Reports of Cases

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)

In Case T-592/18,

Katarzyna Wywiał-Prząda, residing in Wezembeek-Oppem (Belgium), represented by S. Orlandi and T. Martin, lawyers,

applicant,

v

European Commission, represented by T. Bohr and D. Milanowska, acting as Agents,

defendant,

ACTION under Article 270 TFEU for the annulment of the Commission Decision of 23 November 2017 refusing to grant the applicant an expatriation allowance,

THE GENERAL COURT (Fifth Chamber),

composed of D. Gratsias, President, A. Marcoulli and R. Frendo (Rapporteur), Judges,

Registrar: L. Ramette, Administrator,

having regard to the written part of the procedure and further to the hearing on 9 July 2019,

gives the following

Judgment

Background to the dispute

1 The applicant is a Polish national. She arrived in Belgium on 22 September 2010 following the appointment of her husband as a diplomatic adviser to the Permanent Delegation of the Republic of Poland to the North Atlantic Treaty Organisation (NATO).

* Language of the case: French.

2 From 2 July 2010, the applicant held a diplomatic passport issued by the Polish Ministry of Foreign Affairs.

3 From 7 January 2011 to 31 December 2011, the applicant worked as a secretary at the Permanent Representation of the Republic of Poland to the European Union.

4 From 9 November 2012 to 11 January 2013, she directed discussion groups in Brussels (Belgium) on behalf of a non-profit-making organisation, for which she received expenses.

5 The applicant surrendered her diplomatic passport and her name was entered on the register of non-nationals in Woluwe-Saint-Pierre (Belgium) with effect from 7 June 2013.

6 From 16 June 2014 to 31 December 2015 and from 4 January 2016 to 31 August 2017, the applicant was employed successively by two Belgian companies supplying services to the European Commission.

7 On 9 September 2016, the applicant's husband returned to Poland at the end of his diplomatic mission. The applicant remained in Belgium with their son.

8 On 1 September 2017, the applicant was recruited by the Commission as a member of the contract staff.

9 By decision of 23 November 2017, the authority empowered to conclude contracts of employment for the Commission ('the AECE') refused to grant the applicant an expatriation allowance ('the contested decision').

10 The applicant brought a complaint against the contested decision on 21 February 2018. That complaint was rejected by a decision of the AECE of 18 June 2018, notified on the same day. The AECE began by determining the 'five years ending six months before [the official] entered the service' ('the reference period'), referred to in Article 4(1)(a) of Annex VII to the Staff Regulations of Officials of the European Union ('the Staff Regulations'), made applicable to contract staff by Articles 21 and 92 of the Conditions of Employment of Other Servants of the European Union. The AECE determined that reference period as running from 1 March 2012 to 28 February 2017. The AECE then stated its reasons for rejecting the applicant's complaint, which were that she had been resident in Belgium since 22 September 2010, had carried on an occupation there and had continued to live there after the departure of her husband in September 2016.

Procedure and forms of order sought

11 By application lodged at the Court Registry on 28 September 2018, the applicant brought this action.

12 The Commission lodged its defence on 14 December 2018.

13 On 14 February 2019, the applicant lodged her reply.

14 On 1 April 2019, the Commission lodged its rejoinder.

15 On a proposal from the Judge-Rapporteur, the Court (Fifth Chamber) decided to open the oral part of the procedure and, by way of measures of organisation of procedure pursuant to Article 89 of the Rules of Procedure, put written questions to the parties and invited them to answer those questions at the hearing.

16 The parties presented oral argument and answered oral and written questions put by the Court at the hearing on 9 July 2019.

17 The applicant claims that the Court should:

– annul the contested decision;

– order the Commission to pay the costs.

18 The Commission contends that the Court should:

– dismiss the action;

– order the applicant to pay the costs.

Law

19 The applicant raises a single plea, alleging infringement of Article 4(1)(a) of Annex VII to the Staff Regulations. The plea can be divided into two parts, the first part alleging infringement of her diplomatic status and the second alleging an error in applying the concept of habitual residence.

