration, as exemplified by the permanent representation of that State. The appellants are also fully justified in maintaining that, by limiting the scope of the exception at issue to work done for the central government of the State, the Court of First Instance made a distinction to the detriment of persons doing work for regional or local authorities of Member States or for other bodies dependent on the State.

154. The defendant institutions put forward a number of arguments against that view.

155. They contend, firstly, that the respective situations of persons doing work for the central government and of those who work, directly or indirectly, for a regional or local authority are different, since those two categories of persons do not perform the same duties and the interests which they defend do not always coincide.

156. That argument does not seem to me to call into question the validity of the appel-

lants' position for the following reasons. What matters, in my opinion, is whether the circumstances in which the persons concerned are posted to another country enable them, in general, to establish lasting ties there. As we have seen, the Community legislature presumed that work done for the State did not enable such ties to be established. In addition, application of the exception at issue does not depend on the nature of the duties performed, since it covers all work done for a State or for an international organisation.

157. Next, the defendant institutions contend that, in the context of work done for a regional or local authority, the persons concerned do not have a direct relationship with the State.

158. I do not share that view. It is true that the exception at issue can apply only if the person concerned was employed directly by the State. That condition follows logically from the basis of the exception, according to which persons employed by the State, when they are posted to another country, are posted for a limited period and maintain close ties with their State, which do not enable them to become integrated in the country of employment. That condition of the existence of a direct relationship is therefore intended, in my opinion, to limit the benefit of the exception to persons who were employed directly by the State, and to exclude from it those who, as employees of a third-party company, have, on behalf of the latter, done work for a State. [47]

159. In the light of those considerations, persons who are employed directly by a regional or local authority or a body entrusted, under the supervision of that authority, with carrying out a task in the public interest do indeed have a direct relationship with that authority or that body and, therefore, with the State.

160. Finally, the defendant institutions argue that the extension of the concept of 'State', referred to in the provision at issue, to include regional and local authorities and, a fortiori, other bodies would have the effect of expanding entitlement to the allowance to an extent difficult to foresee, whereas the provisions of Community law which create a right to financial benefits must be interpreted strictly.

161. Those objections must be rejected, in my view, for the following reasons. On the one hand, the concept of State, as defined by

47 — The scope of the condition concerning the existence of a direct legal relationship is also in issue in Case C-424/05 *Commission* v *Hosman-Chevalier*, currently pending before the Court, in which Advocate General Mengozzi delivered his Opinion on 15 March 2007.

the case-law, is not unlimited. As I have stated above, the case-law, in particular that relating to the direct effect of directives, has defined the criteria on the basis of which a body may be linked to the State.

162. Ms Salvador García and Mr Salazar Brier refer, in this regard, to the case-law developed by the Court in *Beentjes* and Case C-353/96 *Commission* v *Ireland*. It is true, as the Commission states, that those judgments were given in the specific field of public procurement. The criteria on the basis of which a body can be considered to be a 'contracting authority' cannot therefore be transposed as such for the purposes of the provision at issue of the Staff Regulations.

163. However, those criteria pursue the same objective as those developed by the Court in the context of Articles 226 EC, 249 EC and 87 EC, that is to say, to ensure the effective and uniform implementation of Community law irrespective of the administrative organisation of Member States. They can, therefore, in my opinion, be taken into account, by way of guidance, in assessing whether the public authorities genuinely have supervisory control over a company entrusted with defending the interests of a regional or local authority at Community level.

164. On the other hand, the purpose of the provisions of the Staff Regulations, such as those relating to the expatriation allowance, is to equip the Communities with an independent European public service of good quality, with officials of high standards of ability, efficiency and integrity who are recruited on the broadest possible geographical basis from among the nationals of Member States. [48]

165. As we have seen, the purpose of the exception at issue is to ensure that persons who have worked in the country of their future employment for another State or for an international organisation are not deprived of the expatriation allowance. That expatriation allowance, which is equal to 16% of the basic salary plus the household allowance and the dependent child allowance, and which is paid throughout the period of active service for the Communities, contributes significantly to the attractiveness of posts offered by the latter. I am of the opinion that the Communities have an interest in not limiting the scope of that advantage solely to persons who have worked for the central governments of States, so that they can also benefit, where appropriate, from the expertise acquired by persons who have worked, in the State of employment, for regional or local authorities and in the various bodies dependent on States.

48 — See the second recital in the preamble to Regulation No 31 (EEC), 11 (EAEC); second and third recitals in the preamble to Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities (OJ 2004 L 124, p. 1); and the answer given by Mr Kinnock, Vice-President of the Commission responsible for administrative reform, to a parliamentary question on 22 March 2001 (OJ 2001 C 40 E, p. 9).

