

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
6 June 1990 *

In Case T-44/89

Laura Gouvras-Laycock, an official of the Commission of the European Communities, represented by Aloyse May, of the Luxembourg Bar, with an address for service in Luxembourg at his Chambers, 31 Grand-rue,

applicant,

v

Commission of the European Communities, represented by Sean van Raepenbusch, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, also a member of the Commission's Legal Department, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of the Commission's decision refusing to recognize Athens as the applicant's place of origin,

THE COURT OF FIRST INSTANCE (Third Chamber)

composed of: A. Saggio, President of Chamber, B. Vesterdorf and K. Lenaerts, Judges,

Registrar: B. Pastor, Administrator

having regard to the written procedure and following the hearing on 3 May 1990,

gives the following

* Language of the case: French.

Judgment

Facts and procedure

- 1 The applicant, a British national, is the daughter of Mr Frank Laycock and Mrs Sylvania Laycock. The applicant's parents are separated, her father living in Dublin and her mother in London. Mrs Sylvania Laycock, a Greek national, is a member of the staff of the Greek Embassy in Great Britain, where she has lived for a number of years.

- 2 The applicant has been married since 1977 to Mr Georgios Gouvas, a Greek national who is an official of the Commission of the European Communities and has been working in Luxembourg since June 1982. Prior to that date, he was employed by a Swiss company based in Zürich. On 22 June 1982, Mr Gouvas made the following statement when his place of origin was being determined:

'Statement regarding the application of Article 7(3) of Annex VII to the Staff Regulations.

I, the undersigned, in providing official documents establishing my place of residence for the period of five years expiring six months before my entry in the service of the Commission and whereas my place of recruitment was in England, Pinner, Middlesex,

I hereby declare that my place of origin for the purposes of Article 7(3) of Annex VII to the Staff Regulations should be determined as Papagou, Athens, Greece, which is my parental home and has been given as my permanent address in my application form, for the following reasons:

- (a) my main family ties are retained in Athens (mother, brother and sister);
- (b) I have heritable interests in Athens in the form of property inherited by my late father (shown on herein attached certificate of Ministry of Justice of Greece);
- (c) My essential citizen's interests and rights are established solely in Greece (as shown by copies of my voting book issued by the Community of Papagou, Athens, Greece).

For the past five years ending six months prior to my entry in service, my places of residence were as follows:

- (a) July 1981 — May 1982: home: Pinner, Middlesex, United Kingdom; work: Zürich, Switzerland (as shown on a certificate sent by my previous employers, Electrowatt Engineering Services (London) Ltd to HM Inspector of Taxes, West Sussex, England);
- (b) June 1980 — July 1981: Papagou, Athens, Greece: employed by the Public Power Corporation of Greece, Navarinou 10, Athens 144;
- (c) December 1977 — June 1980: Pinner, Middlesex, United Kingdom; doing doctoral research and post-doctoral work at Imperial College, London, England (see attached certificates);
- (d) January 1977 — November 1977: Papagou, Athens, Greece; doing military service (certified by the Greek Air Force);
- (e) January 1975 — December 1976: doctoral research at Imperial College, London, England (see attached certificate).'

On the basis of this information, Athens was established as Mr Gouvras's place of origin.

- 3 It appears from the documents before the Court that Mr and Mrs Gouvras were married under Greek matrimonial property law, which is based on separate ownership of property. According to the information submitted by the parties, each spouse is entitled, in the event of divorce, to one-third of the property acquired by the other during their marriage. According to Greek succession law, the applicant would receive one-quarter of her husband's property if he were to die intestate.
- 4 The applicant started work on 1 September 1986 in the Official Publications Office of the European Communities in Luxembourg. By an affidavit sworn in Luxembourg in May 1986, the applicant stated that she had resided in London from May 1981 to October 1982 and subsequently in Luxembourg. From June

1980 to May 1981, the applicant lived with her husband in Athens. She lived in London prior to June 1980. From July 1974 to September 1982, she was employed by British Airways, with the exception of the period between June 1980 and May 1981, during which time she was on leave on personal grounds.