The first part of the plea, alleging infringement of the applicant's diplomatic status

20 The applicant submits that, in her capacity as the wife of a diplomatic agent, she enjoyed diplomatic status from 22 September 2010, the date of her arrival in Belgium, until 16 June 2013, the date on which she surrendered her diplomatic passport. As a result of that diplomatic status and pursuant to the second sentence of the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations, she submits that she should have been entitled to have that period left out of account. Leaving it out of account would have led to the reference period commencing on 1 May 2009, at a time when she resided and worked in Poland and had no ties to Belgium. A staff member loses the benefit of the expatriation allowance only if he or she had his or her habitual residence or carried on his or her main occupation in the country of his or her place of employment throughout the reference period. As that is not the case here, the applicant considers that she should be granted an expatriation allowance.

21 Article 4(1) of Annex VII to the Staff Regulations provides as follows:

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

(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.

(b) to officials who are or have been nationals of the State in whose territory the place where they are employed is situated but who during the ten years ending at the date of their entering the service habitually resided outside the European territory of that State for reasons other than the performance of duties in the service of a State or of an international organisation.'

22 There are, therefore, two parts to Article 4(1)(a) of Annex VII to the Staff Regulations. The first part sets out the two cumulative conditions which officials must, as a rule, fulfil in order to qualify for the expatriation allowance: to have never been nationals of the State in whose territory the place where they are employed is situated and not to have habitually resided or carried on their main occupation within the European territory of that State, during the five years ending six months before they entered the service; the second part provides, by way of exception to that principle, that circumstances arising from work done for another State or for an international organisation are not to be taken into account. Periods relating to such work are, therefore, left out of account.

23 Furthermore, under Article 4(1)(a) of Annex VII to the Staff Regulations, the official or staff member concerned is to lose the benefit of the expatriation allowance only if he or she had his or her habitual residence or carried on his or her main occupation in the country of his or her place of employment throughout the reference period (see, to that effect, judgment of 18 June 2015, *Pondichie* v *Commission*, F-50/14, EU:F:2015:62, paragraph 35). In the present case, the effect of leaving out of account the period from 22 September 2010 to 16 June 2013, during which time the applicant was in Belgium with diplomatic status as the wife of a diplomatic agent, would be to bring the start of the reference period forward to 6 June 2009 rather than 1 May 2009 as claimed by the applicant, in other words to a time when she resided and worked in Poland and had no ties to Belgium.

24 It is, therefore, necessary to rule on whether the concept of 'circumstances arising from work done for another State', used in the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations, must be interpreted as covering the period during which the applicant had diplomatic status as the wife of a diplomatic agent.

25 The reason why the period relating to circumstances arising from work done in the State of employment, for another State or for an international organisation, is left out of account is that the performance of such work is presumed to have the effect of preserving a specific tie of the party concerned linking him or her to that other State or international organisation, thereby hindering the creation of a lasting tie to the State of employment and thus his or her sufficient integration in the society of the State of employment (judgment of 13 July 2018, *Quadri di Cardano* v *Commission*, T-273/17, EU:T:2018:480, paragraph 49).

26 That being the case, the applicant submits that, as the wife of a diplomatic agent, she benefited from various privileges and immunities pursuant to the Vienna Convention on Diplomatic Relations of 18 April 1961 ('the Vienna Convention'). According to the applicant, that diplomatic status, in itself, hinders the creation of lasting ties to the State of employment. It should, therefore, be classified as 'circumstances arising from work done for another State' within the meaning of the second sentence of the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations.

27 In paragraph 14 of its judgment of 2 May 1985, *De Angelis* v *Commission* (246/83, EU:C:1985:165), the Court of Justice held that that provision applied only to circumstances arising from work done by the actual official entering the service and could not be extended to another person.

28 However, the applicant submits that that case-law does not apply to her because, in the case giving rise to the judgment of 2 May 1985, *De Angelis* v *Commission* (246/83, EU:C:1985:165), the party concerned, who had accompanied her husband, an official of the European Community, to Belgium, did not have diplomatic status.

29 Nevertheless, it must be noted that, in the judgment of 2 May 1985, *De Angelis* v *Commission* (246/83, EU:C:1985:165), the lack of diplomatic status was not mentioned by the Court of Justice as a reason for its finding that the party concerned was not entitled to the expatriation allowance.

