JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)

25 October 2005 *

In Case T-298/02,

Anna Herrero Romeu, official of the Commission of the European Communities, residing in Brussels (Belgium), represented by J. García-Gallardo Gil-Fournier, J. Guillem Carrau, D. Domínguez Pérez and A. Sayagués Torres, lawyers,

applicant,

v

Commission of the European Communities, represented by J. Currall, acting as Agent, and by J. Rivas-Andrés and J. Gutiérrez Gisbert, lawyers, with an address for service in Luxembourg,

defendant,

* Language of the case: Spanish.

APPLICATION for annulment of the Commission's decision of 10 June 2002 refusing to pay the applicant the expatriation allowance under Article 4 of Annex VII to the Staff Regulations of Officials of the European Communities and the allowances associated therewith,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (First Chamber),

composed of J.D. Cooke, President, R. García-Valdecasas and V. Trstenjak, Judges,

Registrar: J. Palacio González, Principal Administrator,

having regard to the written procedure and further to the hearing on 16 and 17 February 2005,

gives the following

Judgment

Legal context

1 Article 69 of the Staff Regulations of Officials of the European Communities ('the Staff Regulations') in the version applicable to the present case states that the expatriation allowance is to be equal to 16% of the total of the basic salary, household allowance and dependent child allowance to which the official is entitled.

2 According to Article 4(1) of Annex VII to the Staff Regulations:

'an expatriation allowance shall be paid, equal to 16% of the total amount of the basic salary plus household allowance and the dependent child allowance paid to the official:

(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 organisation shall not be taken into account;

...'

Background to the dispute

3 The applicant, a Spanish national, was employed from January 1993 to November 2001 by the representative office of the Patronat Català Pro Europa ('the Patronat') in Brussels, which is the body in charge of managing the interests of the government of the Spanish Autonomous Community of Catalonia (Comunidad Autónoma de Cataluña) within the Community institutions in Brussels, under a contract signed on 15 January 1993 with the Patronat.

4 On 16 November 2001, the applicant took up her duties at the Commission as an official. The five years referred to in the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations for the purposes of payment of the expatriation allowance, known as 'the reference period', were, in the present case, between 16 May 1996 and 15 May 2001.

5 On 19 November 2001, the applicant had an interview with the Directorate-General (DG) Personnel and Administration to determine her rights and to complete her individual record sheet on entering the service. During that meeting, she was informed verbally that, on a provisional basis, the expatriation allowance could not be paid to her. The individual record sheet drawn up on that date also showed that she was refused the allowance.

6 On 18 January 2002, the applicant sent a letter to the Head of Unit 'Administration of Individual Rights' of the Personnel and Administration DG asking him to send her the existing provisions relating to allowances for new officials who have previously worked for regional representative offices in Brussels. Having received no response from the Commission to her letter, the applicant repeated her request by letter of 14 February 2002.

7 On 14 February 2002, the applicant lodged a complaint under Article 90(2) of the Staff Regulations against the decision of 19 November 2001.

8 By decision of 10 June 2002, the appointing authority rejected the applicant's complaint. According to that decision, the applicant was refused the expatriation allowance and the allowances associated therewith, in accordance with Article 4(1)(a) of Annex VII to the Staff Regulations, on the ground that she had both lived and worked in Brussels during the five years ending six months before she entered the service. More precisely, the appointing authority considered that her employment with the Patronat could not be considered to be 'work done for another State' within the meaning of the exception laid down in Article 4 and could thus not be taken into consideration.

Procedure and forms of order sought

9 By application lodged at the Registry of the Court of First Instance on 1 October 2002, the applicant brought the present action.

10 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (First Chamber) decided to open the oral procedure. By way of measures of organisation of procedure, the Court requested the parties and the Kingdom of Spain to produce certain documents and to reply to written questions. The parties and the Kingdom of Spain complied with those requests within the prescribed periods.

11 The parties presented oral argument and replied to the Court's questions at the hearing on 16 and 17 February 2005.

12 The applicant claims that the Court of First Instance should:

— annul the decision of 10 June 2002 refusing her payment of the expatriation allowance and the allowances associated therewith;

— order the Commission to pay all the costs, including the costs incurred during the administrative stage of the procedure.

13 The Commission claims that the Court of First Instance should:

— dismiss the action as unfounded;

— order the applicant to pay her own costs.

Legal context

Subject-matter of the proceedings

14 Although the applicant's pleas seek annulment of the Commission's decision of 10 June 2002 dismissing the complaint submitted on 14 February 2002, under Article

90(2) of the Staff Regulations, about the decision of 19 November 2001, the present action has the effect, according to settled case-law, of bringing before the Court of First Instance the act adversely affecting the official in respect of which the complaint was submitted (Case T-156/95 *Echauz Brigaldi and Others* v *Commission* [1997] ECR-SC I-A-171 and II-509, paragraph 23, and Case T-300/97 *Latino* v *Commission* [1999] ECR-SC II-1263, paragraph 30). It follows from this that the present action seeks annulment of the Commission's decision of 19 November 2001 refusing to recognise the applicant's entitlement to the expatriation allowance and the allowances associated therewith.

