

**Luisa Sabbatini, née Bertoni,
v European Parliament²**

Case 20/71

Summary

Officials — Expatriation allowance — Marriage of the recipient — Retention of the allowance — Conditions — Status of 'head of household' — Different treatment of male and female officials — Not permissible

(Staff Regulations of Officials of the European Communities, Annex VII)

The withdrawal of the expatriation allowance following the marriage of the recipient, which might be justified in cases in which this change in the family situation is such as to bring to an end the state of 'expatriation', must however be dependent on uniform criteria, irrespective of sex.

Consequently, by rendering the retention of the allowance subject to the acquisition of the status of 'head of household'—as it is defined in Article 1(3) of Annex VII—the Staff Regulations have created an arbitrary difference of treatment between officials.

In Case 20/71

LUISA SABBATINI, née Bertoni, (wife of Sereno Sabbatini), an official of the European Parliament, residing in Soleuvre (Grand Duchy of Luxembourg), represented by Marcel Grégoire, Advocate at the cour d'appel, Brussels, with an address for service in Luxembourg at the Chambers of Tony Biever, 83 boulevard Grande-Duchesse-Charlotte,

applicant,

v

EUROPEAN PARLIAMENT, represented by its Secretary-General, Hans Robert Nord, acting as Agent, assisted by Alex Bonn, a member of the Luxembourg Bar, with an address for service in Luxembourg at the Chambers of the latter, 22 Côte-d'Eich,

defendant,

Application for the annulment of two decisions of the European Parliament depriving the applicant of the benefit of an expatriation allowance,

¹ — Language of the Case: French.

² — CMLR.

THE COURT (Second Chamber),

composed of: H. Kutscher, President of Chamber, A. Trabucchi and P. Pescatore (Rapporteur), Judges,

Advocate-General: K. Roemer

Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts

Miss Luisa Bertoni, an Italian national, entered the service of the European Parliament on 1 January 1960.

On her appointment she was awarded an expatriation allowance as prescribed by Article 69 of the Staff Regulations, which, under Article 4(1)(a) of Annex VII to the said Staff Regulations, is granted in particular to officials.

— who are not and have never been nationals of the State in whose European 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.

On 4 November 1970 Miss Bertoni married Sereno Sabbatini, who is not an official of the Communities.

On 17 November 1970, the Director-General for Administration of the European Parliament informed Mrs Sabbatini that consequent upon her marriage she would lose, as from 1 December 1970, her right to an expatriation allowance in accordance with Article 4(3) of Annex VII to the Staff Regulations, under which:

‘An official who marries a person who at the date of marriage does not qualify for the allowance shall forfeit the right to expatriation allowance unless that official thereby becomes a head of household.’

On 15 February 1971 Miss Sabbatini asked the Director-General for Administration of the European Parliament to review the decision depriving her of the expatriation allowance. On 24 February 1971 the Director-General for Administration of the Parliament informed Mrs Sabbatini that he could not, according to the provisions of the Staff Regulations then in force, accede to her request.

II — Procedure

The application instituting the proceedings was lodged at the Registry of the Court on 26 April 1971.

The written procedure followed the normal course.

Having heard the report of the Judge-Rapporteur and the views of the Advocate-General, the Court (Second Chamber) decided to open the oral procedure without any preparatory inquiry.

By Order of 3 December 1971 the Court (Second Chamber) joined the present Case to Case 32/71 (*Monique Chollet, née*

Bauduin, v Commission of the European Communities) for the purpose of the oral procedure.

By Order of 13 January 1972 the President of the Court designated Mr Karl Roemer as Advocate-General in Joined Cases 20/71 and 32/71, in place of Mr A. Dutheillet de Lamothé, deceased.

The parties presented oral argument at the hearing on 20 January 1972.

The Advocate-General delivered his opinion at the hearing on 24 February 1972.

III — Conclusions of the parties

The *applicant* claims that the Court should:

- (a) annul the decision of the European Parliament, of which she was informed by letter of 17 November 1970, according to which, following her marriage, she would, as from 1 December 1970, lose her right to the expatriation allowance on the ground that her husband had resided in Luxembourg since his birth;
- (b) annul the decision of the European Parliament, of which she was informed by letter of 24 February 1971, rejecting the non-contentious request which she had made on 15 February 1971 with respect to the decision of 17 November 1970;
- (c) rule that notwithstanding her marriage she has and has always had the right to the expatriation allowance by virtue of Article 4 of Annex VII to the Staff Regulations;
- (d) order the defendant to bear the costs.