30 Admittedly, in its judgment of 21 June 2007, *Commission* v *Hosman-Chevalier* (C-424/05 P, EU:C:2007:367, paragraphs 42 and 43), cited by the applicant, the Court of Justice referred to the privileges, immunities and the special status from which the party concerned benefited, in finding that she had a specific tie linking her to another State which hindered her integration in the country of employment. However, the question at issue in that case was whether the applicant, who worked at the *Länder* Liaison Office of the Republic of Austria, had worked for that State and therefore had a tie to it. In that judgment, the Court of Justice deduced such a tie from a number of factors. The first of those factors was that the staff of a permanent representation must be considered to be working for the Member State concerned and, consequently, to be in a situation of expatriation, since they are part of the structures of that representation. The second factor was that, although the person concerned worked at the *Länder* Liaison Office, she was a member of staff of the Permanent Representation of the Republic of Austria and was subject to the supervisory authority of the Austrian ambassador, so that she had to be regarded as having worked for the Austrian State. Lastly, the third factor was that her status was the same as that of other officials posted to that representation (judgment of 21 June 2007, *Commission* v *Hosman-Chevalier*, C-424/05 P, EU:C:2007:367, paragraphs 41 and 42). Thus, the special status referred to by the Court of Justice in paragraph 43 of that judgment cannot be understood as deriving solely from the privileges and immunities from which the person concerned had benefited. On the contrary, the Court of Justice placed more emphasis on the fact that she had worked for the Republic of Austria in its Permanent Representation.

31 In its later judgment of 29 November 2007, *Salvador García* v *Commission* (C-7/06 P, EU:C:2007:724, paragraph 51), also cited by the applicant, the Court of Justice referred to its judgment of 21 June 2007, *Commission* v *Hosman-Chevalier* (C-424/05 P, EU:C:2007:367), in finding that the special status of the person concerned, as a member of the staff of a permanent representation, resulted in her having a specific tie linking her to the Member State concerned and in finding also that that privileged status, which allowed her to enjoy various privileges and immunities, in itself created an obstacle which prevented the person concerned from forming a lasting tie linking her to the State to which she was posted and, consequently, from integrating to the requisite degree in the society of that country. However, in paragraph 50 of the judgment of 29 November 2007, *Salvador García* v *Commission* (C-7/06 P, EU:C:2007:724), the Court of Justice stated, again with reference to the judgment of 21 June 2007, *Commission* v *Hosman-Chevalier* (C-424/05 P, EU:C:2007:367), that functional integration within the permanent representation constituted a decisive factor in order for the official concerned to be considered to have worked for another State (see also, to that effect, judgment of 24 January 2008, *Adam* v *Commission*, C-211/06 P, EU:C:2008:34, paragraph 45).

32 Lastly, following on from the judgment of 29 November 2007, *Salvador García* v *Commission* (C-7/06 P, EU:C:2007:724), the Court of Justice held, in its judgment of 24 January 2008, *Adam* v *Commission* (C-211/06 P, EU:C:2008:34, paragraph 49), that, for the purposes of interpreting the expression 'work done for another State' in the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations, only work done within the permanent representation of a State other than the State of employment is to be considered relevant.

33 It follows that, even in the case-law cited by the applicant, the only factor hindering the formation of a tie with the country of employment is working for, while being functionally integrated within, the diplomatic representation of another State or an international organisation.

34 However, the applicant argues that the wording 'circumstances arising from work done for another State or for an international organisation' used in the second sentence of the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations covers situations other than those arising solely from the performance of duties for that State or organisation.

35 The case-law is indeed fixed in the sense that that provision cannot be limited only to individuals who have been members of staff of a State other than the State of employment, or of an international organisation, since it covers all 'circumstances arising from work done' for such a State or organisation (judgments of 25 October 2005, *Salazar Brier* v *Commission*, T-83/03, EU:T:2005:371, paragraph 45, and of 25 October 2005, *De Bustamante Tello* v *Council*, T-368/03, EU:T:2005:372, paragraph 42). As the applicant observes, that case-law is explained by the fact that the scope of that expression is broader than that of the expression 'performance of duties' used in Article 4(1)(b) of Annex VII to the Staff Regulations (judgment of 30 March 1993, *Vardakas* v *Commission*, T-4/92, EU:T:1993:29, paragraph 36).

