JUDGMENT OF THE COURT (Second Chamber)
24 June 1987 *

In Case 61/85

Tamara Urhausen, née von Neuhoff von der Ley, an official of the Commission of the European Communities, represented by Victor Biel, of the Luxembourg Bar, with an address for service at the latter's Chambers, 18A, rue des Glacis, Luxembourg,

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 G. Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the payment of the expatriation allowance provided for in Article 4 (1) (a) of Annex VII to the Staff Regulations of Officials and the other financial benefits payable on a change of residence,

THE COURT (Second Chamber)

composed of: T. F. O'Higgins, President of the Chamber, O. Due and K. Bahlmann, Judges,

Advocate General: G. F. Mancini
Registrar: B. Pastor, Administrator

having regard to the Report for the Hearing and further to the hearing on 18 March 1987,

after hearing the Opinion of the Advocate General delivered on the same day,

* Language of the Case: French.

gives the following

Judgment

1 By an application lodged at the Court Registry on 7 March 1985 Mrs Tamara Urhausen, née von Neuhoff von der Ley, of German nationality, an official of the Commission of the European Communities since 16 April 1984 and employed in Luxembourg, brought an action primarily for the payment of the expatriation allowance provided for in Article 4 (1) (a) of Annex VII to the Staff Regulations of Officials of the European Communities.

2 Under that provision the expatriation allowance is paid '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 enter the service', in this case, between 16 November 1978 and 16 November 1983, 'did not habitually reside or carry on their main occupation within the European territory of that State'.

3 It appears from the documents before the Court that the applicant went to live with her mother in the Grand Duchy of Luxembourg after her parents divorced in 1965. From September 1975 until July 1980 she studied translation and interpreting in Innsbruck, Austria. In September 1980 she married a Luxembourg national, and from then until February 1981 she taught in a primary school in Luxembourg. In November 1980 she had her name placed on the list of court experts in Luxembourg. From February 1981 onwards she worked as a translator in Luxembourg, first as a trainee at the Commission and then as a free-lance terminologist until her appointment as an official on 16 April 1984.

4 During that period the applicant gave as her address, in her free-lance contract with the Commission, the city of Luxembourg. In her application for employment with the Commission in Luxembourg she gave an address for correspondence in the city of Luxembourg and indicated as her permanent residence both her property in Munich and her address in Luxembourg. Furthermore, the applicant

was included in the register of inhabitants of Luxembourg without interruption until the date of her recruitment to the Commission.

5 Reference is made to the Report for the Hearing for a more detailed account of the facts of the case and the arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

6 The applicant submits that by failing to grant her the expatriation allowance the Commission has failed to comply with Article 4 (1) (a) of Annex VII to the Staff Regulations.

7 That submission cannot be upheld. The Court has 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 13 November 1986 in Case 330/85 *Richter* v *Commission* [1986] ECR 3439 at p. 3445). Furthermore, the Court has consistently held that 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 (see the judgment of 2 May 1985 in Case 246/83 *De Angelis* v *Commission* [1985] ECR 1253 at p. 1259). Thus the applicant can claim the allowance in question only if she neither habitually resided nor carried on her main occupation on Luxembourg territory during the period from 16 November 1978 to 16 November 1983.

8 In this case it is sufficient to note that from September 1980 onwards the applicant carried on her main occupation in Luxembourg, first of all as a teacher, then as a trainee translator at the Commission and finally as a free-lance terminologist until April 1984. It appears from the applicant's own statements that she carried on no other occupation during that period. Moreover, it appears from the documents before the Court that the applicant not only rented an apartment in Luxembourg during that period but, in her application for employment, gave Luxembourg both as her permanent residence and as her address for correspondence. She does not deny that she was physically present in Luxembourg during that period.

9 In those circumstances the fact that the applicant studied in Innsbruck from November 1978 to July 1980 and maintained a residence in Germany during the reference period is not sufficient for her to be regarded as having habitually resided outside Luxembourg during that period.

10 The application must therefore be dismissed.

Costs

11 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. 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.

O'Higgins Due Bahlmann

Delivered in open court in Luxembourg on 24 June 1987.

P. Heim
Registrar

T. F. O'Higgins
President of the Second Chamber