166. In the light of all those considerations, I am of the opinion that the concept of work done for another State does not cover only work done for the government authorities of Member States, but must be understood as also referring to work done for a regional or local authority and that done for a body, whatever its legal form, which has been given responsibility, by the public authorities, for providing, under the supervision of those authorities, a public service such as managing or defending the interests of a regional or local authority at Community level.

(b) Do the duties of an assistant to a Member of the European Parliament constitute 'work done for an international organisation' within the meaning of Article 4(1) of Annex VII to the Staff Regulations?

167. It is not disputed and appears indisputable that the Parliament must be considered to be an international organisation within the meaning of Article 4(1) of Annex VII to the Staff Regulations. It should be recalled, in that regard, that work done at the Commission has been held by the Court of Justice and the Court of First Instance to be work done for an international organisation within the meaning of that provision. [49]

168. The Commission contends that the occupation of assistant to a Member of the European Parliament cannot come within the scope of the exception at issue since such an assistant does not have a direct legal relationship with that institution. [50]

169. I disagree. As I have stated above, the condition of the existence of a direct relationship between the person in question and the State or international organisation concerned, which is dictated by the objective pursued by the exception at issue, implies that that person has been employed directly by that State or by that international organisation. That condition must lead to the exclusion from the benefit of that exception of persons who, as employees of a third-party company, have, on behalf of the latter, done work for a State or an international organisation. [51]

170. The condition of the existence of a direct relationship between the person concerned and a Community institution is therefore satisfied where that person was engaged directly by that institution by contract or in some other form, in accord-

49 — *Atala-Palmerini* v *Commission*, paragraph 6, and *Liaskou* v *Council*, paragraphs 49 and 50.

50 — That is also the view taken by the Commission in Case T-473/04 *Asturias Cuerno* v *Commission*, pending before the Court of First Instance.

51 — See, with regard to a person supplied to the Commission by a temporary employment agency, Case T-127/00 *Nevin* v *Commission* [2002] ECR-SC I-A-149 and II-781, paragraphs 53 and 58.

ance with the Conditions of Employment of Other Servants of the European Communities or with other Community legislation. [52]

171. Article 14 of the rules governing the payment of expenses and allowances to Members of the European Parliament, adopted by the Bureau of that institution in 1984, [53] provides that Members are to be entitled to the reimbursement of expenses arising from the employment or from the engagement of the services of one or more assistants. Under that provision, several Members may also jointly engage a single assistant.

172. It is therefore apparent from the provisions adopted by the Parliament for its operation that Members of the European Parliament may directly recruit parliamentary assistants to help them in their duties during their term of office. In addition, the Members are precisely those who, as Members of the Parliament, exercise, as laid down by the Treaty and the rules adopted by that institution, the powers conferred on it.

173. An assistant to a Member of the European Parliament, provided that he has been recruited directly by that member and not supplied to the latter by a service provider, does therefore, in my opinion, have a direct relationship with the Parliament as an international organisation within the meaning of Article 4(1) of Annex VII to the Staff Regulations. The fact that the contract binding that assistant to that parliamentarian is a contract under private law subject to a national law, like that concluded between Ms Salvador García and the Member in whose service she was employed, does not preclude that analysis. What is important, in my opinion, is that the contract is concluded between the assistant and the Member and that the opportunity for a Member of the Parliament to employ staff to assist him in the performance of his duties in that institution is provided for by an act of that institution.

174. Consequently, the duties of an assistant to a Member of the European Parliament must, in my view, be considered to be work done for an international organisation, within the meaning of that provision, if the assistant concerned is employed directly by the Member and not supplied to him as an employee of a company providing services.

175. I shall now set out the inferences which, in my opinion, must be drawn from those analyses in the four cases under consideration.

52 — Case T-43/93 *Lo Giudice* v *Parliament* [1995] ECR-SC I-A-57 and II-189, paragraph 34.

53 — This document, which is not published, is entitled 'Rules governing the payment of expenses and allowances to Members' (PE 133.116).

4. The inferences to be drawn from those analyses in the four cases under consideration

(a) In Case C-7/06 P

176. Ms Salvador García, it should be recalled, entered the service of the Commission in Brussels on 16 April 2001. The Court of First Instance fixed the reference period so far as concerns her as between 16 October 1995 and 15 October 2000.

177. In the judgment in *Salvador García* v *Commission*, the Court of First Instance found that the applicant carried on her main occupation in Brussels, for the majority of that period, first in the service of Sodexna, a company entrusted with the external economic development of the Autonomous Community of Navarre, then as a delegate of the government of that autonomous community.