5 By a memorandum dated 10 August 1987 the applicant requested the defendant to establish her place of origin at the centre of her interests, namely Athens, instead of Luxembourg, the place where she was recruited. In that memorandum, the applicant made the following statement:

'(a) I retain my main family interests in Athens, constituted by a house belonging in part to my husband, Georgios Gouvras, which has been our common residence prior to him entering the service of the Commission of the European Communities, and where my family and I pass our annual holidays.

(b) My mother, a Greek citizen working at the Greek Embassy of London, has her centre of interests in Athens, where she can be transferred at the demand of her service.'

6 This request was accompanied by two supporting documents, namely:

(1) a certificate from the Athens District Court concerning succession to the estate of Mr Gouvras's father, under which Mr Gouvras's mother, Mr Gouvras himself and his brother and sister share the estate in equal portions, in other words one-quarter for each;

(2) a certificate from the Greek Embassy in London, which states that Mrs Laycock, a member of its staff and the applicant's mother, is liable at any time to be transferred to the Press and Information Office in Athens if the interests of the Ministry to the Prime Minister so require.

7 The administrative authorities did not deem these two facts to be adequate for the purpose of fixing Athens as the applicant's place of origin. In view, moreover, of the applicant's ties to London, represented by a permanent residence of the couple

prior to the entry into service of one of them, and of the applicant's mother, the defendant, by a memorandum of 24 August 1987 followed by a more detailed memorandum of 8 October 1987, dismissed the applicant's request and established London as her place of origin.

- 8 Following a request by the applicant and without prejudice to her rights under Article 90 of the Staff Regulations of Officials of the European Communities (hereinafter referred to as 'the Staff Regulations'), her place of origin was subsequently established as Dublin, the place of her father's residence, with effect from 1 September 1986.
- 9 By a memorandum registered by the Commission on 24 November 1987 the applicant brought a complaint against the aforementioned memorandum of 24 August 1987, in which she sought to have Athens established as her place of origin. The Commission rejected that complaint in a decision of 24 May 1988, which was notified to the applicant by a memorandum dated 6 June 1988.
- 10 The applicant accordingly brought the present action by application lodged at the Court Registry on 6 September 1988. The written procedure was conducted in its entirety before the Court of Justice which, by order of 15 November 1989, transferred the case to the Court of First Instance in accordance with Article 14 of the Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities. After hearing the report of the Judge-Rapporteur, the Court of First Instance decided to open the oral procedure without any preparatory inquiry.

Conclusions of the parties

- 11 The applicant claims that the Court of First Instance should:
 - (1) declare the action admissible;
 - (2) annul the Commission decision of 24 May 1988 which dismissed the plaintiff's complaint seeking to have her place of origin established as Athens (Greece);

- (3) uphold the plaintiff's request that Athens be established as her place of origin with effect from the date on which she entered into the service of the Commission of the European Communities;
- (4) order the defendant to pay all the costs of the proceedings.

2 The defendant claims that the Court of First Instance should:

- (1) declare the application to be unfounded;
- (2) make an appropriate order as to costs.

Admissibility

- 3 As a preliminary point, the Commission notes that the application is directed solely against the decision dismissing the complaint brought by the applicant. According to the Commission, there is no indication whatever in the submissions and arguments outlined in the application that the action is in fact directed at the decision which gave rise to the complaint. However, the Commission adds that it is aware of the case-law of the Court according to which an application is admissible if there is no doubt about the 'real subject-matter of the dispute'.
- 4 For her part, the applicant simply observes that the Commission did not expressly raise an objection of inadmissibility.
- 5 Although the present application, which was brought within the time-limits laid down in Articles 90 and 91 of the Staff Regulations, is formally directed against the defendant's decision dismissing the complaint brought by the applicant, it clearly seeks the annulment of the refusal to establish Athens as the applicant's place of origin (see, for example, the judgment of the Court of Justice of 23 October 1986 in Case 92/85 *Hamai v Court of Justice* [1986] ECR 3157).

