

Nadia Costacurta Gelabert

v

Commission of the European Communities

(Officials — Expatriation allowance — Recovery of undue payment — Default interest)

Judgment of the Court of First Instance (Third Chamber), 8 April 1992 II - 1656

Summary of the Judgment

1. *Officials — Actions — Request for information regarding an official's statutory rights — Treated in the same way as a prior administrative complaint under Article 90(2) of the Staff Regulations — Not permissible*
(*Staff Regulations, Art. 90(2)*)
2. *Officials — Remuneration — Expatriation allowance — Official not a national of the Member State where he is employed — Habitual residence during the reference period as a student away from the place of employment — Prior residence at the place of employment — Not relevant — Conditions for grant satisfied*
(*Staff Regulations, Annex VII, Art 4(1)(a)*)

1. A letter does not constitute a prior administrative complaint within the meaning of Article 90(2) of the Staff Regulations where the official, while expressing his disagreement with the measures taken by the administration with regard to him, requests the administration to review its position and then to adopt a reasoned decision, when the

formal appearance of that letter is not that of a complaint, the letter has not been sent through the immediate superior and in accordance with the relevant institution's internal regulations with regard to complaints, and was also not treated by the administration as a complaint within the meaning of the Staff Regulations.

In those circumstances, such a letter constitutes a mere request for information regarding the statutory rights of the person concerned.

2. Article 4(1)(a) of Annex VII to the Staff Regulations is to be interpreted as giving entitlement to an expatriation allowance to an official who is not and never has been a national of the State in whose territory the place where he is employed is situated, and, during the reference period referred to in that provision, has resided permanently outside that State,

even if he resided there prior to that period; it is not necessary to enquire in clear cases whether, in reintegrating himself into the environment of his place of employment, the person concerned is subject to precisely the same extra expense and inconvenience as an official who has never resided there.

The fact that the person concerned resided as a student outside the Member State where he is employed does not preclude him from receiving the expatriation allowance.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)

8 April 1992 *

In Case T-18/91,

Nadia Costacurta Gelabert, an official of the Commission of the European Communities, residing in Mexico, represented by Nicolas Decker, of the Luxembourg Bar, with an address for service in Luxembourg at his Chambers, 16 Avenue Marie-Thérèse,

applicant,

v

Commission of the European Communities, represented by Sean van Raepenbusch, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Roberto Hayder, representing its Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: French.