OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 14 February 1985 *

Mr President,
Members of the Court,

1. In order to give judgment in the action brought against the Commission by Claudia De Angelis, the Court will have to interpret Article 4 (1) (a) of Annex VII to the Staff Regulations and, more particularly, the last sentence thereof.

That provision is as follows:

'1. 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 organization shall not be taken into account.'

2. Until 1981, the final sentence of that provision was generally given a very broad interpretation, particularly for the benefit of the spouses and children of Community officials who were themselves recruited by one of the Community institutions.

With particular reference to spouses, the heads of department concerned took formal note at their 73rd meeting on 21 May 1973 that according to the Commission

'the period spent by a spouse accompanying her husband was not to be taken into account for the grant of the expatriation allowance'. [1]

At their 127th meeting on 21 March 1980, they reaffirmed

'that interpretation in the light of the fact that the second indent of Article 4 (1) (a) of Annex VII relating to the conditions of residence also covered a person who was not carrying on an occupation and resided in a given country only as the result of the work done in that country by his or her spouse for a State or an international organization'. [1]

That was the position on 1 December 1982, the date on which she was recruited in Brussels by the Commission, of Mrs De Angelis who had been living in that city since 1970 and had accompanied her husband there when he entered the service of *the same institution.*

However, the expatriation allowance was not granted to the applicant. In the light of the criteria set out in a report adopted on 4 February 1982 by the Court of Auditors, the Community institutions concerned substituted a restrictive practice for the broad practice previously followed which the Court of Auditors had described as

* Translated from the French.

1 — 127th meeting of the heads of department on 21 March 1980, Conclusion No 45/80 — Reference Document: RCA/127.

'an extension of the derogation contained in Article 4 of Annex VII to the Staff Regulations, which would be permissible only if an amendment were made to the Staff Regulations'. [2]

3. Following the express rejection of her complaint against the application of that new practice in relation to her, Mrs De Angelis brought an action in which she claims that the Court should:

'(1) Review the salary slips for February 1983 and all succeeding salary slips to the extent to which those slips give effect to the defendant's decision to refuse the applicant the benefit of the expatriation allowance provided for by Article 4 (1) of Annex VII to the Staff Regulations.

(2) Order the defendant to pay the expatriation allowance to the applicant as from 1 December 1982.

(3) Annul, in so far as is required, the express decision notified to the applicant on 8 August 1983 rejecting the complaint lodged by her on 18 March 1983 pursuant to Article 90 (2) of the Staff Regulations.

(4) By way of compensation, order the defendant to pay the applicant interest upon the arrears of the expatriation allowance, calculated from the due date of each payment until the date on which payment is actually made.

(5) Order the defendant to pay the whole of the costs of the action, pursuant to Article 69 (2) of the Rules of Procedure, and also the expenses necessarily incurred by the parties for the purposes of the proceedings and, in particular, travelling and subsistence expenses and lawyer's fees pursuant to Article 73 (b) of those Rules.'

The Commission contends that the application should be dismissed and that the applicant should be ordered to pay the costs.

4. In support of her application, Mrs De Angelis maintains that the defendant's decision refusing to grant the expatriation allowance to her is contrary to:

— the *ratio legis* of the provision in question;

— the principle of equal treatment of officials;

— the principle of equal pay for male and female workers.

I shall consider each of those three submissions in turn.

5. In the applicant's view, the purpose of the expatriation allowance is

'to offset the difficulties and the inconvenience resulting from the status of alien which beset an official who does not intend to establish lasting ties with the country to which he has been posted by the international organization for which he works'.

In her view, although it expressly denies the benefit of that allowance to an official who, before entering the service, had established lasting ties with the country of employment, the Commission nevertheless expressly reserves the benefit of the allowance to officials who, whilst they may have lived in the country of employment during the reference period, have not established lasting ties with that country. The applicant claims that she falls within the latter situation and that she merely accompanied her husband when he moved to Belgium on

2 — Special Report of the Court of Auditors relating to the expatriation and foreign residence allowances, adopted on 4 February 1982 and dated 6 April 1982, p. 30, No 67.

the ground that she was legally bound to do so by virtue of her personal status as a married woman and that she was anxious to preserve the unity of the family, but had no intention of establishing lasting ties with her husband's country of employment. Finally, the applicant contends that when she entered the service, she was in a situation 'arising from work done for another State or for an international organization'.

I am not swayed by that argument. As the Commission — which cites the Court in this regard — rightly points out:

'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* [3] obliged to change their residence'. [4]

As far as the concept of residence is concerned, the Court has held that a person's place of residence is that in which he has established, with the intention that it should be of a lasting character, the 'permanent' or 'habitual' centre of his interests. [5]

Admittedly, I recently proposed in Case 144/84 that the Court should, in determining the place of origin of Mrs De Angelis, declare that the centre of her interests is situated in Ischia.