The *defendant* contends that the Court should:

- (a) declare the application unfounded both as regards its principal and its alternative submissions and dismiss it;
- (b) make an order as to costs in accordance with the relevant provisions.

IV — Submissions and arguments of the parties

The submissions and arguments of the parties may be summarized as follows:

A — *Illegality of Article 4(3) of Annex VII to the Staff Regulations*

The *applicant* maintains that Article 4(3) of Annex VII to the Staff Regulations on which the contested decisions are founded is illegal because it is contrary, first, to the general principle of law prohibiting any discrimination based on sex and providing for equal pay for men and women, and, secondly, to Article 119 of the EEC Treaty which sanctions the principle of equal pay for male and female workers.

(a) The Court of Justice has the special task of ensuring the observance of the general principles of law, even though these are not necessarily embodied in any written text. General legal principles can be relied upon against measures adopted by the Community institutions. They derive not solely from the written or unwritten law of the Community but also from international law and from references to principles enshrined in the legal systems of the Member States.

There can be no doubting the existence in Community law of the general principle of law sanctioning the equality of the sexes as regards the remuneration, in the widest sense, of workers.

(b) This principle is further sanctioned by several written texts, such as Convention No 100 (1951) of the International Labour Organization (ILO), the Resolution of the Conference of Member States of the Community of 30 December 1961 and Article 119 of the EEC Treaty.

In particular, Article 119 proclaims the principle of equal pay for male and female workers, the concept of pay meaning not only 'the ordinary ... wage or salary' but also 'any other consideration ... which the worker receives, directly or indirectly, in respect of his employment from his employer'. It is incontestable that the expatriation allowance constitutes a part of

the worker's pay, within the meaning of this provision.

(c) By providing that 'An official who marries a person who at the date of marriage does not qualify for the allowance shall forfeit the right to expatriation allowance unless that official thereby becomes a head of household', Article 4(3) of Annex VII to the Staff Regulations creates a flagrant inequality between male and female officials placed in the same position. The link between the retention of the right to the allowance and the status of head of household leads to different results according to the sex of the official concerned; in fact, a married male official is automatically considered by the Staff Regulations to be a head of household (Article 1(3)(a) of Annex VII), whereas a married female official is so regarded only on a very exceptional basis. This link is entirely artificial, since the expatriation allowance is justified by changes in the living conditions of officials and is intended to compensate for the additional expenditure which officials incur in maintaining family, financial and other ties with their country of origin—which do not come to an end upon marriage. The status of head of household—a concept which is in fact no longer recognized by the civil law of four of the Member States of the Communities—is irrelevant as regards the material, family, psychological and emotional consequences of expatriation. Article 4(3) of Annex VII to the Staff Regulations therefore renders the grant of the expatriation allowance subject to a criterion which is extraneous to that allowance and leads to flagrant inequality between male and female officials.

The Commission, in reply to a parliamentary question, has itself recognized that the link established between the right to the expatriation allowance and the status of head of household leads in facts, a regards the grant of that allowance, to different results according to sex. According to the principle of equality, a difference in treatment is legally admissible only where there is a well-founded relationship between the criterion adopted and the difference between the rules; that is not the case here.

Since the Community institutions have the task of eradicating any discrimination as to pay which still exists between male and female workers at the level of domestic legislative systems, those same institutions cannot be allowed to apply to their own officials a legal provision which clearly sanctions the same discrimination.

In the course of the oral procedure the *defendant* questioned the admissibility of the first submission in the application. The Parliament has merely applied a provision of the Staff Regulations of which it is not the author. Since it has neither the authority nor the power to review the legality of this provision the question arises whether it can defend an action which casts doubt upon that legality.

There is also the question whether the applicant has not gone beyond the legal limits laid down in Article 91 of the Staff Regulations for appeals by officials.

In any event, the plea of illegality raised by the applicant is wellfounded neither in law nor in fact.

(a) The Court of Justice ensures the protection of fundamental rights 'drawing its inspiration from the constitutional traditions common to the Member States'. The 'general principle of law' relied on by the applicant is not contained in the 'fundamental laws' of the six Member States of the Communities, nor is it rooted in their legislation. On the contrary, the legal status of married women differs as between the various national legislative systems, which have by no means abolished all differences between the rights and duties of the husband and those of his wife.