36 It follows that the second sentence of the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations does not cover only situations where the person concerned is in an employment relationship in the strict sense (see, to that effect, judgment of 3 May 2001, *Liaskou* v *Council*, T-60/00, EU:T:2001:129, paragraph 50). The fact remains, however, that, according to the same case-law, the concept of 'circumstances arising from work done for another State or for an international organisation' relates only to situations in which the work results from a direct legal connection between the person concerned and the State or international organisation in question, for example in the case of a traineeship or an expert contract (see, to that effect, judgments of 25 October 2005, *Salazar Brier* v *Commission*, T-83/03, EU:T:2005:371, paragraph 45, and of 25 October 2005, *De Bustamante Tello* v *Council*, T-368/03, EU:T:2005:372, paragraph 42).

37 Consequently, the second sentence of the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations 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, but who cannot claim a direct legal connection of that kind. In that regard, the Commission rightly states that the applicant's right to diplomatic status was not a personal right, but a derived right, intended to facilitate the family life of diplomatic agents, that she acquired through her husband's duties.

38 The applicant also submits that, in the examination of her degree of integration in Belgium which, ultimately, determines the grant of the expatriation allowance, it should not be forgotten that, pursuant to the Vienna Convention and to a Belgian State Circular of 15 May 2014 on the exercise of gainful professional or commercial activity by members of diplomatic missions or

consular posts or by their family members ('the Belgian State Circular'), she was unable to carry out any professional activity in Belgium unless she surrendered her diplomatic passport and thus renounced the diplomatic status granted to members of the family of a diplomatic agent.

39 It must be borne in mind, in that regard, that the concept of expatriation depends, inter alia, on the personal situation of the official, namely on his or her degree of integration in the State of employment resulting, for example, from having previously carried on an occupation in that State (see, to that effect, judgments of 24 January 2008, *Adam* v *Commission*, C-211/06 P, EU:C:2008:34, paragraph 38, and of 13 July 2018, *Quadri di Cardano* v *Commission*, T-273/17, EU:T:2018:480, paragraph 44). Consequently, if it were shown to be impossible to carry on an occupation, that could be a factor capable of negating that integration and of establishing, on the contrary, a situation of expatriation.

40 It must, however, be noted that Article 42 of the Vienna Convention provides that 'a diplomatic agent shall not in the receiving State practise for personal profit any professional or commercial activity' and there is no provision extending the scope of that prohibition to the members of the agent's family. Consequently, unlike diplomatic agents themselves, their family members may practise a professional or commercial activity in the receiving State, subject to the laws and regulations of that State and, therefore, subject, where applicable, to any authorisations required by any foreigner of the same nationality, such as a work permit for example. However, in her capacity as a national of an EU Member State, the applicant was exempt from even that obligation. Furthermore, even if they practise a professional or commercial activity, the members of a diplomatic agent's family as a rule retain their privileges and immunities as provided and circumscribed by Articles 29 to 36 of the Vienna Convention, which apply to them pursuant to Article 37(1) thereof. In fact, under Article 31(1)(c) of the Vienna Convention, only immunity from civil and administrative jurisdiction is waived for actions relating to any professional or commercial activity. There is no advance waiver of criminal immunity.

41 Although it post-dates the period which the applicant claims should have been left out of account, the Belgian State Circular confirms the foregoing.

42 It must also be noted in the light of all of the foregoing that, unlike the applicant herself, her husband was in no case permitted to practise a professional or commercial activity in Belgium. The applicant and her husband were not, therefore, in the same legal position.

43 The applicant also relies on Article 57 of the Vienna Convention on Consular Relations of 24 April 1963. However, she describes her husband's duties as being those of a diplomatic agent and, more specifically, of an 'adviser to the Permanent Delegation of the Republic of Poland to NATO'. Therefore, as it has not been established how those duties fall within the scope of that convention, it must be held that the convention is irrelevant to the present case.

44 The applicant also submits that there is no reason why an agent performing duties in the country of employment for a State or an international organisation should have a greater degree of expatriation than his or her spouse who also lived there and did not perform such duties, yet still benefited from diplomatic status.