178. The Court of First Instance held that those activities could not be considered to be work done for another State within the meaning of the second indent of Article 4 (1)(a) of Annex VII to the Staff Regulations on the ground that that provision does not cover work done for political subdivisions of a State or, a fortiori, work done for a company such as Sodexna, because it does not, by its very nature, form part of the organs of the State, even though that company is entrusted with a task in the public interest.

179. If the Court of Justice agrees with my analysis of the concept of 'work done for another State' referred to in the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations, the Court of First Instance made an error of law in the application of that provision by excluding those activities from the scope of that concept even though the Autonomous Community of Navarre is a public authority of the Kingdom of Spain and without inquiring whether Sodexna carries on its activities under the supervision of that autonomous community.

180. The plea alleging infringement of Article 4(1)(a) of Annex VII to the Staff Regulations is therefore well founded.

181. In order to determine what inferences should be drawn from that error of law, it should be examined whether the activities of Ms Salvador García in Belgium during the five years preceding her entry into the service of Sodexna on 1 March 1997 are sufficient to justify the dismissal of her action for annulment of the Commission's decision refusing her payment of the expatriation allowance.

182. Under the case-law, when a person has done work for another State or for an international organisation during the relevant period calculated from her entry into the service of the Communities, the appointing authority must reconstruct a period of five years by disregarding the time devoted to that work. [54] The person concerned cannot qualify for the expatriation allowance if, during the reference period thus reconstructed, she habitually resided or carried on her main occupation within the European territory of the State of employment. [55]

183. When I examine the appellant's situation in the years prior to her entry into the service of Sodexna on 1 March 1997, I note that she was a student in Belgium from September 1991 to July 1992, then that she held a traineeship at the Commission in Brussels from October 1992 to February 1993.

184. From 1 October 1993 to 31 December 1994, the appellant worked in that city for the government of the Autonomous Community of Navarre, then, from 21 February 1995 to 20 August 1995, at Sodena, a company given responsibility for the economic development of that autonomous community.

185. Between 1 September 1995 and 30 June 1996, Ms Salvador García performed the duties of an assistant to a Member of the European Parliament.

186. In July and August 1996, she did voluntary work with a non-governmental organisation in Peru, then, from 2 September 1996 to 28 February 1997, she carried on her occupation under a contract of employment signed on 17 July 1996 with ECO, a private company to which the Commission had entrusted technical assistance assignments.

187. When I consider that period as a whole, I find that the majority of it is devoted to activities carried out as an employee of the government of the Autonomous Community of Navarre (15 months), as an employee of Sodena (6 months), as an assistant to a Member of the European Parliament (10 months) and as a trainee at the Commission (5 months). In accordance with my analysis

54 — Thus, in *Atala-Palmerini* v *Commission*, the Court of Justice was faced with the following situation: Mrs Palmerini, a Peruvian national by birth and an Italian national by marriage, had studied in Belgium from September 1970 to June 1973, then, after returning to Peru for a short time, had held a traineeship at the Commission from 1 September 1973 to 31 January 1974. On 7 December 1974, she had married a Commission official of Italian nationality posted to Brussels. During the 1974/75 and 1975/76 academic years, she had been enrolled at the University of Paris X-Nanterre for the purpose of preparing a doctorate. From 6 March 1978 to 30 March 1987, she had worked at the Peruvian Embassy in Belgium. On 16 April 1987, Mrs Palmerini had entered the service of the Commission in Brussels. The Court held that the reference period of five years was composed of the time between 6 October 1972 and 31 August 1973 and between 1 February 1974 and 5 March 1978, because the period as a trainee with the Commission and the period of service in the Peruvian Embassy did not have to be taken into account.

55 — *Atala-Palmerini* v *Commission*, paragraphs 10 and 11. See, to the same effect, *Nuñez* v *Commission*, paragraph 12.

of the concept of work done for another State or for an international organisation, those activities are or may be covered by that concept.

188. As regards the periods spent by the appellant in Brussels in order to study there, from September 1991 to July 1992, and as an employee of the company ECO, for a period of six months, they are not sufficient, as such, to demonstrate that the person concerned habitually resided or carried on her main occupation in Belgium for five years.

189. In the light of those considerations, I am of the opinion that the appeal brought by the appellant is well founded and that the judgment in *Salvador García* v *Commission* must be set aside.

