

## Case T-90/92

Pedro Magdalena Fernández

v

Commission of the European Communities

(Officials — Conditions for payment of expatriation allowance)

Judgment of the Court of First Instance (Third Chamber), 28 September  
1993 ..... II - 973

### Summary of the Judgment

1. *1. Officials — Remuneration — Expatriation allowance — Habitual residence in the Member State of employment during the reference period — Definition — Sporadic and brief absence from that State at the start of the reference period — Not such as to alter habitual nature of residence*  
(Staff Regulations, Annex VII, Art. 4(1)(a))
  
2. *2. Officials — Remuneration — Expatriation allowance — Payment during employment in a Member State — Right to continued payment if place of employment changes — None*  
(Staff Regulations, Annex VII, Art. 4(1)(a))

1. The concept of habitual residence referred to in Article 4(1)(a) of Annex VII to the Staff Regulations in connection with the payment of the expatriation allowance must be understood to mean the place where the person concerned has established the permanent or habitual centre of his interests with the intention that it should remain so. That being a question of fact, an official's actual residence during the reference period before he takes up his post must be taken into account in determining where that place is. Absence of a sporadic and brief nature from the Member State of employment at the start of that period is not sufficient to deprive a person's residence in that State of its habitual nature, within the meaning of the Staff Regulations, where the person concerned, who already lived there before the start of the reference period, lived there without interruption throughout the remainder of that period.

Neither the intention of the person concerned to look for a job in his country of origin and settle there nor the fact that he exercises political rights and has financial interests there are sufficient to rule out his continued habitual residence in the State of employment, when, throughout the reference period, the person concerned retained the centre of his interests in that

State, where his home was situated and where for most of the reference period he carried on his occupation. Nor is it of any relevance that the administration agreed, at the request of the person concerned, to determine his place of origin, within the meaning of Article 7(3) of Annex VII to the Staff Regulations, to be in another Member State, as the fixing of an official's place of origin and the granting of the expatriation allowance meet different needs and interests.

2. An official who receives the expatriation allowance provided for in Article 69 of the Staff Regulations while he is posted to a Member State with which he had not established lasting links before initially taking up his post with the European Communities loses the right to that allowance when he is subsequently posted to the Member State where he habitually resided or carried on his occupation during the reference period referred to in Article 4(1)(a) of Annex VII to the Staff Regulations. It is the particular connection which an official has with each of his places of employment which determines his right to receive the expatriation allowance, and the fact that an official meets the conditions for its payment at one point in his career does not give him an established right to its continued payment.