A — *Expatriation allowance*

15 The applicant puts forward, essentially, four pleas in support of her action. By the first plea she alleges infringement of Article 4(1)(a) of Annex VII to the Staff Regulations. The second plea alleges an error in the assessment of the facts. The third plea alleges infringement of the obligation to state grounds. Finally, the fourth plea is based on a breach of the principle of equal treatment.

1. The first plea alleging infringement of Article 4(1)(a) of Annex VII to the Staff Regulations

Arguments of the parties

16 The applicant submits that she is entitled to payment of the expatriation allowance and that the Commission misinterpreted the exception laid down in Article 4(1)(a)

of Annex VII to the Staff Regulations. Her employment with the Patronat in Brussels should be considered to be 'work done for another State', in this instance, the Spanish State and, therefore, that period of work should be 'disregarded' in accordance with the exception laid down in Article 4 of Annex VII to the Staff Regulations and not taken into account to determine the reference period.

17 First, the applicant submits that the case-law of the Court has established a Community definition of State which partially respects the concept of State as understood in the legal systems of each of the Member States. The Court has thus held that public authorities falling within the definition of 'State' not only include central government but also judicial and legislative authorities, decentralised bodies and even certain bodies considered as emanations of the State (Case 152/84 *Marshall* [1986] ECR 723 and Case 199/85 *Commission* v *Italy* [1987] ECR 1039). In addition, the Court has made clear that the State also carries out the traditional functions of sovereignty or authority as well as functions of economic intervention which are carried out both by public authorities and by bodies governed by public or private law (Case 149/79 *Commission* v *Belgium* [1980] ECR 3881 and Case 290/83 *Commission* v *France* [1985] ECR 439).

18 Second, the applicant sets out arguments regarding the meaning of 'State' within the Spanish legal system. She thus points out that the Spanish Constitution established a highly decentralised legal system, known as 'the State of regional autonomy', which is characterised by a division of powers between the central administration and the Autonomous Communities. In relation to powers in the field of Community law, the Tribunal Constitucional (the Spanish Constitutional Court) has held that the European Union is not an international area and that issues relating to the Community legal order should be treated as national issues. In particular, the Tribunal Constitucional asserted in its Decision No 165/1994 of 26 May 1994 (*Annex B.2 to the defence*) that, unlike international relations which are exclusively a matter for central government, 'the activities of the European Communities directly affect the Autonomous Communities'. Therefore, the division of powers requires the

Autonomous Communities to follow the development of the legislative activities of the European institutions since they are, in many cases, the authorities responsible for transposing Community legislation and subject, moreover, to the direct effect thereof. That justifies the existence of representative offices for the Autonomous Communities to the European Union.

19 In addition, the applicant describes the various instruments which have been created with a view to facilitating the management of European affairs by the Spanish central government and the Autonomous Communities, such as the 'Conferencia para los asuntos relativos a las Comunidades Europeas (CARCE)' (the Conference for Affairs relating to the European Communities), which was set up in 1992 with the aim of increasing cooperation between the central government and the Autonomous Communities in Community matters. In accordance with the agreements adopted in that context, the Autonomous Communities have, since 1998, been taking part in meetings of the consultation committees chaired by the Commission and the staff of the Autonomous Communities and the Permanent Representation of the Kingdom of Spain also organise sectional technical meetings for the purpose of following the work of the Council and Community legislative initiatives. Furthermore, the staff working for the delegations of the Autonomous Communities are subject to the same health insurance scheme (eligible for the Spanish social security system on submission of Forms E 111 and E 106) and the same tax scheme (Article 19 of the convention concluded in 1970 between the Kingdom of Spain and the Kingdom of Belgium to avoid double taxation on income; 'the double taxation convention') as the diplomatic staff at the Permanent Representation of the Kingdom of Spain.

20 Third, the applicant submits that, as regards the Autonomous Community of Catalonia, the Patronat is the public law institution set up in 1982 by the Catalan government with a view to the accession of the Kingdom of Spain to the European Communities and which, since that date, follows and participates in the evolution of Community legislation, defending the interests and acting as a channel for the concerns and expectations of that Autonomous Community. That institution is thus

an integral part of the administration of the Autonomous Community of Catalonia and, thus, of the Spanish State, which is the reason why the work done by the applicant for the Patronat is in the nature of work done for the Spanish State.

