OPINION OF MR ADVOCATE GENERAL MANCINI
delivered on 8 October 1986 *

Mr President,
Members of the Court,

1. As the Court is aware, Article 4 (1) (b) of Annex VII to the Staff Regulations provides that officials who are nationals of the State in whose territory the place where they are employed is situated are entitled to an expatriation allowance equal to 16% of the basic salary if they can prove that they have habitually resided outside the territory of that State for at least 10 years before entering the service of the European Communities.

On 16 April 1984 Claude Richter, a Luxembourg national, was appointed by the Commission as a translator and assigned to Directorate-General IX, which is based in the Grand Duchy of Luxembourg. He immediately requested that the rule under Article 4 (1) (b) should be applied to him, but the Administration rejected his request; this gave rise to a dispute which, now that the administrative procedures have been exhausted, is brought before this Court. In order to resolve it the Court must, in essence, establish whether, during the 10-year period from 15 April 1974 until 15 April 1984, Mr Richter was habitually resident outside Luxembourg.

In support of his application, Mr Richter gives the following details regarding the period at issue: He was born in 1953 in Luxembourg and lived there with his parents until 15 October 1973. From that date onwards he was in Strasbourg, to pursue his university studies. Having left Strasbourg on 1 October 1977, he moved to Germersheim in Germany, and obtained his diploma as translator at the nearby University of Mainz (March 1981). From September 1981 onwards he was once again in Luxembourg where, until February 1982, he was a trainee with the Terminology Division of the Commission. At the end of that brief interlude he returned to Germersheim but left it permanently on 16 April 1984, when he entered the service of the Commission.

In support of that account he has produced a certificate from the municipal authorities of Germersheim, which states that Mr Richter declares that he resided in that town from 4 October 1977 to 1 May 1984 'without interruption'. Thus, if that period is added to the time spent in Strasbourg, the period during which he resided outside his country of origin amounts to almost 11 years. The refusal to grant him an expatriation allowance is therefore illegal.

2. The argument is not well-founded. I would point out first that the purpose of the benefit in question 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' (judgment of 16 October 1980, Case 147/79 *Hochstrass* v *Court of Justice* [1980] ECR 3005, at paragraph 12). The Administration is therefore obliged to grant the allowance only if the official can satisfy it that, although retaining the nationality of the

* Translated from the Italian.

State in which his place of employment lies, he departed from that State with the intention of severing, for a long period of time, the social and professional ties which would normally link him to it.

In this particular case it suffices to observe that those ties were not severed by the applicant's stay in Strasbourg, which was merely for the purpose of attending the university there, nor by the period during which he claims to have resided in Germany; indeed, the certificate issued to him by the municipal authorities of Germersheim — which in any event merely reproduces what the applicant had declared — is at variance with his application for employment of 30 March 1983, in which he himself gave Luxembourg as his permanent residence and his address for correspondence. Furthermore, his judicial record [extrait de casier judiciaire] issued by the Ministry of Justice on 31 March 1983 contains the remark 'living in Luxembourg'.

In my opinion, those indications demonstrate that despite his many absences for reasons of study or employment the applicant intended 'the permanent centre of his interests' to remain in the territory of the Grand Duchy of Luxembourg (judgment of 9 October 1984, Case 188/83 *Witte* v *European Parliament* [1984] ECR 3465, at paragraph 11).

3. In short, I would conclude that Mr Richter's claim is not substantiated by unequivocal and coherent evidence. I therefore propose that the Court should dismiss his application against the Commission of the European Communities and order the parties to bear their own costs in accordance with Article 70 of the Rules of Procedure.