OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 10 DECEMBER 1981 [1]

Mr President,
Members of the Court,

The plaintiff in this staff case, Mrs Colette Novi, an official in Grade B 2, has been in the service of the Commission since 1965.

Between the beginning of April 1972 and the end of March 1975 she was granted unpaid leave on personal grounds, with two extensions, in order to enable her to take up employment in the administration and financial service of the Contrôleur Délégué (Delegate Controller) of the European Development Fund in Yaoundé (Cameroon). Her employment was based on a contract with the European Association for Cooperation dated 10 March 1972. The Association, incorporated under Belgian law, was created for the sole purpose of providing the Commission with the necessary staff for administering the projects of the Development Fund.

On expiry of her leave the applicant was reinstated by decision of 6 June 1975 in the Commission's Directorate-General for Development and Cooperation and by a further decision of the same date seconded in the interests of the service to her previous employer, the Contrôleur Délégué in Cameroon. In the decision it was expressly stated that neither Mrs Novi's salary nor any additional expenses occasioned by the secondment were payable by the Commission. The same stipulation was contained in the decision of 26 January 1977 extending the period of the secondment, where it was expressly stated that Mrs Novi's salary and any additional expenses occasioned by her secondment were to be borne by the European Development Fund.

Finally, by a decision of 12 May 1978 the Commission revoked all the previous decisions granting leave and the decision to reinstate her and decided at the same time that Mrs Novi was to be seconded in the interests of the service to the administrative and financial service of the Contrôleur Délégué of the European Development Fund with retroactive effect for the period from 1 April 1972 to 30 April 1975, so that even the costs arising in that period were to be borne by the Development Fund.

Her assignment having come to an end on 31 October 1979, Mrs Novi wrote to the Commission on 24 January 1980 requesting that, pursuant to the provision in Article 38 (d) of the Staff Regulations which states that an official on secondment in the interests of the service "shall . . . be entitled to reimbursement of all additional expenses entailed by his secondment", she be paid the sum of BFR 220 205. Those costs, covering the transport of her furniture to a furniture repository, its storage there and its transport back again were incurred because prior to her departure for Cameroon she had given up her flat in Brussels, her previous place of employment.

By letter of 1 April 1980 the Commission refused her request, *inter alia* on the ground first, that the removal had not been authorized and secondly, that the

1 — Translated from the German

costs, which were in any case largely covered by the resettlement allowance of BFR 182 421 which she had been given, had been incurred solely on the initiative of the applicant. After a further application had been refused by letter of 14 May 1980 the applicant submitted a complaint through official channels under Article 90 (2) of the Staff Regulations on 8 August 1980.

Since that complaint remained unanswered Mrs Novi brought an action on 11 March 1981 seeking an order that the Commission pay her BFR 220 205 together with interest at the customary legal rate and costs.

My opinion on the case is as follows:

1. In the course of the written proceedings the Commission objected that the action was inadmissible because in its view the decisions of 6 June 1975 and 12 May 1978 are to be considered as measures adversely affecting the official in question and, as complaints through official channels directed against them, ought to have been lodged in due time under Article 90 (2) of the Staff Regulations. The decisions clearly provided that additional expenses were not the responsibility of the Commission but were to be borne by the European Association for Cooperation.

The applicant, however, takes the view that those provisions could not, and should not, deny her the rights conferred on her under Article 38 (d) of the Staff Regulations but should rather be considered as being a way of apportioning the costs between the Commission and the European Association.

In any case the Commission did not elaborate on its formal objection in the oral proceedings and so has obviously, and in my opinion rightly, abandoned its objection that the application is inadmissible. Article 90 (1) of the Staff Regulations enables any person to whom the Staff Regulations apply to submit to the appointing authority a request that it take a decision relating to him. The express or implied refusal of such a request opens the way to a complaint through official channels under Article 90 (2) of the Staff Regulations. If, as in the present case, an applicant submits a request under Article 90 (1) of the Staff Regulations and the appointing authority expressly rejects it the sufficiency of the grounds for that refusal remains open to review. Since both the complaint through official channels and the application to the Court were lodged within the time-limits laid down in the Staff Regulations and there are no other objections to the proceedings the application must be considered to be admissible.