21 The applicant adds that, although it is evident that the meaning of 'State' must be interpreted independently, a definition on the basis of the legal orders of the Member States does not distort the exception laid down in Article 4 of Annex VII to the Staff Regulations, since the Commission itself accepted during the interview when the applicant took up her duties that, in the case of federated States, work done by staff for regional bodies falls within the scope of the exception. Moreover, such an independent definition would not constitute a claim that every municipal body works for the State because, unlike those bodies, the Autonomous Communities have not had their powers conferred by the State, but enjoy powers of their own which are laid down in the Spanish Constitution. Finally, the applicant points out that she is not seeking to compare her status to that of a member of a diplomatic corps, but to that of a member of staff of a permanent representation which is not part of the diplomatic corps. However, if diplomatic immunity were a decisive element, there would be no reason to apply the above exception to all the staff of such a representation, as the Commission does.

22 The Commission considers that, although it is true that the Spanish Autonomous Communities have a number of powers of their own which have been transferred to them directly by the general administration of the State pursuant to the Spanish Constitution, it does not mean that the Autonomous Communities are States nor that the work done for the Patronat should be considered to be work done for a State within the meaning of the exception laid down in Article 4 of Annex VII to the Staff Regulations.

Findings of the Court

23 According to settled case-law, the fundamental purpose of the expatriation allowance is to compensate for the extra expense and inconvenience of taking up

permanent employment in a country with which the official has established no lasting tie before his entry into service (Case T-4/92 *Vardakas* v *Commission* [1993] ECR II-357, paragraph 39; Case T-72/94 *Diamantaras* v *Commission* [1995] ECR-SC I-A-285 and II-865, paragraph 48; and Case T-28/98 *J* v *Commission* [1999] ECR-SC I-A-185 and II-973, paragraph 32). For such a lasting tie to be established, thus entailing the loss to the official of the benefit of the expatriation allowance, the legislature requires that the official should have had his habitual residence or exercised his main professional activity for a period of five years in the country where he is posted (*Diamantaras* v *Commission*, cited above, paragraph 48).

24 It should also be remembered that an exception is laid down in the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations in favour of those who have worked for another State or for an international organisation during the five years ending six months before they entered the service. That exception was established in order to take account of the fact that, in those circumstances, those persons cannot be deemed to have established a lasting tie with the country in which they are employed due to the temporary nature of the secondment in that country (Case 1322/79 *Vutera* v *Commission* [1981] ECR 127, paragraph 8, and Case 246/83 *De Angelis* v *Commission* [1985] ECR 1253, paragraph 13).

25 The applicant entered the service of the Commission on 16 November 2001 and, therefore, the reference period to be taken into consideration for the application of Article 4 of Annex VII to the Staff Regulations is between 16 May 1996 and 15 May 2001. It is common ground between the parties that, during the reference period, the applicant was principally employed with the delegation of the Patronat in Brussels.

26 The issue to be determined in the present case is whether the work done by the applicant for the delegation of the Patronat in Brussels is to be considered, as the applicant claims, to be work done for a State within the meaning of Article 4(1)(a) of Annex VII to the Staff Regulations.

27 It is settled case-law that the requirement for a uniform application of Community law and the principle of equality require that the terms of a provision of Community law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an independent and uniform interpretation throughout the Community; that interpretation must take into account the context of the provision and the purpose of the relevant regulations. In the absence of an express reference, the application of Community law may sometimes necessitate a reference to the laws of the Member States where the Community Court cannot identify in Community law or in the general principles of Community law criteria enabling it to define the meaning and scope of such a provision by way of independent interpretation (see Case 327/82 *Ekro* [1984] ECR 107, paragraph 11; Case T-43/90 *Díaz García* v *Parliament* [1992] ECR II-2619, paragraph 36; Case T-264/97 *D* v *Council* [1999] ECR-SC I-A-1 and II-1, paragraphs 26 and 27, upheld in Joined Cases C-122/99 P and C-125/99 P *D and Sweden* v *Council* [2001] ECR I-4319).

28 In the present case, Community law and, in particular, the Staff Regulations provide sufficient guidance to allow the scope of Article 4 of Annex VII to the Staff Regulations to be defined and, therefore, to establish an independent interpretation of the meaning of 'State' in relation to the different national laws, as accepted by the parties themselves in their written pleadings.

29 First, the Court has held that it is apparent from the general scheme of the Treaties that the term 'Member State', for the purposes of the institutional provisions, refers only to government authorities of the Member States and cannot include the governments of regions or autonomous communities, irrespective of the powers they may have. If the contrary were true, it would undermine the institutional balance provided for by the Treaties, which, inter alia, govern the conditions under which the Member States, that is to say, the States party to the Treaties establishing the Communities and the Accession Treaties, participate in the functioning of the Community institutions (orders in Case C-95/97 *Région wallonne* v *Commission* [1997] ECR I-1787, paragraph 6, and Case C-180/97 *Regione Toscana* v *Commission* [1997] ECR I-5245, paragraph 6).

