Case 61/85

Tamara Urhausen, née von Neuhoff von der Ley,
v
Commission of the European Communities

(Official — Expatriation allowance)

Report for the Hearing 2853
Opinion of Mr Advocate General Mancini delivered on 18 March 1987 2857
Judgment of the Court (Second Chamber), 24 June 1987 2861

Summary of the Judgment

Officials — Remuneration — Expatriation allowance — Object — Concept of expatriation (Staff Regulations of Officials, Annex VII, Art. 4 (1))

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. 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.

REPORT FOR THE HEARING
delivered in Case 61/85 *

I — Facts

1. Article 4 (1) (a) of Annex VII to the Staff Regulations of Officials is worded as follows:

'1. An expatriation allowance shall be paid, equal to 16% of the total amount of the basic salary plus household allowance and the dependant child allowance paid to the official.

* Language of the Case: French.

(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. The applicant, who is a German national, has been an official of the Commission (in Grade LA 7) since 16 April 1984. She is employed in Luxembourg. The main issue in these proceedings is whether or not the applicant habitually resided or carried on her main occupation in the Grand Duchy of Luxembourg between 16 November 1978 and 16 November 1983.

3. The applicant was born in 1956 in Munich, and lived there until her parents divorced in 1965. From that date until July 1975 she lived in Luxembourg with her mother, and received part of her primary schooling and her secondary schooling there. From September 1975 until July 1980 the applicant studied translation and interpreting in Innsbruck, Austria.

4. The applicant taught in a primary school in Luxembourg from September 1980 until February 1981, and in November 1980 her name was placed on the list of court experts in Luxembourg. From February 1981 onwards she worked as a translator in Luxembourg, first of all as a trainee at the Commission, then as a free-lance terminologist until her appointment as an official on 16 April 1984. 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 dated March 1983 she gave an address for correspondence in the city of Luxembourg; as her permanent residence she gave her property in Munich, but added her Luxembourg address. It also appears that the applicant was included in the register of inhabitants of Luxembourg without interruption until the date of her recruitment to the Commission.

5. The applicant learned in August 1984 that she had not been granted the expatriation allowance. After submitting a request for that allowance pursuant to Article 90 (1) of the Staff Regulations, to which the administration replied in the negative, she submitted a complaint pursuant to Article 90 (2); that complaint was rejected by a decision received by her on 13 December 1984.

It is against that decision that the applicant has brought this action, which was lodged at the Court Registry on 7 March 1985.

II — Written procedure and conclusions of the parties

The written procedure took its normal course. After hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court (Second Chamber) decided to open the oral procedure without any preparatory inquiry.

The *applicant* claims that the Court should:

(1) Declare the action admissible;

(2) Declare it well founded, and consequently declare that the applicant is entitled both to the expatriation allowance and to the installation and daily subsistence allowances and removal expenses, all of which are payable upon a change of residence;

(3) Annul any contrary decision, and in particular the decision rejecting the applicant's complaint;

(4) Order the Commission to pay the costs.

The *Commission* contends that the Court should:

(1) Dismiss the action as unfounded;

(2) Make an appropriate order for costs;

without prejudice to the right to formulate conclusions.

III — Submissions and arguments of the parties

The admissibility of the application is not disputed. The submissions and arguments regarding the substance of the case may be summarized as follows.

1. The *applicant* emphasizes the issue of where the centre of her interests was during the reference period. For her Luxembourg was a sort of 'compulsory' residence as a result of a civil judgment which gave custody of her to her mother. She argues that her inclusion in the register of inhabitants of the city of Luxembourg took place while she was still a minor and does not represent any desire on her part to make Luxembourg the centre of her interests. As soon as she reached the age of majority she took Munich as the focus of her activities; it is there that she owns property, that her father and grandfather live, that her main interests lie — Munich was thus her 'habitual residence' for the purposes of the provisions at issue. She argues that she went to university from Munich and not from Luxembourg. She points out, moreover, that according to her residence certificate issued by the city of Munich (attached to the application) her principal residence during the period in question was in Munich.

The applicant argues that her marriage in September 1980 to a Luxembourg national in no way changed the centre of her interests, since her husband continued his own language studies in Innsbruck until autumn 1982 and their usual meeting-place was Munich.

The applicant does not go so far as to say that during the period from September 1980 onwards when she did free-lance work she was not physically present in Luxembourg, but she does not accept that during that period she habitually resided in Luxembourg. She argues that she came there to visit her mother, who lived there, but it is equally true that during that period she habitually resided in Munich where she looked after her grandfather. Furthermore, she considers that according to the second indent of Article 4 (1) (a) circumstances arising from work done for an international organization are not to be taken into account in determining habitual residence.

She argues that it was only her success in a competition at the Commission which led her to change her 'habitual social context' finally and irrevocably. She maintains that if she had not been able to obtain a post at the Commission she would have made every effort to find employment in the region where she was born, where she had kept up professional contacts.

2. The *Commission*, on the other hand, argues that the resolution of this matter depends not on the applicant's preference for one city or another (Munich or Luxembourg) but on her actual residence. It

takes the view that the phrase 'habitually reside' means the physical presence of the official within the territory of the State where he is employed during the reference period. It argues that absence from the country of employment for certain reasons, *inter alia* university studies, does not in principle have the effect of interrupting 'habitual residence' in the country of employment for the purposes of the provision in question.

The Commission emphasizes that the period during which the applicant was absent from Luxembourg in order to pursue her studies at university from 16 November 1978 (beginning of the reference period) until July 1980 amounts to a third of the reference period. It argues that the applicant resided (was physically present) in Luxembourg during the reference period for at least 40 months, that is to say two-thirds of that period. In its view the length of time (40 months) spent by her in Luxembourg makes it possible to assert that the applicant habitually resided in Luxembourg during the reference period.

The Commission disputes the assertion that the applicant lived in Munich during the period when she worked on a free-lance basis for the Commission, especially since in her free-lance contract with the Commission the applicant gave an address in the city of Luxembourg. The Commission points out that the applicant does not expressly assert that she lived in Munich during those periods but rather that her work was usually sent to her Munich address. Furthermore, the Commission considers that the certificate of residence issued by the city of Munich does not certify that the applicant actually lived at that address during the period in question. Similarly, the applicant's voting papers and her inclusion in the land register of the city of Munich do not constitute proof that she actually lived there.

In the alternative, the Commission argues that quite apart from the question of the time physically spent in Luxembourg, the applicant cannot claim the expatriation allowance because she is not an 'expatriate' in Luxembourg. It points out that she lived in Luxembourg continually from 1965 until 1975 (from the age of 9 until the age of 19) and from 1980 until 1984 (from the age of 24 to the age of 28). Furthermore, on her return from Austria in September 1980 she married a Luxembourg national and began to teach in a primary school in Luxembourg. Finally, her name was in the register of inhabitants of Luxembourg without interruption until the date of her recruitment to the Commission.

T. F. O'Higgins
Judge-Rapporteur