190. Under Article 61 of the Statute of the Court of Justice, if the appeal is well founded, the Court is to set aside the decision of the Court of First Instance and may itself give final judgment in the matter, where the state of the proceedings so permits. I am of the opinion that that is the case here.

191. Ms Salvador García seeks the annulment of the Commission's decision of 27 March 2002 rejecting her complaint against the decision of 28 June 2001 refusing to grant her the expatriation allowance and the allowances associated therewith.

192. As stated in the decision of 27 March 2002, that refusal is based mainly on the same grounds as those adopted by the Court of First Instance and which, in my opinion, are vitiated by an error of law.

193. Thus, the Commission based its decision on the following grounds:

— the occupation of assistant to a Member of the European Parliament cannot be considered to be 'work done for an international organisation' within the meaning of Article 4(1)(a) of Annex VII to the Staff Regulations, since the appellant did not have direct legal ties with the Parliament, her only contractual relationship having been a contract under private law concluded with a Member of the European Parliament;

— the occupations carried on by the appellant for the companies Sodena

and Sodexna are not covered by the abovementioned provision, because, even acknowledging that those companies were public in nature in that they were entrusted with representing the interests of the Autonomous Community of Navarre in Brussels, the work done by the appellant with those companies was governed by contracts under private law, and

— nor could the occupations carried on directly by Ms Salvador García for the government of the Autonomous Community of Navarre be considered to be 'work done for another State' within the meaning of the provision in question, because the fact that the Spanish autonomous communities have powers of their own which have been conferred on them by the Constitution does not make them States.

194. For the reasons which I have set out above, those grounds are erroneous, with the result that the plea alleging infringement of Article 4(1)(a) of Annex VII to the Staff Regulations is well founded. The Commission's decisions of 28 June 2001 and 27 March 2002 refusing to pay the appellant the expatriation allowance under that article and the allowances associated therewith must therefore be annulled.

195. If the Court shares my view, it will be for the Commission, pursuant to Article 233 EC, to adopt a new decision on Ms Salvador García's claim for payment of those allowances, which complies with the judgment delivered by the Court and the grounds thereof.

196. Pursuant to the first paragraph of Article 122 of the Rules of Procedure, where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to costs. Under Article 69(2) of the Rules of Procedure, which applies to appeals pursuant to Article 118 thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

197. In accordance with those provisions and with the forms of order sought by Ms Salvador García, I also propose that the Court should order the Commission to pay the costs of these proceedings and of those before the Court of First Instance.

(b) In Cases C-8/06 P to C-10/06 P

198. The inferences which I propose should be drawn in Case C-7/06 P should, in my

view, also be drawn in the three other cases under consideration, following the same reasoning.

199. Ms Herrero Romeu (Case C-8/06 P) entered the service of the Commission in Brussels on 16 November 2001. The Court of First Instance fixed the reference period concerning her as being between 16 May 1996 and 15 May 2001. Throughout that period, the appellant worked in Brussels with the Patronat, a public law body entrusted with managing the interests of the government of the Autonomous Community of Catalonia.

200. Mr Salazar Brier (Case C-9/06 P) entered the service of the Commission in Brussels on 1 June 2002. The Court of First Instance fixed the reference period concerning him as being between 1 December 1996 and 30 November 2001. It found that, during that period, the applicant had carried on his main occupation in Brussels, first in the service of Sofesa, a company entrusted with managing the interests of the Autonomous Community of the Canary Islands, and of that of the representative office of that autonomous community, then directly in the service of the government of the latter.

201. Mr de Bustamante Tello (Case C-10/06 P), for his part, entered the service of the Council in Brussels as an official on 1 January 2003. The Court of First Instance fixed the reference period concerning him as being between 1 July 1997 and 30 June 2002. It found that, during that period, the appellant had carried on his main occupation in Brussels, in the service of the ORM, a body entrusted with managing the interests of the Autonomous Community of the Region of Murcia at Community level.

202. In the three judgments in *Herrero Romeu* v *Commission*, *Salazar Brier* v *Commission* and *de Bustamante Tello* v *Council*, the Court of First Instance held that the activities of the appellants, carried out during those reference periods, could not be considered to be work done for another State within the meaning of Article 4(1)(a) of Annex VII to the Staff Regulations, on the same grounds as those set out in the judgment in *Salvador García* v *Commission*. Those grounds, as I have already stated, are, in my opinion, vitiated by an error of law.

203. When I examine the situation of those appellants during the period prior to the reference period fixed by the Court of First Instance, I find that their activities in Belgium are not such as to justify refusal of the expatriation allowance.

204. Thus, so far as concerns Ms Herrero Romeu, the only activities which she pursued in Belgium are those carried out in the service of the Patronat, from January 1993 onwards.