(b) Far from proclaiming the principle of equality between men and women, the Treaty, in Article 119 merely recognizes equality in a particular sphere and for a specific objective, as a Community social provision.

(c) Article 4(3) of the Annex VII to the Staff Regulations does not give the male sex pre-eminence; rather, it is Article 1 of Annex VII, defining the status of head of household and referred to by Article 4(3), which is challenged by this application.

The submission of illegality, in so far as it is directed against Article 4(3) of Annex VII, is unfounded as to the facts.

In law, it must be observed that the institution and concept of head of household, as they appear in the Staff Regulations and also in the national laws of most of the Member States, create no discrimination whatsoever between the sexes; they entail, not the superiority of one spouse over the other, but the management of matters of family concern by one of the spouses rather than the other. The Staff Regulations do no more than reflect, without creating it, a differentiation between the legal position of the husband and that of his wife, deriving from the rules on the legal status of married women under the domestic legislation governing the nationality of married women, the matrimonial and family status of husband and wife, the relationship between husband and wife and the rights and duties of each in marriage.

Furthermore, the contested provision corresponds fully to the basic purpose of the expatriation allowance: the Staff Regulations presuppose, with good reason, that the establishment, through marriage, of a new household whose head does not satisfy the conditions for entitlement to the expatriation allowance removes all right to that allowance.

B — *Infringement of Article 4(3) of Annex VII to the Staff Regulations*

The *applicant*, as an alternative submission, complains that the contested decisions misinterpreted Article 4(3) of Annex VII to the Staff Regulations and consequently wrongly applied it. That provision relates only to the case of marriage of a Community official to another Community official who does not, at the date of marriage, satisfy the requirements for entitlement to the expatriation allowance.

(a) The question whether, at a given date, a person satisfies the requirements for entitlement to the expatriation allowance can relate, by definition, only to officials of the Community institutions. The terminology of Article 4(3) of Annex VII is by no means decisive. The first requirement

for the grant of the allowance is that the person concerned should be in the service of the Communities; the other conditions are unascertainable with regard to a person who is not in the service of the Communities unless the provisions are to be distorted and interpreted in an arbitrary manner.

(b) In Article 4(2) and (3) of Annex VII, the Staff Regulations intended to examine and regulate two different cases: paragraph (2) relates to the marriage of two Community officials who are both entitled to the expatriation allowance, whereas paragraph (3) relates to the marriage of two officials, one of whom is not entitled to that allowance.

(c) Since Article 4(3) is a provision which derogates from a general rule it must be interpreted restrictively; such an interpretation, furthermore would limit the consequences of this provision with respect to female officials, which are, to say the least, extremely unjust.

The *defendant* rebuts the applicant's argument in the following manner:

(a) The very wording of paragraphs (2) and (3) of Article 4 of Annex VII is at variance with the parallelism which the applicant claims to discern between these two provisions: by its use of the term 'person', which is unusual in the Staff Regulations, Article 4(3) indicates that it does not relate solely to officials or servants of the Communities but also to all other persons.

There is nothing to prevent an examination as to whether a person who is not in the service of the Communities satisfies the requirements (as to nationality, residence, occupation or performance of duties) laid down by Article 4(1) of Annex VII for the grant of the expatriation allowance.

(b) Article 4(3) of Annex VII does not derogate from a general rule; Article 4 as a whole governs the problem of the grant of the expatriation allowance.

(c) The basic purpose of the expatriation

allowance dictated the solution set out in Article 4(3) of Annex VII; there can therefore be no question of unjust consequences deriving from the application of this provision.

Furthermore, the provisions of the Staff Regulations should be applied in accordance with their terminology and in a consistent manner.

(d) The applicant's argument would itself create discrimination; it would have the effect of depriving a female official of her expatriation allowance by reason of her marriage to an official who is not himself entitled to the allowance, but of entitling her to retain it if she marries a person who is not in the service of the Communities.