30 Second, according to settled case-law, the provisions of the Staff Regulations, which have the sole purpose of regulating legal relations between the institutions and officials by establishing reciprocal rights and duties, employ precise wording and there is no reason to extend their scope by analogy to situations to which they do not expressly refer (Case 48/70 *Bernardi* v *Parliament* [1971] ECR 175, paragraphs 11 and 12, and Case 123/84 *Klein* v *Commission* [1985] ECR 1907, paragraph 23; Case T-74/98 *Mammarella* v *Commission* [1999] ECR-SC I-A-151 and II-797, paragraph 38).

31 In Article 4 of Annex VII to the Staff Regulations, the legislature chose the word 'State' although, at the time when the Staff Regulations were adopted, Member States with a federal or regional structure, such as the Federal Republic of Germany, already existed alongside the States with a centralised internal structure. Thus, if the Community legislature had wanted to introduce political subdivisions or local authorities into that article, it would have done so expressly. It can be considered that the drafters of the Staff Regulations had no intention of including political subdivisions of a State, such as regional governments, autonomous communities or other local bodies in the expression 'work done for another State' used in that article.

32 It follows from all of the above arguments that the term 'State' used in Article 4 of Annex VII to the Staff Regulations relates only to the State as a legal person and unitary subject of international law and its government bodies. An interpretation such as that put forward by the applicant could lead, as the Commission submits, to considering as States all public entities which have their own legal personality and to which a central government has transferred internal powers, including town councils or any body to which an administration has delegated duties.

33 Therefore, the expression 'work done for another State', laid down in Article 4 of Annex VII to the Staff Regulations, must be interpreted as not referring to work done for governments of political subdivisions of a State.

34 It follows from the above that the work done by the applicant for the delegation of the Patronat in Brussels cannot be considered to be work done for a State within the meaning of Article 4 of Annex VII to the Staff Regulations.

35 That assessment cannot be called into question by the applicant's argument based on the existence of an autonomous meaning of 'State' in Community law which encompasses decentralised bodies. Although it is clear that, in accordance with the case-law cited by the applicant in the context of a failure of a Member State to fulfil its obligations, it can be considered that the authorities of a State which are charged with ensuring observance of the rules of Community law can be either central authorities and authorities of a federated State or territorial or decentralised authorities of that State within the sphere of their respective competence, it is also necessary to recall that an action following which the Court of Justice can declare that a Member State has failed to fulfil one of its obligations can only be brought against the government of that State, even if the failure to act is the result of the action or omission of the authorities of a federal State, a region or an autonomous community (*Région wallonne* v *Commission*, cited above, paragraph 7, and *Regione Toscana* v *Commission*, cited above, paragraph 7). That case-law thus cannot be relied upon in support of the applicant's proposition for a broad interpretation of the meaning of 'State'.

36 Similarly, the arguments submitted by the applicant based on the powers that the Autonomous Communities have in their own right in the Spanish legal system and the wording of the decision of the Spanish Tribunal Constitucional must be rejected. It is true that the Autonomous Communities have their own powers which have been transferred to them pursuant to the Spanish Constitution and that the decision of the Tribunal Constitucional of 26 May 1994, cited above, states that, by reason of those powers, they have an interest in following and informing themselves about the work of the Community institutions and are thus entitled to have offices in Brussels to that end. Nevertheless, it needs to be pointed out that the Tribunal Constitucional was settling an issue of Spanish national law on the basis of the Spanish Constitution and that, with that end in view, it clearly recalled that the Treaties establishing the Communities provide only for the participation of the Member States in

Community activity and that that excludes the existence of relations between sub-State bodies, such as the Autonomous Communities, and the Community institutions, which might give rise to the liability of the Spanish State in any way. Moreover, according to the Tribunal Constitucional, such relations are not possible in the light of the very structure of the European Union. In any event, the interpretation of Community law is, ultimately, the task of the Community Courts in accordance with Article 220 EC.

37 In addition, it should be pointed out that the delegations of the Spanish Autonomous Communities in Brussels are responsible for managing the interests of the administrations which they represent, which are interests which do not necessarily coincide with the interests of other Autonomous Communities and with those of the Kingdom of Spain as a State.

38 Neither can the applicant rely on the fact that she was covered by the same health insurance and tax schemes as the staff working in the Permanent Representation of the Kingdom of Spain in Brussels.

39 It should be recalled, first, that the double taxation convention, adopted several years after the Staff Regulations, states in Article 19(1) thereof that 'remuneration, including pensions, paid by a contracting State or by one of its political subdivisions or local authorities ... to a natural person for work done for that State or for one of its political subdivisions or local authorities is only taxable in that State'. That convention thus distinguishes between work done for a State and work done for a political subdivision of a State. Such a distinction is not made in Article 4 of Annex VII to the Staff Regulations.

