JUDGMENT OF THE COURT (Second Chamber)
2 May 1985 *

In Case 246/83

Claudia De Angelis, an official of the Commission of the European Communities, residing in Brussels, represented by Jean-Noël Louis of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Nicolas Decker, 16 Avenue Marie-Thérèse,

applicant,

v

Commission of the European Communities, represented by its Legal Adviser, Dimitrios Gouloussis, acting as Agent, with an address for service in Luxembourg at the office of Manfred Beschel, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the annulment of the Commission's decision refusing to grant the expatriation allowance to the applicant,

THE COURT (Second Chamber)

composed of: O. Due, President of Chamber, P. Pescatore and K. Bahlmann, Judges,

Advocate General: M. Darmon
Registrar: H. A. Rühl, Principal Administrator

after hearing the Opinion of the Advocate General at the sitting on 14 February 1985,

gives the following

* Language of the Case: French.

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By application lodged at the Court Registry on 8 November 1983 Mrs Claudia De Angelis, who has been an official at the Commission of the European Communities since 1 December 1982, brought an action seeking in substance the annulment of the Commission's implied decision refusing to grant the expatriation allowance to her, as evidenced by the salary slips for February 1983 and succeeding months. As an ancillary claim the applicant seeks by way of compensation interest on the arrears of the expatriation allowance.

2 The applicant, who is an Italian national, lived with her husband in Ischia (Italy) until she moved to Brussels in 1970 to be with her husband who entered the service of the Commission and who has been in receipt of the expatriation allowance since taking up employment there.

3 In February 1983 the applicant found that the salary slip for that month, which also included her salary for December and January, did not show the expatriation allowance provided for by Article 4 (1) of Annex VII to the Staff Regulations which lays down in subparagraph (a), second indent, that the allowance is to be paid to officials '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 organization shall not be taken into account'.

4 In a memorandum dated 18 March 1983 the applicant lodged a complaint under Article 90 (2) of the Staff Regulations challenging her salary slip for February 1983 in so far as it reflected the failure to grant her the expatriation allowance.

5 That complaint was rejected by letter of the Vice-President of the Commission of 5 August 1983. In that letter the Vice-President refers to the Commission's decision to the effect that the former administrative practice of assimilating certain members of the official's family to the official himself pursuant to Article 4 (1) of Annex VII to the Staff Regulations is no longer justified, particularly in the light of social developments and amendments of the Staff Regulations made in the meantime, namely the abolition of the status of head of household and the establishment of the foreign residence allowance. Even if one spouse 'merely accompanies' the other and 'the social life of the former is closely connected, if not completely dependent, on that of the latter', that factor cannot in the Commission's view be decisive as regards the interpretation to be given to the exception contained in the above-mentioned provision.

6 Following the express rejection of her complaint on those grounds, the applicant lodged the application which is the subject-matter of these proceedings.

7 In support of her application, the applicant relies on three main arguments. In the first place she contends that the contested decision is vitiated by an error in the statement of the reasons on which it is based, inasmuch as it fails to take account of the *ratio legis*. Since in her view the expatriation allowance has as its purpose to offset the difficulties and disadvantages resulting from the status of alien, it is necessary to take account of circumstances in which an official has not established lasting ties with the country of employment. Since it is indisputable that her husband has not established any such ties and that she merely accompanied him, she cannot have established any such ties with the country of employment either. The applicant maintains that she had no alternative other than to accompany her husband since, under the Italian legislation applicable at the time, a wife was obliged to accompany her husband wherever he considered it appropriate to establish his residence. She therefore found herself in circumstances arising from work done by her husband for an international organization, namely the Commission.

8 Next, the applicant points out that until 1980 the Commission interpreted the last sentence of Article 4 (1) (a), second indent, of Annex VII to the Staff Regulations as meaning that the period spent by a person in a country in which he or she resided solely as a result of the work done by his or her spouse for a State or an international organization was not to be taken into account for the purposes of the grant of the expatriation allowance. That interpretation was altered in the case of

officials who entered the service after 1980, whilst payment of the allowance to officials who were in the same position but had entered the service before that date was maintained. In the applicant's view, therefore, the Commission's failure to apply the provisions of the Staff Regulations in the same manner to all officials who find themselves in the situation contemplated by the Staff Regulations constitutes a breach of the principle of non-discrimination between officials.

9 Finally, the applicant contends that the Commission's new interpretation leads to discrimination between men and women and, more particularly, infringes the provisions of Council Directive No 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women (Official Journal L 45, p. 19). The social constraints and domestic obligations imposed on women, particularly the duty to raise their children until they have reached school-age, prevent officials' wives for relatively long periods from applying to enter the service of the institution by which the husband is employed. To disregard that state of affairs in connection with the interpretation of the provision in question amounts to discrimination.

