Reports of Cases

Case T-592/18

Katarzyna Wywiał-Prząda
v
European Commission

Judgment of the General Court (Fifth Chamber), 28 November 2019

(Civil service — Contract staff — Remuneration — Decision refusing to grant expatriation allowance — Article 4(1)(a) of Annex VII to the Staff Regulations — Work done for another State — Diplomatic status — Five-year reference period)

1. *Officials — Remuneration — Expatriation allowance — Conditions for granting — Habitual residence outside the Member State of employment during the reference period — Calculation of the period — Periods spent in the service of a State or international organisation to be left out of account*
(Staff Regulations, Annex VII, Art. 4(1)(a))

(see paragraphs 23-25)

2. *Officials — Remuneration — Expatriation allowance — Conditions for granting — Work done for another State or international organisation — Concept — Requirement for a direct legal connection between the person concerned and the State or international organisation — Wife of a diplomatic agent — Lack of such a link*
(Staff Regulations, Annex VII, Art. 4(1)(a))

(see paragraphs 27, 33, 35-37)

3. *Officials — Remuneration — Expatriation allowance — Conditions for granting — No habitual residence or main occupation in the Member State of employment during the reference period — Concept of habitual residence*
(Staff Regulations, Annex VII, Art. 4(1)(a))

(see paragraphs 55, 59, 61, 64-67)

Résumé

In the judgment of 28 November 2019 in *Wywiał-Prząda* v *Commission* (T-592/18), the Court dismissed an application made by a member of the contract staff for the annulment of the decision of the European Commission of 23 November 2017 refusing to grant her an expatriation allowance (‘the contested decision’).

The applicant, a Polish national, arrived in Belgium on 22 September 2010, following the appointment of her husband as a diplomatic advisor to the Permanent Delegation of the Republic of Poland to the North Atlantic Treaty Organisation. From 2 July 2010, the applicant held a diplomatic passport, issued by the Polish Ministry of Foreign Affairs. The applicant surrendered her diplomatic passport and her name was entered on the register of non-nationals in Belgium on 7 June 2013. The applicant was then employed by two Belgian companies supplying services to the European Commission, before being recruited by the Commission as a member of the contract staff. By decision of 23 November 2017, the authority empowered to conclude contracts of employment for the Commission refused to grant an expatriation allowance to the applicant.

Under Article 4(1)(a) of Annex VII to the Staff Regulations of Officials of the European Union ('the Staff Regulations'), applicable in this case, an expatriation allowance is payable to staff members 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 that provision, circumstances arising from work done for another State or for an international organisation are not to be taken into account. Furthermore, according to the case-law of the Court of Justice,[1] the staff member loses the benefit of the expatriation allowance only if he had his habitual residence or carried on his main occupation in the country of his place of employment throughout the reference period.

In support of her action brought against the said decision, the applicant raised a single plea, alleging infringement of the aforementioned provision of the Staff Regulations.

The first part of that plea alleged an infringement of the applicant's diplomatic status. The applicant claimed in that regard that the period during which she resided in Belgium under diplomatic status, as the wife of a diplomatic agent, should have been left out of account when calculating the relevant reference period in order to determine her entitlement to an expatriation allowance.

In that regard, the only factor hindering the formation of a tie with the country of employment is the provision of services while being functionally integrated within the diplomatic representation of another State or an international organisation. It follows that, although the relevant provision of the Staff Regulations does not cover only situations where the person concerned is in a working relationship in the strict sense, the fact remains that the concept of 'circumstances arising from work done for another State or for an international organisation' always requires there to be a direct legal connection between the person concerned and the State or international organisation in question, as in the case of a traineeship or an expert contract, for example. However, that provision cannot be extended to the wife of a diplomatic agent who has benefited, in that capacity, from certain privileges and immunities pursuant to the Vienna Convention,[2] but who cannot claim a direct legal connection of that sort.

The second part of the single plea alleged an error in applying the concept of 'habitual residence'. The applicant claimed, in that regard, that she did not have the intention to give her presence in Belgium the lasting character required to fall within the scope of the relevant provision of the Staff Regulations. In assessing the characteristics and material factors of the situation in question, in

[1] Judgment of the Civil Service Tribunal of 18 June 2015 in *Pondichie* v *Commission* (F-50/14, EU:F:2015:62, paragraph 35).

[2] Vienna Convention on Diplomatic Relations of 18 April 1961.

particular the degree of the applicant's integration into the country of employment, the Court held that this part of the single plea was also unfounded.

In the light of the foregoing, the Court dismissed the applicant's action and upheld the contested decision.