45 As has already been explained (paragraph 39 above), the concept of expatriation depends, inter alia, on the degree of integration of the person concerned in the country of employment. Although it may be presumed that an individual retains a specific tie linking him or her to his or her State of origin when he or she works in the delegation or embassy of that State, and that this

hinders the creation of a lasting tie to the country of employment (see, to that effect, judgments of 21 June 2007, *Commission* v *Hosman-Chevalier*, C-424/05 P, EU:C:2007:367, paragraph 38, and of 13 July 2018, *Quadri di Cardano* v *Commission*, T-273/17, EU:T:2018:480, paragraph 49), the same is not necessarily true of his or her spouse, who does not share the same professional environment dedicated to the service of that State and who therefore has a broader range of possibilities for integrating into the society of the host country.

46 Lastly, the applicant cannot successfully argue that, if her husband had been recruited by the EU institutions on the same date as her, the period during which he benefited from diplomatic status would have been left out of account. Contrary to what the applicant maintains, it is clear from paragraphs 27 to 37, 40 and 45 above that she and her husband were not in the same legal or factual situation.

47 In conclusion, the expatriation of a person, giving rise to an entitlement to an expatriation allowance, is independent of the diplomatic status which he or she enjoys under international law (see, to that effect, judgment of 30 March 1993, *Vardakas* v *Commission*, T-4/92, EU:T:1993:29, paragraph 40). That is all the more true where, like the applicant in the present case, that person benefits from that status without being a member of the staff of an international organisation or of the representation of a State other than the State of employment.

48 Consequently, in determining the reference period as 1 March 2012 to 28 February 2017, rather than putting it back to 6 June 2009, the AECE did not infringe the second sentence of the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations.

49 It follows from all the above that the first part of the applicant's plea must be rejected.

The second part of the plea, alleging an error in applying the concept of habitual residence

50 The applicant submits, in the alternative, that even if the period during which she benefited from a special diplomatic status cannot be left out of account, she did not, during that period, have the intention to give her presence in Belgium the lasting character required in order to fall within the scope of the first sentence of the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations. In that regard, she lists material factors which she claims point to her expatriation.

51 In the first place, the applicant argues that her stay in Belgium was inseparably linked to the diplomatic mission of her husband and that the nature of her presence on Belgian territory was therefore precarious and temporary. That precarious and temporary nature rendered any attempt to create a lasting tie with Belgium inconsequential.

52 However, since the application of the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations depends on the degree of integration of the person concerned in the country of employment before his or her entry into the service (paragraph 39 above) and since the degree of integration is independent of the diplomatic status which he or she enjoys under international law (paragraph 47 above), the fact that the applicant's stay in Belgium derived from the diplomatic mission of her husband is, in itself, irrelevant.

53 As for the allegedly precarious and temporary nature of that stay, it must be borne in mind that it is for the applicant to show that the conditions laid down in Article 4(1)(a) of Annex VII to the Staff Regulations are met (see judgment of 13 July 2018, *Quadri di Cardano* v *Commission*, T-273/17, EU:T:2018:480, paragraph 51 and the case-law cited). The fact that diplomatic staff are

required periodically to change the place of their posting does not lead to an assumption of non-integration. Unless there are exceptional circumstances, diplomatic agents remain in one country for several years. In the present case, the applicant's husband was indeed posted to Brussels for six years.

54 In the second place, the applicant relies on the special nature of her residence in Belgium, in that she was housed with her family in an apartment provided by the Permanent Delegation of the Republic of Poland to NATO, which paid the rent and the energy bills.

55 It should be recalled, in that respect, that the concept of habitual residence has been consistently interpreted in the case-law as being the place where the official concerned has established, with the intention that it should be of a lasting character, the permanent or habitual centre of his or her interests. In addition, irrespective of the purely quantitative element of the time spent by the person in a particular country, residence implies not only the actual fact of living in a given place, but also the intention of thereby achieving the continuity which stems from a stable way of life and from the course of normal social relations (judgment of 13 July 2018, *Quadri di Cardano* v *Commission*, T-273/17, EU:T:2018:480, paragraph 48).