Grounds of judgment

- 1 The application seeks the annulment of the decisions of 17 November 1970 and 24 February 1971 by which, following the applicant's marriage, the administration of the European Parliament, acting in pursuance of Article 4(3) of Annex VII to the Staff Regulations, withdrew the expatriation allowance which the latter had previously received.
- 2 In support of her application, the applicant has advanced two submissions, based on the illegality of Article 4(3) of Annex VII to the Staff Regulations and, alternatively, on an infringement of that provision.
- 3 As her principal submission the applicant claims that Article 4(3) of Annex VII to the Staff Regulations, on which the contested decisions are founded, is illegal because it is contrary to a general principle of law prohibiting any discrimination on grounds of sex and, more particularly, because it is contrary to Article 119 of the EEC Treaty relating to the principle of equal pay for male and female workers.
- 4 Under Article 4(3) of Annex VII an official 'who marries a person who at the date of marriage does not qualify for the allowance shall forfeit the right to expatriation allowance unless that official thereby becomes a head of household'.
- 5 Although this provision does not of itself create any difference of treatment as between the sexes, it must however be examined in conjunction with Article 1(3) of the same Annex, which provides that the term 'head of household' normally refers to a married male official, whereas a married female official is considered to be head of household only in exceptional circumstances, in particular in cases of invalidity or serious illness of the husband.
- 6 It is thus clear that the provision the validity of which is contested does in fact create a difference of treatment as between male and female officials inasmuch as it renders the retention of the expatriation allowance conditional upon the acquisition of the status of head of household within the meaning of the Staff Regulations.

- 7 It is therefore necessary to examine whether this difference of treatment is such as to affect the validity of the contested provision of the Staff Regulations.
- 8 The purpose of the expatriation allowance is to compensate for the special expenses and disadvantages resulting from entry into the service of the Communities for those officials who — in the conditions more fully set out in Article 4(1) of Annex VII — are thereby obliged to change their place of residence.
- 9 Article 4, taken as a whole, indicates that the expatriation allowance is paid to married officials not only in consideration of the personal situation of the recipient, but also of the family situation created by the marriage.
- 10 Thus Article 4(3) takes into account the new family situation entered upon by the official when he or she marries a person who does not satisfy the conditions for the grant of the expatriation allowance.
- 11 The withdrawal of the allowance following the marriage of the recipient might be justified in cases in which this change in the family situation is such as to bring to an end the state of 'expatriation' which is the justification for the benefit in question.
- 12 In this respect, the Staff Regulations cannot however treat officials differently according to whether they are male or female, since termination of the status of expatriate must be dependent for both male and female officials on uniform criteria, irrespective of sex.
- 13 Consequently, by rendering the retention of the allowance subject to the acquisition of the status of 'head of household' — as it is defined in Article 1(3) — the Staff Regulations have created an arbitrary difference of treatment between officials.
- 14 Consequently, the decisions taken with regard to the applicant are devoid of any legal basis and must be annulled in pursuance of Article 184 of the EEC Treaty.
- 15 In these circumstances, there is no need to give a decision on the alternative submission.

Costs

- 16 Under the first subparagraph of Article 69(2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs.
- 17 Since the defendant has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

Upon reading the pleadings;

Upon hearing the report of the Judge-Rapporteur;

Upon hearing the parties;

Upon hearing the opinion of the Advocate-General;

Having regard to the Treaty establishing the European Economic Community, especially Articles 119 and 184;

Having regard to the Staff Regulations of Officials, especially Annex VII;

Having regard to the Protocols on the Statute of the Court of Justice;

Having regard to the Rules of Procedure,

THE COURT (Second Chamber)

hereby:

- 1. Annuls the decisions of 17 November 1970 and 24 February 1971 by which the European Parliament withdrew the applicant's expatriation allowance;**
- 2. Orders the European Parliament to bear the costs of the proceedings.**

Kutscher

Trabucchi

Pescatore

Delivered in open court in Luxembourg on 7 June 1972.

A. Van Houtte

H. Kutscher

Registrar

President of the Second Chamber

OPINION OF MR ADVOCATE-GENERAL KARL ROEMER DELIVERED ON 24 FEBRUARY 1972¹

*Mr President,
Members of the Court,*

Article 4 of Annex VII to the Staff Regulations of Officials of the Communities provides that under certain conditions officials are entitled to an expatriation allowance. Mrs Sabbatini (née Bertoni) and Mrs Chollet (née Bauduin), who are the applicants in Cases 20/71 and 32/71 respectively on which I am giving my opinion

today (in future I shall refer to them as the first applicant and the second applicant), were granted such an allowance. In fact, on taking up her appointment in Luxembourg, the first applicant, who entered the service of the European Parliament on 1 January 1960 as an official in Grade C/1, was of Italian nationality and had not during the five years ending six months before she entered the service resided or carried on her main occupation within the

¹ — Translated from the French version.