40 Second, as regards the health insurance scheme, Forms E 106 and E 111 merely certify a person's right to benefit from healthcare in a country other than the one in which he is normally insured or was insured previously. As regards Form E 106, it

should be noted in addition that it is issued not only to diplomats and other members of the Permanent Representation of the Kingdom of Spain to the European Union, but also to numerous other categories of persons working outside Spanish territory.

41 Finally, as regards the applicant's argument based on the participation of representatives of the Autonomous Communities in the consultation committees of the Commission, it should be noted that the exception laid down in the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations cannot be restricted solely to persons who have served on the staff of another State or of an international organisation, since it covers all 'circumstances arising from work done for another State or for an international organisation' (*Diamantaras* v *Commission*, cited above, paragraph 52, and Case T-60/00 *Liaskou* v *Council* [2001] ECR-SC I-A-107 and II-489, paragraph 49). Article 4 nevertheless requires that to benefit from the exception for which it provides, the official concerned should at least have had direct legal links with the State or international organisation in question, which is consistent with the autonomy which States and institutions enjoy in the internal organisation of their services, which entitles them to invite third parties which do not belong to their hierarchical structure to tender for work of a specific nature (Case T-43/93 *Lo Giudice* v *Parliament* [1995] ECR-SC I-A-57 and II-189, paragraph 36, and Case T-127/00 *Nevin* v *Commission* [2002] ECR-SC I-A-149 and II-781, paragraph 51).

42 In that regard, it is sufficient to note that the applicant expressly accepted at the hearing that she never joined or was part of the Spanish delegation which participated in meetings with Council and Commission bodies which took place throughout the relevant reference period. Neither did the applicant submit that she had a possible direct legal tie with the Spanish central government which would allow her to be considered to have done work for the Spanish State during that period.

43 In those circumstances, it cannot be considered that the applicant did work for a State within the meaning of Article 4 of Annex VII to the Staff Regulations.

44 In view of the foregoing, the first plea must be rejected.

2. The second plea alleging an error in the assessment of the facts

Arguments of the parties

45 The applicant submits that the Commission erred in the assessment of the facts since her habitual residence and her centre of interests during the reference period laid down in Article 4 of Annex VII to the Staff Regulations were always in Spain and not in Belgium. Her residence in Brussels during her employment at the Patronat was only temporary and secondary. Consequently, the applicant is entitled to the expatriation allowance provided for in Article 4 of Annex VII to the Staff Regulations. In support of that claim, the applicant submits the following matters as evidence that her centre of interests and her habitual residence have always been in Barcelona (Spain):

— her main place of residence is Barcelona, where her family lives, where she is registered with the regional administration in Barcelona as living, where she is enrolled on the electoral register, and where she exercises her voting rights and renews her personal identification documents;

— she has a Spanish contract of employment, signed in Barcelona and governed by Spanish legislation in relation to tax and social law;

— she pays taxes in Spain, where she submits her annual tax return as a Spanish salaried worker and taxable person under Article 19 of the double tax convention;

— her medical insurance was governed by Spanish law on the basis, first, of Form E 111 and then of Form E 106 as a member of staff on secondment in Brussels;

— she has a bank account open and life insurance contracted in Barcelona;

— she has a mortgage contracted in Barcelona in order to purchase an apartment in that city.

46 The applicant adds that the ties which she kept with Spain are more important than those generally kept with the country of residence of one's parents, given that she also completed both her undergraduate studies and postgraduate studies in Barcelona and was also employed in that city before being assigned by the Patronat to the delegation in Brussels. Moreover, the fact that she received an 'additional sum for expatriation' under the contract drawn up with the Patronat in no way demonstrates that she was resident in Brussels, since that sum was specifically intended to compensate the applicant for a temporary stay and not a permanent one in Brussels and was justified by the lack of lasting ties in Belgium.

47 The Commission considers that that head of claim must be rejected as unfounded since the applicant habitually lived and carried on her main occupation in Brussels from 1993 and throughout the entire reference period laid down in Article 4 of Annex VII to the Staff Regulations, and the information submitted by the applicant does not prove the contrary.

48 According to the Commission, the matters cited by the applicant merely constitute habitual ties which any person keeps with his country of origin and do not establish

that her permanent centre of interests was in Spain. In addition, payment of income tax in Spain results simply from the application of Article 19 of the double tax convention and the very fact that healthcare was available in Belgium on the basis of Forms E 111 and E 106 proves that the applicant was resident in Belgium. Furthermore, the applicant stated herself in her application that her contract of employment provided for payment of an expatriation allowance in connection with her status as a member of staff on secondment in Brussels. If she were simply staying there temporarily rather than actually residing there, such compensation would not have made sense.