Substance

- 16 Under the first subparagraph of Article 7(3) of Annex VII to the Staff Regulations, an official's place of origin is to be determined when he takes up his appointment, account being taken of where he was recruited or the centre of his interests.

That provision was interpreted by the Commission Decision of 15 July 1980 adopting general implementing provisions for giving effect to Article 7(3) of Annex VII to the Staff Regulations, as amended on 22 December 1987 with effect from 1 January 1988 (hereinafter referred to as 'the general provisions'). Article 2(2) of the amended decision provides as follows:

'For the purposes of applying this article:

...

'centre of interests' shall mean the place where an official retains (a) his main family ties which, barring duly substantiated exceptions, shall mean, at the choice of the official . . . , 1. mother and father . . . or children, . . . or 2. the marital residence, on condition that it was the husband and wife's joint permanent residence before either of them entered the service of the Communities as an official or a member of the temporary staff, and that it is in the form of immovable property in which at least one of them has heritable interests; and (b) heritable interests constituted by immovable property in the form of buildings or parts thereof.

The applicant bases her arguments on the reasons for the judgment of 2 May 1985 of the Court of Justice in Case 144/84 *De Angelis v Commission* [1985] ECR 1301, and claims that the decision of 24 May 1988 is vitiated by a manifest error of law. She relies on two arguments in support of that submission.

- 17 First of all, the applicant submits that she possesses heritable interests at Athens within the meaning of subparagraph (b) of the second indent of Article 2(2) of the general provisions. She points out that she and her husband restored their house in Papagou, Athens, in April 1986 and that the work was financed by a bank loan taken out by both of them. In support of that claim, the applicant produced a letter in which the Crédit Européen, Luxembourg, confirms that it granted the spouses 'a personal loan of LFR 500 000 . . . in April 1986 for a period of 24 months, which was disbursed on 3 April 1986 and repaid on 28 April 1988'.

According to the applicant, this restoration of the property with funds borrowed by both spouses 'confers on both spouses a legal claim to the said property'. She also points out that 'both Greek law and English law entitle the applicant to object to the sale of the property and also to reside there and make normal use of it'.

- 1 Secondly, the applicant claims that she also has family ties in Athens. She stresses that Athens has been established as her husband's place of origin and that she and her husband jointly decided on Athens as their marital residence prior to their respective entries into the service of the institutions. It is there that they spend all their holidays. The applicant disputes the claim made by the defendant to the effect that the spouses had established their permanent residence in London before Mr Gouvras entered the service of the Communities.

- 2 Furthermore, the applicant argues that her family ties with Athens are closer than those with London, on which the first decision taken by the defendant was based. That is particularly true inasmuch as her mother has never established her permanent habitual residence in London, since she may at any time be transferred to Athens should the interests of her employers so require.

- 3 The applicant concludes by submitting that she has established, on the basis of documentary evidence, that she took up permanent residence in Athens, that she and her husband own a house there, that she was married in Athens and lived there prior to entering the service of the Commission, that she retains family ties there and that the centre of her interests is there.

- 4 The Commission points out that, according to the judgment of 2 May 1985 in Case 144/84 *De Angelis*, cited above, the heritable interests on which the applicant relies 'must be assessed in every individual case by the institution concerned'. The Commission takes the view that the circumstances in the *De Angelis* case differed from those of the present case. The facts set out by the applicant fail sufficiently to prove that her principal interests on 1 September 1986 were in Athens to such a

degree as to replace London as her centre of interests. More specifically, the existence in Athens, prior to the entry of Mr and Mrs Gouvras into the service of the Commission, of a joint permanent residence (as referred to at point 2 of subparagraph (a) of the second indent of Article 2(2) of the general provisions) and of heritable interests belonging to the applicant (within the meaning of subparagraph (b) of the second indent of Article 2(2) of those provisions) has not been proven.

