

## Case T-298/02

**Anna Herrero Romeu**

**v**

**Commission of the European Communities**

(Officials — Remuneration — Expatriation allowance — Article 4(1)(a) of Annex VII to the Staff Regulations — Work done for another State — Meaning of habitual residence — Statement of grounds — Principle of equal treatment)

Judgment of the Court of First Instance (First Chamber), 25 October 2005 . . II - 4604

### Summary of the Judgment

1. *Officials — Remuneration — Expatriation allowance — Subject-matter — Conditions for granting — Habitual residence or main professional activity in the Member State of employment during the reference period — Exception — Work done for another Member State or for an international organisation — Justification*  
(*Staff Regulations, Annex VII, Art. 4(1)(a)*)

2. *Community law — Interpretation — Principles — Independent interpretation — Limits*
3. *Officials — Remuneration — Expatriation allowance — Conditions for granting — Work done for another Member State or for an international organisation — Definition of ‘State’ — Legal person and unitary subject of international law*  
(Staff Regulations, Annex VII, Art. 4(1)(a))
4. *Officials — Staff Regulations — Extension by analogy of the benefit of a statutory provision — Not included*
5. *Officials — Remuneration — Expatriation allowance — Conditions for granting — Work done for another Member State or for an international organisation — Meaning — Requirement of a direct legal link between the person concerned and the State or international organisation*  
(Staff Regulations, Annex VII, Art. 4(1)(a))
6. *Officials — Remuneration — Expatriation allowance — Conditions for granting — No habitual residence or main professional activity in the Member State of employment during the reference period — Definition of habitual residence*  
(Staff Regulations, Annex VII, Art. 4(1))
7. *Officials — Decision adversely affecting an official — Duty to state reasons — Scope*  
(Staff Regulations, Art. 25, second para.)
8. *Officials — Equal treatment — Limits — Advantage unlawfully granted*

1. The fundamental purpose of the expatriation allowance laid down in Article 69 of the Staff Regulations 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. 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.

The exception 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 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.

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 para. 27)

(see paras 23-24)

2. 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
3. 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.

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. 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.

(see paras 29, 32-33)

4. 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.

(see para. 30)

5. 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. 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 ques-

tion, 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.

(see para. 41)

6. 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.

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.

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.

(see paras 50-51)

(see para. 67)

7. The obligation to state grounds, which results from the combined provisions of Articles 25, second paragraph, and 90(2) of the Staff Regulations, 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
8. The principle of equal treatment which requires that similar situations are not to be treated differently may be invoked only in the context of a review of legality and that no person may rely, in support of a claim, on an unlawful act committed in favour of another.

(see paras 76-77)