Findings of the Court

49 Article 4(1)(a) of Annex VII to the Staff Regulations provides that an expatriation allowance is to be 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 entered the service did not habitually reside or carry on their main occupation within the territory of that State.

50 In order to determine such situations, the case-law has asserted that Article 4 of Annex VII to the Staff Regulations must be interpreted as adopting the official's habitual residence prior to taking up employment as the essential criterion for the grant of the expatriation allowance. In addition, the concept of expatriation depends on the personal position of the official, that is to say on the extent to which he is integrated in his new environment, which may be demonstrated, for example, by habitual residence or by the prior pursuit of a main occupation (*De Angelis* v *Commission*, cited above, paragraph 13; Case T-18/91 *Costacurta Gelabert* v *Commission* [1992] ECR II-1655, paragraph 42; see also, to that effect, Case 188/83 *Witte* v *Parliament* [1984] ECR 3465, paragraph 8).

51 The place of habitual residence is that in which the official concerned has established, with the intention that it should be of a lasting character, the permanent or habitual centre of his interests. For the purposes of determining habitual residence, all the factual circumstances which constitute such residence and, in particular, the actual residence of the official concerned must be taken into account (Case C-452/93 P *Magdalena Fernández* v *Commission* [1994] ECR I-4295, paragraph 22; Case T-63/91 *Benzler* v *Commission* [1992] ECR II-2095, paragraph 17; and Case T-90/92 *Magdalena Fernández* v *Commission* [1993] ECR II-971, paragraph 27).

52 It should be borne in mind that the reference period to be taken into consideration for the application of Article 4(1)(a) of Annex VII to the Staff Regulations is between 16 May 1996 and 15 May 2001 and that the applicant entered the service six months after that date, namely on 16 November 2001.

53 However, it is evident from the documents that the applicant habitually resided and carried on her main occupation from 15 January 1993 until November 2001 in Brussels.

54 The applicant stated both in her complaint and in her letter of 18 January 2002 that she had worked until 15 November 2001, for a period of eight years, in the delegation of the Catalonian government to the Community institutions in Brussels.

55 The employment contract concluded between the applicant and the Patronat on 15 January 1993 and which governed the work done by the applicant for the Patronat until she entered the service of the Commission, that is to say for almost nine years, stipulated in its second recital that the applicant was employed as a member of the administrative staff working for 'the Brussels office of the body'.

56 The seventh clause of the contract stipulated that the applicant would receive an additional allowance by reason of the fact that the work to be done '[was] in Belgium' and would be entitled to two air fares for a return trip from Brussels to Barcelona, as the work to be done was abroad. The applicant admitted herself in her application that she was receiving the additional allowance 'on the ground of expatriation as a member of staff on secondment to the representation in Brussels'. However, those allowances are granted to compensate for the difficulties necessarily associated with living and working in a foreign country and the fact that, in certain countries, the cost of living is much higher.

57 The eighth clause of the contract shows that the amount of the salary laid down in the contract was reviewed, in particular, in the light of 'the increase in the CPI ([c]onsumer [p]rice [i]ndex) officially approved ... in Belgium'. Finally, the 10th clause of the contract grants five additional days' leave on the ground that the applicant is employed in Belgium.

58 It follows from the above that, under the terms of her contract with the Patronat, the applicant was engaged, from the beginning of her employment relationship with that body, in order to be seconded to Brussels. Thus, it must be held that, during the reference period, the applicant clearly lived and carried on her main occupation, within the meaning of Article 4(1)(a) of Annex VII to the Staff Regulations, in and had transferred her centre of interests to Brussels.

59 In addition, the matters cited by the applicant as evidence that her centre of interests was in Spain during the reference period are not such as to undermine the conclusion reached in the above paragraph.

60 Even if it is conceded that some of the information submitted by the applicant does show that she indeed maintained a series of ties with Spain, the facts that she has a

certificate of residence, or of registration of residence with the municipal authority, in Barcelona, is enrolled on the electoral register of that city, exercises her political rights and pays taxes there are not sufficient to establish that the permanent centre of her interests was still in Spain (see, to that effect, Case T-90/92 *Magdalena Fernández* v *Commission*, cited above, paragraph 30, and Case T-317/99 *Lemaître* v *Commission* [2000] ECR-SC I-A-191 and II-867, paragraph 57).

61 Similarly, the fact that she has interests and assets in Spain, such as a bank account and a life assurance policy or the ownership of property in Barcelona, does not, in itself, establish that the permanent centre of the applicant's interests was in that country (see, to that effect, Case T-90/92 *Magdalena Fernández* v *Commission*, cited above, paragraph 30, and *Liaskou* v *Council*, cited above, paragraph 63). In addition, as regards the purchase of an apartment in Barcelona, it should be noted that the applicant does not dispute that that purchase took place in 1989, that is to say well before her secondment to Brussels in January 1993 and well before the beginning of the reference period in May 1996.