10 The Commission emphasizes, as regards the alleged error in the statement of reasons, that the applicant was not obliged to change her place of residence as a result of entering the service. Since she had been living in Brussels since 1970, she did not incur the extra expense or suffer the additional inconvenience resulting from taking up employment with the Commission and had already established lasting ties with the host country.

11 The Commission justifies the alteration of its administrative practice by reference to social developments (the abolition of the status of head of household) and to amendments of the Staff Regulations made in the meantime (introduction of the foreign residence allowance). However, that alteration cannot, in its view, lead to the withdrawal of rights acquired by officials who entered the service earlier. The Commission considers that it is at all times entitled to alter its interpretation of a provision of the Staff Regulations in the light of social developments. The status of an official who entered the service before the administrative practice in question was altered and that of an official who entered the service subsequently are not

comparable. Expatriation is established at the time of recruitment, which is decisive as regards the grant of the allowance.

12 The Commission denies the allegation of discrimination between men and women and considers that to interpret the provision in question in a different manner according to the sex of the person concerned, as the applicant is in substance proposing, would constitute in practice a breach of the principle of non-discrimination.

13 In view of those differences of opinion, it must be remembered, first of all, that the Court has already repeatedly held that the object of the expatriation allowance is to compensate officials for the extra expense and inconvenience of taking up employment with the Communities and being thereby obliged to change their residence and move to the country of employment (see the judgment of 9 October 1984 in Case 188/83 *Witte* v *European Parliament* [1984] ECR 3465). Secondly, the concept of expatriation also depends on the personal position of an official, that is to say on the extent to which he is integrated in his new environment, which is demonstrated, for example, by habitual residence or by the main occupation pursued. In that regard, an exception is provided for only in favour of an official who during a period of five years ending six months before entry into the service resided in the country in which he is employed where he was in the service of another State or of an international organization. That exception was established in order to take account of the fact that, as the Court held in its judgment of 15 January 1981 in Case 1322/79 *Vutera* v *Commission* [1981] ECR 127, in those circumstances an official cannot be deemed to have established a lasting tie with the country in which he is employed.

14 It is clear from those decisions, in the first place, that the allowance in question may be claimed only by an official who has neither habitually resided nor carried on his main occupation within the territory of the country of employment during the period prescribed by Article 4 of Annex VII. It must be stated, secondly, that the exception provided for in favour of certain persons applies only to circumstances arising from work done by the actual official entering the service. That exception accords preferential treatment only to persons who were in the service of another State or an international organization before their entry into service, so as not to penalize them by depriving them of the expatriation allowance as a result of their change of employment where they have not established a lasting tie with the country of employment. An exception of that kind to a general rule cannot therefore be extended to anyone other than the person specifically concerned by the provision in question.

15 Moreover, it must be pointed out that the applicant cannot rely on a duty to accompany her husband arising from her marital status in order to come within the aforementioned exception provided for by the Staff Regulations. The relevant Community rules take account of actual residence from the time of an official's entry into service, whatever the cause thereof, whether or not laid down by law.

16 In those circumstances it is sufficient to state that the applicant has been residing in Brussels since 1970, that is to say for longer than the period referred to in the provision relied upon. Accordingly, the applicant was not obliged to change her residence or to incur the extra expense and suffer the additional inconvenience resulting from taking up employment herself. Since it is also impossible for her to rely on circumstances arising from work done by her for another State or an international organization, the submission alleging an error in the statement of reasons must be rejected.

17 As regards the submission alleging a breach of the principle of non-discrimination between officials, it is necessary to state, as the Court has already held in its above-mentioned judgment of 9 October 1984 in relation to an identical submission concerning the same alteration of an administrative practice of the Community institutions, that apart from the fact that no person may rely, in support of his claim, on an unlawful act committed in favour of another, it cannot be concluded in the circumstances of this case that in refusing to grant the expatriation allowance to the applicant the Commission departed from an administrative practice which was still in force at the time of the decision in question. Since no discrimination against the applicant can therefore be established, this submission must also be rejected.

18 As regards the final submission alleging a breach of the principle of equal pay for men and women, it must be stated in the first place that neither the wording of the provision in question nor the application thereof by the Commission provides the slightest indication of direct or indirect discrimination based on the sex of officials. Secondly, the principle of equal treatment implies that both men and women must be afforded identical working conditions without discrimination but it cannot require the institution to interpret the provisions of the Staff Regulations in a different manner in order to offset any domestic or social expenses or obligations.

19 For those reasons, the application must be dismissed.

Costs

20 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleading.

21 However, under Article 70 of the Rules of Procedure, the institutions are to bear their own costs in proceedings initiated by servants of the Communities.

On those grounds,

THE COURT (Second Chamber)

hereby:

(1) Dismisses the application;

(2) Orders the parties to bear their own costs.

Due Pescatore Bahlmann

Delivered in open court in Luxembourg on 2 May 1985.

P. Heim
Registrar

O. Due
President of the Second Chamber