In this case I intend to demonstrate that she has established the *permanent* centre of her interests in *Brussels.*

3 — Emphasis added.

4 — Judgment of 20 February 1975 in Case 21/74 *Airola* v *Commission* [1975] ECR 221, p. 228, paragraph 8 of the decision; see also the judgment of 7 June 1972 in Case 20/71 *Sabbatini* v *European Parliament* [1972] ECR 345, p. 351, paragraph 8 of the decision.

5 — Judgment of 12 January 1973 in Case 13/73 *Angenieux* v *Hackenbag* [1973] ECR 935, p. 951, paragraph 32 of the decision; judgment of 17 February 1977 in Case 76/76 *Di Paulo* v *Office National de l'Emploi* [1977] ECR 315.

Nothwithstanding the similarities in terminology, that does not involve any contradiction.

The Court has already held [6] that the expression 'place of origin' in Article 7 (3) of Annex VII to the Staff Regulations, which is determined by an official's centre of interests, is a *term of art* whose function is to indicate the place which is relevant for determining certain expenses of travel from the official's place of employment to his place of origin. The Court pointed out that 'that concept is different from that' of the place where the officials concerned 'resided before their entry into the service'. The Court therefore distinguishes between the concept of 'centre of interests' within the meaning of Article 7, and the concept of 'permanent centre of interests' which is used to define the place of residence.

Mrs De Angelis, who, according to the criteria laid down by the Court in its case-law, resided in Brussels, was not required to change her residence *as a result of* taking up employment in that city and it is difficult to identify 'the extra expense and inconvenience' resulting therefrom which need to be compensated.

Moreover, and the observation made in this regard by the Commission at the hearing seems pertinent, the provision to the effect that 'circumstances arising from work done for another State or for an international organization shall not be taken into account' does indeed constitute an exception to the rule which precedes it and which lays down that, in order to qualify for the expatriation allowance, an official must not, during the reference period, have resided or carried on his occupation within the territory of the State of employment.

6 — Judgment of 9 March 1978 in Case 54/77 *Herpels* v *Commission* [1978] ECR 585, paragraphs 31 and 32 of the decision.

That exception was recognized as such by the Court in the *Vutera* judgment. [7] It must therefore be given a restrictive interpretation. It applies to an *official* and cannot, unless otherwise provided, extend to the official's *spouse*, where the latter has also become a Community official.

In my view, therefore, this submission is unfounded.

6. Secondly, Mrs De Angelis contends that the Commission continues to grant the expatriation allowance to officials recruited at the time at which the old interpretation of the provision in question was still followed. She contends that since the two situations are identical, the application of the same provision in different ways constitutes a breach of the principle of equal treatment of officials.

I am not convinced by the objection which the Commission raises against that submission and which is based on the principle of acquired rights.

None the less 'no person may rely, in support of his claim, on an unlawful act committed in favour of another'. [8] In my view, the second submission is equally unfounded.

7. In her final submission the applicant alleges a breach of the principle of equal pay for male and female workers and, more particularly, of the provisions of the Council Directive of 10 February 1975. Mrs De Angelis considers that the restrictive interpretation which she is contesting leads to discrimination between male workers, who are free to carry on their occupation without delay, and female workers, who are subject to social and cultural pressure to raise their children until they have reached school-age and must therefore delay their careers by several years.

In the first place, it must be pointed out that 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 cannot be applied to the provision at issue which is a rule of Community law. None the less, the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities cannot derogate from the fundamental principle of equal pay for equal work, which is enshrined in Article 119 of the EEC Treaty.

No one has any intention of challenging the sociological and cultural factors relied upon by the applicant. However, neither the provision at issue nor the new application thereof can be criticized on the ground that they do not contribute towards mitigating the effects of those factors. Neither that provision nor the application thereof discriminate, either directly or indirectly, against employed women in the manner complained of by the applicant.

The Staff Regulations must not contain any provisions which give rise to unequal treatment, as the Court has once again forcefully emphasized in the *Razzouk* judgment. [9] However, the provisions of the Staff Regulations cannot necessarily be expected to correct any pre-existing inequalities.

7 — Judgment of 15 January 1981 in Case 1322/79 *Vutera* v *Commission* [1981] ECR 127, paragraph i of the decision.

8 — Judgment of 9 October 1984 in Case 188/83 *Witte* v *European Parliament* [1984] ECR 3465, paragraph 15 of the decision.

9 — Judgment of 20 March 1984 in Joined Cases 75/82 and 117/82 *Razzouk and Beydoun* v *Commission* [1984] ECR 1509.

Thus the provisions complained of neither gave rise to, nor aggravated, a situation involving unequal treatment of male and female workers at the time when they were applicable.

Hence the third submission, like the first two submissions, is in my view unfounded.

8. Consequently no purpose is served by examining the claim relating to the payment of interest by way of compensation.

In conclusion, therefore, I consider that the application should be dismissed and that the parties should be ordered to bear their own costs.