62 Finally, access to healthcare in Belgium on submission of Forms E 111 and E 106 and payment of her salary and taxes in Spain, pursuant to Article 19 of the double tax convention, far from proving, as the applicant claims, that her centre of interests was in Spain during the reference period, actually demonstrate that she moved from Spain for a long period of time and, thus, that she lived and worked habitually in another country, in this case in Belgium.

63 It follows from the above that the Commission did not commit an error in the assessment of the facts as regards the applicant's personal situation and that it correctly came to the conclusion that she was not entitled to the expatriation allowance.

64 The second plea must therefore be rejected.

3. The third plea alleging infringement of the obligation to state grounds

Arguments of the parties

65 The applicant submits that the grounds of the decision of 10 June 2002 are manifestly insufficient. The Commission did not request further information and took refuge behind a standard formulation which sheds no light on the reasons why the particular facts submitted do not justify the grant of the expatriation allowance.

66 The Commission considers that that head of claim must be rejected as unfounded since the decision of 10 June 2002 sets out clearly the reasons why the applicant was refused the expatriation allowance and the allowances associated therewith.

Findings of the Court

67 It must be remembered that the obligation to state grounds is intended, on the one hand, to provide the person concerned with sufficient information to determine whether the decision taken by the administration was well founded and whether it is appropriate to bring proceedings before the Court, and on the other, to enable the Court to carry out its review. The extent of the obligation must be considered in the

light of the specific circumstances of the case, in particular the content of the measure, the nature of the grounds relied upon and the interest which the addressee might have in receiving an explanation (Case T-60/94 *Pierrat* v *Court of Justice* [1995] ECR-SC I-A-23 and II-77, paragraphs 31 and 32; Case T-10/99 *Vicente Nuñez* v *Commission* [2000] ECR-SC I-A-47 and II-203, paragraph 41; and Case T-206/00 *Hult* v *Commission* [2002] ECR-SC I-A-19 and II-81, paragraph 27).

68 In the present case, it must be observed that the decision of 10 June 2002 rejecting the applicant's complaint states unequivocally that the latter is not entitled to payment of the expatriation allowance since her employment with the office of the Patronat in Brussels between 15 January 1993 and 15 November 2001 does not fall within the exception for 'work done for another State' laid down in Article 4(1)(a) of Annex VII to the Staff Regulations, and gives the reasons for such an assessment. In addition, the decision of 10 June 2002 states explicitly that, having regard to the fact that there is no possibility of 'disregarding' the reference period to be taken into account (from 16 May 1996 to 15 May 2001), the competent service rightly refused payment of the expatriation allowance to the applicant, as, during that reference period, she lived and carried on her main occupation in Brussels. The reasons provided by the Commission in the decision of 10 June 2002 thus amply fulfil the requirements of the obligation to state grounds.

69 In addition, the applicant acknowledges, in her complaint and in her application (paragraph 17), that she had been informed at her interview with the Personnel and Administration DG to determine her rights on entering the service that the office of the Patronat in Brussels, as a delegation of the Catalonian Government to the Community institutions, could not be considered to be a service of a State within the meaning of Article 4 of Annex VII to the Staff Regulations.

70 It follows from this that the applicant was fully aware of the reasons why the appointing authority refused her payment of the expatriation allowance.

71 Consequently, the plea alleging infringement of the obligation to state grounds must be rejected as unfounded.

4. The fourth plea alleging infringement of the principle of equal treatment

Arguments of the parties

72 The applicant submits that she has been discriminated against in relation to other officials who worked, during the reference period, for delegations of regional representations of other Member States in Brussels, such as those of the *Länder* or the 'United Kingdom Federations', and which were recognised as falling within the exception for 'work done for another State' laid down in Article 4(1) of Annex VII to the Staff Regulations.

73 The applicant points out that equal treatment is a general principle of Community law which applies to the civil service. There is a breach of that principle where two categories of person whose factual and legal circumstances disclose no essential difference are treated differently or where situations which are different are treated in an identical manner (Case T-86/97 *Apostolidis* v *Court of Justice* [1998] ECR-SC I-A-167 and II-521, paragraph 61, and Joined Cases T-114/98 and T-115/98 *Rodríguez Pérez and Others* v *Commission* [1999] ECR-SC I-A-97 and II-529, paragraph 75). The applicant cites the case of Mr W who worked for more than five years for a delegation of a German *Land* in Brussels under a public sector contract concluded in Germany which made provision for secondment to Brussels. In that case the Commission granted the expatriation allowance.