205. As regards Mr Salazar Brier, he worked at Sofesa in Brussels from 3 October 1994 to 31 August 1998, first as a trainee then under a contract of employment. There is no evidence that, for five years prior to his entering the service of Sofesa on 3 October 1994, Mr Salazar Brier habitually had his residence or main occupation in Belgium.

206. Similarly, so far as concerns Mr de Bustamante Tello, it is apparent from the material in the file that he carried on his professional activity in Brussels between 2 December 1991 and 31 July 1996 in the service of the INFO, a public law body of the Autonomous Community of the Region of Murcia, entrusted inter alia with monitoring Community legislation and programmes of interest to that autonomous community, first as a trainee, then under an indefinite contract of employment. From August 1996 onwards, he worked in Brussels as director of the ORM.

207. All those activities may be classified as 'work done for another State' within the meaning of the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations. In the light of those considerations, I am of the opinion that the appeals of the applicants in the three cases under consideration are well founded and that the judgments in *Herrero Romeu* v *Commission*, *Salazar Brier* v *Commission* and *de Bustamante Tello* v *Council* must be set aside.

208. Since, in my view, the state of the proceedings in those cases so permits, I propose that the Court give judgment in the matter.

209. Ms Herrero Romeu, Mr Salazar Brier and Mr de Bustamante Tello seek the annulment of the decisions given, respectively, by the Commission on 19 November 2001 and 25 July 2002 and by the Council on 24 January 2003, by which those institutions decided that the persons concerned could not be paid the expatriation allowances and the allowances associated therewith.

210. I find that the grounds on which those institutions gave those refusals, as evidenced by the decisions, given, respectively, on 10 June 2002, 24 March 2003 and 28 July 2003, rejecting the complaints lodged by the appellants, are essentially identical to those of the Court of First Instance in the contested judgments and which are, in my view, vitiated by an error of law. Consequently, the plea alleging infringement of Article 4(1)(a) of Annex VII to the Staff Regulations is well founded.

211. I therefore propose that the Court annul those decisions and, in accordance with the forms of order sought by the appellants, order the defendant institutions to pay all the costs of the present proceedings and of those before the Court of First Instance.

V — Conclusion

212. In the light of the foregoing considerations, I propose that the Court rule as follows:

(1) In Case C-7/06 P:

— set aside the judgment of the Court of First Instance of the European Communities of 25 October 2005 in Case T-205/02 Salvador García v Commission;

— annul the Commission's decisions of 28 June 2001 and 27 March 2002 refusing to pay Ms Salvador García the expatriation allowance under Article 4 of Annex VII to the Staff Regulations of Officials of the European Communities and the allowances associated therewith, and

— order the Commission of the European Communities to pay the costs of the proceedings both before the Court of First Instance of the European Communities and before the Court of Justice of the European Communities.

(2) In Case C-8/06 P:

— set aside the judgment of the Court of First Instance of the European Communities of 25 October 2005 in Case T-298/02 *Herrero Romeu* v *Commission*;

— annul the Commission's decisions of 19 November 2001 and 10 June 2002 refusing to pay Ms Herrero Romeu the expatriation allowance under Article 4 of Annex VII to the Staff Regulations of Officials of the European Communities and the allowances associated therewith, and

— order the Commission of the European Communities to pay the costs of the proceedings before the Court of First Instance of the European Communities and before the Court of Justice of the European Communities.

(3) In Case C-9/06 P:

— set aside the judgment of the Court of First Instance of the European Communities of 25 October 2005 in Case T-83/03 *Salazar Brier* v *Commission*;

— annul the Commission's decisions of 25 July 2002 and 24 February and 24 March 2003 refusing to pay Mr Salazar Brier the expatriation allowance under Article 4 of Annex VII to the Staff Regulations of Officials of the European Communities and the allowances associated therewith, and

— order the Commission of the European Communities to pay the costs of the proceedings before the Court of First Instance of the European Communities and before the Court of Justice of the European Communities.

(4) In Case C-10/06 P:

— set aside the judgment of the Court of First Instance of the European Communities of 25 October 2005 in Case T-368/03 *de Bustamante Tello* v *Council*;

— annul the Council's decisions of 24 January 2003 and 28 July 2003 refusing to pay Mr de Bustamante Tello the expatriation allowance under Article 4 of Annex VII to the Staff Regulations of Officials of the European Communities and the allowances associated therewith, and

— order the Council of the European Union to pay the costs of the proceedings before the Court of First Instance of the European Communities and before the Court of Justice of the European Communities.