2. The applicant submits in support of the application that renting storage space in Brussels for her furniture was a "logical consequence" of her secondment to Yaoundé. Once she had moved there remained no reasonable grounds for her to retain the flat in the place of her official employment, especially as both before and after that she had a residence where she came from in southern France, which was also considered to be her centre of interest. Since she was not permitted to take her furniture with her to Cameroon the only possible course of action for her was to put it into store. The costs of storage must therefore be considered as expenses entailed by her secondment which are to be reimbursed under the terms of Article 38 (d) of the Staff Regulations.

The Commission's contention is that those costs are not a direct consequence of the secondment, nor may they be regarded as additional expenses within the meaning of the provision in question. Even if that view were not accepted the costs must be considered to have been compensated for by the allowances paid to the applicant for service overseas and expatriation and the installation and resettlement allowances which total altogether BFR 266 307.

To come directly to the conclusion: the Commission's principal argument is the one which, in my view, must be accepted. Even without going into the question whether the applicant has any claim against the Commission under Article 38 in view of the terms of her contract described above, the wording of Article 38 is sufficiently unambiguous to show that the only expenses to be reimbursed are *additional* expenses *entailed by* the official's secondment.

There can be no question of additional expenses, however, unless the costs in question did not have to be paid by the official before the secondment. Whether that condition has been met may therefore be determined only an objective comparison of the applicant's financial situation before her secondment with her situation while she was on secondment. As the applicant rightly pointed out, however, that does not mean that the separate components of the total amounts may be aggregated and a comparison then made; the correct procedure is to consider for the purposes of comparison only those elements of the remuneration which have a similar purpose.

When that comparison is made it will be seen that the applicant's claims under the Staff Regulations are covered by her entitlements in the way of basic salary, household and child allowances under her contract with the European Association for Cooperation. In addition to those the applicant was entitled under her contract to receive from the European Association for Cooperation an overseas service allowance, an expatriation allowance payable in local currency and free furnished accommodation where even the electricity was paid for.

By contrast to that the Staff Regulations do not provide for any particular compensation to be given for the costs of the residence which Article 20 of the Staff Regulations requires officials to have at their place of employment. Hence, if the applicant has relinquished her accommodation in Brussels, on wholly reasonable financial grounds, in order to put into storage the furniture which she was not able to take with her to Cameroon, *thereby reducing her costs,* it cannot be said that she has incurred additional living expenses. The fact that at the same time she was provided with free furnished accommodation at her new place of employment must carry special weight. Thus by giving up her residence she ultimately achieved a saving corresponding to the difference between the rent of the flat and the storage costs. The provision in question is not intended, however, as its wording shows, to improve the financial situation of the official on secondment by

comparison with his previous position. It is merely designed to prevent his financial position from deteriorating as a result of his secondment.

Lastly the above-mentioned advantage is not rendered nugatory, as the applicant believes, by the withdrawal of the expatriation allowance. Apart from the fact that it was not quite apparent in the course of the oral proceedings whether the applicant, who is of French nationality, drew such an allowance up to the date of her secondment, all that need be said here is that the purpose of the expatriation allowance, as was made clear by the Court of Justice in Case 21/74 (judgment of 20 February 1975, *Jeanne Airola* v *Commission* [1975] ECR 221) and Case 147/79 (judgment of 16 October 1980, *René Hochstrass* v *Court of Justice of the European Communities* [1980] ECR 3005), is to compensate for the extra expense and inconvenience of taking up employment with the Communities when the official in question, who does not have the nationality of the country in which he is employed, is thereby obliged to change his residence. That being the purpose of the expatriation allowance, which is not to be confused with a residence allowance, the conclusion must be that there ceased to be any grounds for granting such an allowance once the applicant had relinquished her residence in the place of her official employment and after the extra expense, of being employed overseas for example, had been compensated for by a number of other special allowances, the total of which was in any case greater than the expatriation allowance.

It follows too from what I have said, to take another line of argument, that the applicant is not entitled to what she claims because the furniture storage costs were not *occasioned by* her secondment but were merely a *consequence* thereof. The sense and purpose of the provision cannot be to compensate for all expenses which may arise even in a remote connection with a secondment; on the contrary, in order to set a limit to the sphere of application of the provision, there must be a requirement that the expenses represent a *necessary consequence in the interests of the service of secondment*. Those conditions are not met, however, by expenditure incurred for the sole purpose of enabling the applicant to make greater savings.

3. Accordingly, I can only propose that the application be dismissed as unfounded and the costs of the proceedings awarded in accordance with Article 70 of the Rules of Procedure.