74 The Commission considers that that head of claim must be rejected as unfounded since it did not discriminate in any way. As regards the particular case of Mr W, the applicant's account of the facts is inaccurate since, although it is true that the official in question was granted payment of the expatriation allowance, that decision was made on the basis of the fact that, for part of the reference period applicable to him, he neither resided nor carried on his main occupation in Brussels, and not on the basis that the period of employment for the German *Land* was disregarded. If deemed necessary, the Commission is at the Court's disposal to supply any relevant documents to substantiate that claim.

75 The Commission submits that, in any event, no person may rely, in support of his claim, on unlawful acts committed in favour of another (*Witte* v *Parliament*, cited above, paragraph 15, and Case T-22/99 *Rose* v *Commission* [2000] ECR-SC I-A-27 and II-115, paragraph 39).

Findings of the Court

76 It is settled case-law that the general principle of equal treatment is a fundamental principle of Community law. That principle requires that similar situations are not to be treated differently unless differentiation is objectively justified (Joined Cases 117/76 and 16/77 *Ruckdeschel and Others* [1977] ECR 1753, paragraph 7; Case 810/79 *Überschär* [1980] ECR 2747, paragraph 16, Case 147/79 *Hochstrass* v *Court of Justice* [1980] ECR 3005, paragraph 7; Case T-48/89 *Beltrante and Others* v *Council* [1990] ECR II-493, paragraph 34). Thus, there is a breach of the principle of equal treatment where two classes of persons whose factual and legal situations are not essentially different are treated differently or where different situations are treated in an identical manner (Case T-100/92 *La Pietra* v *Commission* [1994] ECR-SC I-A-83 and II-275, paragraph 50, and Case T-66/95 *Kuchlenz-Winter* v *Commission* [1997] ECR II-637, paragraph 55).

77 It should be remembered that, as the Commission has rightly argued, the principle of equal treatment may be invoked only in the context of a review of legality (Joined Cases 55/71 to 76/71, 86/71, 87/71 and 95/71 *Besnard and Others* v *Commission* [1972] ECR 543, paragraph 39, and Case T-90/92 *Magdalena Fernández* v *Commission*, cited above, paragraph 38) and that no person may rely, in support of a claim, on an unlawful act committed in favour of another (*Witte* v *Parliament*, cited above, paragraph 15, and *Rose* v *Commission*, cited above, paragraph 39).

78 In the present case, it was held in the context of the examination of the plea alleging infringement of Article 4(1)(a) of Annex VII to the Staff Regulations that the expression 'work done for another State' laid down in that provision must be interpreted as not referring to work done for governments of political subdivisions of a State.

79 Therefore, even if the Commission did actually grant the official in question payment of the expatriation allowance on the basis that his employment at the delegation of a representation of a *Land* in Brussels was covered by the exception for 'work done for another State', such an irregularity could not legitimately be submitted by the applicant in support of an allegation of breach of the principle of equality.

80 In any event, it needs to be pointed out that, in response to the Court's written question on the policy that the Commission has been applying in this area over the past 10 years, the latter stressed that it has never applied an administrative policy of disregarding periods of work done for delegations of representations of federated States located in Brussels and of granting payment on the basis of the expatriation allowance to officials who have worked beforehand in such delegations during their respective reference periods. Moreover, the Commission reiterated once again in its response to the Court that the case of Mr W, which the applicant put forward as a basis for an alleged breach of the principle of equal treatment, is not applicable since the expatriation allowance was granted to him on the basis that he had not resided in Brussels throughout the entire reference period applicable to him. However, at the

hearing the applicant did not in any way dispute or react to the explanations given by the Commission as regards the inaccuracy of the facts submitted in relation to the situation of Mr W.

81 In those circumstances, and without there being any need to ask the Commission to produce the personal file of the official in question, it must be held that a breach of the principle of equal treatment has not been established.

82 The plea in law based on infringement of the principle of equal treatment cannot therefore be upheld.

B — *The allowances associated with the expatriation allowance*

83 The applicant claims that, if she is found eligible for the expatriation allowance the case-law must be applied according to which she is automatically entitled to the daily subsistence allowance and the installation allowance (Case C-62/97 P *Commission* v *Lozano Palacios* [1998] ECR I-3273).

84 Given that the Court of First Instance has held that the applicant is not entitled to payment of the expatriation allowance, that claim must be rejected.

85 It follows from all of the foregoing considerations that the application must be dismissed as unfounded in its entirety.

Costs

86 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. However, under Article 88 of those Rules of Procedure, in proceedings between the Communities and their servants the institutions are to bear their own costs. Since the applicant has been unsuccessful, the parties must be ordered to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby:

1. Dismisses the application;

2. Orders the parties to bear their own costs.

Cooke García-Valdecasas Trstenjak

Delivered in open court in Luxembourg on 25 October 2005.

E. Coulon R. García-Valdecasas

Registrar President