- 22 With regard to the applicant's ties to London (or to Dublin), the Commission points out that subparagraph (a) of the second indent of Article 2(2) of the general provisions does not actually require that the residence of the father or the mother should be established as the place of origin, but it does imply that the main family ties of the official should be 'represented, where appropriate, by his or her father or mother'. According to the Commission, it is difficult to deny that the applicant's mother represents the applicant's family ties with London, where her mother normally lives.
- 23 The Commission takes the view that the heritable interests relied on by the applicant represent no more than expectations of what would happen in the event of her husband's death or of divorce. The occurrence of either of those events would result in the dissolution of the marriage and consequently the cessation of any matrimonial residence, which is a further necessary constituent element for the place of origin claimed.
- 24 With regard to family ties, the Commission stresses that the concept of matrimonial residence cannot have a merely declaratory nature such as to preclude the Commission from carrying out any examination whatever into the genuineness of the place of origin claimed. In the present case, the applicant was living in London when her husband entered the service of the Commission and it has not been proven that the spouses had jointly decided to establish their matrimonial residence at Athens prior to their respective entries into service.
- 25 In the light of the above arguments of the parties, it should be observed first of all that the general implementing provisions, most recently amended following the aforementioned judgment of the Court of Justice of 2 May 1985, merely interpret and define Article 7(3) of Annex VII to the Staff Regulations, which refers for the determination of an official's place of origin to the place where his centre of

interests is situated (paragraph 16 of the judgment of 2 May 1985). Provisions of this kind cannot, therefore, alter the meaning of the concept of 'centre of interests', just as they cannot bind the Community courts in their interpretation of that concept.

6 In order to determine an official's place of origin within the meaning of that provision it is therefore necessary to establish that the person concerned retains a permanent link with a certain place. That link must be assessed in every individual case by the institution concerned (see paragraph 18 of the judgment of 2 May 1985).

7 Article 2 of the general provisions gives a correct general definition of the circumstances which may point to the place representing the official's centre of interests. These are as follows:

(a) main family ties;

(b) heritable interests;

(c) essential civic interests, both active and passive.

8 With regard to the main family ties, it should be noted, as the Court of Justice stated in the *De Angelis* case, that it is illogical to exclude or to reduce the significance of the place in which the spouse himself has his centre of interests. With regard to heritable interests, it is equally important to stress the fact that ties other than rights *in rem* in immovable property may also serve as criteria for determining the official's centre of interests.

9 It is therefore on the basis of these criteria, interpreted in the light of the particular circumstances of this case, that the applicant's 'centre of interests' must be determined.

30 It is not disputed in the present case that the centre of interests of the applicant's husband, Mr Georgios Gouvras, is situated at Athens, where he is the part owner of property which the spouses regard as their matrimonial and family residence and in which they spend their holidays. Furthermore, Mr and Mrs Gouvras financed the restoration of that property by way of a joint loan. It should be added that the applicant's mother, a Greek national, has retained her domicile in Greece, both under Greek law and under English law, even though she has been living for a considerable time in the United Kingdom by virtue of her employment at the Greek Embassy in London.

31 In contrast, the only tie linking the applicant to Dublin is the fact that her father lives there. As far as London is concerned, only the habitual residence of her mother can constitute a link between the applicant and that city. In this connection, it should also be noted that although the applicant does not have any civic interests in Greece, she has not retained a right to vote in the United Kingdom either.

32 It follows that there are more relevant ties establishing Athens than any other place as the centre of the applicant's interests.

33 It follows from all the foregoing that the Commission decision of 24 May 1988 is vitiated by a manifest error of law in so far as it is at variance with the concept of 'centre of interests' set out in Article 7(3) of Annex VII to the Staff Regulations and that that decision must consequently be annulled.

Costs

34 Under Article 69(2) of the Rules of Procedure of the Court of Justice, which are applicable *mutatis mutandis* to the Court of First Instance by virtue of the third paragraph of Article 11 of the abovementioned Council decision of 24 October 1988, the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleadings. As the Commission has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

- (1) **Annuls the Commission's decision of 24 May 1988;**
- (2) **Orders the Commission to pay the costs.**

Saggio

Vesterdorf

Lenaerts

Delivered in open court in Luxembourg on 6 June 1990.

H. Jung
Registrar

A. Saggio
President of the Third Chamber