56 In the present case, it should be noted that the applicant has resided in Belgium since 22 September 2010. The fact that she benefited from material advantages consisting of staff accommodation for which the Permanent Delegation of the Republic of Poland to NATO paid the rent and the energy bills is not evidence of the retention of ties with her country of origin such as to preclude any integration in Belgium. In other words, the fact that those costs were met by the Republic of Poland does not mean that the accommodation could not, in a lasting manner, form the permanent or habitual centre of the applicant's interests in Belgium.

57 Nor did payment of those costs prevent the applicant from forming social relations with Belgium. The fact that after her husband had returned to Poland, the applicant remained in Belgium with her son so that he could continue his schooling there is a factor indicative of integration. Another indication of integration is the fact that while she still had diplomatic status, the applicant temporarily worked with a Brussels association involved in training, thereby participating in the voluntary sector network in her future country of employment.

58 In that regard, and in the third place, the applicant specifically argues that directing discussion groups did not constitute an occupation for the purposes of Article 4(1)(a) of Annex VII to the Staff Regulations and cannot lead to the assumption that she intended to move the permanent centre of her interests to Belgium. She states that the activity was very limited and gave rise only to the payment of expenses. The Commission, meanwhile, considers that it constituted paid occupation.

59 However, it must be borne in mind that while occupation is indeed an objective criterion included in Article 4(1)(a) of Annex VII to the Staff Regulations in order to cover the situation of newly recruited officials and staff (see, to that effect, judgment of 28 February 2019, *Pozza* v *Parliament*, T-216/18, not published, EU:T:2019:118, paragraph 25), it only applies by way of example (judgments of 21 June 2007, *Commission* v *Hosman-Chevalier*, C-424/05 P, EU:C:2007:367, paragraph 35, and of 13 July 2018, *Quadri di Cardano* v *Commission*, T-273/17, EU:T:2018:480, paragraph 44). Thus, the contribution of an official or member of staff to the activity of a voluntary sector organisation in the country of his or her future employment is, in certain circumstances, capable of constituting an indication, among others, of the integration of the person concerned.

60 In the fourth place, the applicant observes that it was only after surrendering her diplomatic passport, on 16 June 2013, that she was registered on the Belgian population registers.

61 However, although registration as a resident demonstrates the wishes and intention of the person concerned to fix the permanent or habitual centre of his or her residence and of his or her interests in that place (order of 26 September 2007, *Salvador Roldán* v *Commission*, F-129/06, EU:F:2007:166, paragraph 60), that registration remains a formal element from which it cannot be inferred, in the present case, that the applicant had not previously had an actual residence in Belgium, specifically in the circumstances of the present case, where the existence of such a residence is, moreover, not disputed.

62 In the fifth place, the applicant submits that, during the period when her husband served as an embassy official in Belgium, she maintained lasting ties with Poland.

63 The applicant argues that she was still the owner of a property in Poland and retained a Polish telephone number. She even maintained an occupation there as a language teacher and sworn translator until 2013 and continued to pay tax there.

64 Nevertheless, the fact of having a tax domicile, financial interests and assets in the country of origin does not establish that an applicant is habitually resident in that country (see, to that effect, order of 26 September 2007, *Salvador Roldán* v *Commission*, F-129/06, EU:F:2007:166, paragraph 59). That is all the more so where the income declared for tax purposes in the country of origin results from an occupation carried on abroad. At the hearing, the applicant specifically stated that she had worked from Belgium on a freelance basis as a sworn translator for the Polish courts and it was in that capacity that she had for 2012 declared a professional income of 2 664.64 Polish zlotys (PLN) (around EUR 650). The applicant also stated at the hearing that she had asked to be removed from the Polish commercial register in 2014 and that the amount of PLN 54 289.16 (around EUR 12 700) declared for that year represented the salary that she had received in Belgium from her employment that year in a Belgian company which supplied services to the Commission.

65 Nor does the fact that the applicant retained a Polish telephone number prove that she had retained the centre of her interests in Poland, especially given that, as she confirmed at the hearing, it was a mobile telephone number, which could therefore be used from Belgium.

66 In the sixth place, the applicant states that she has always worked in an international public environment, first at the Permanent Representation of the Republic of Poland to the European Union, from 7 January to 31 December 2011, then at the Commission, from 16 June 2014 to 31 August 2017. She maintains that the fact that she thus worked in an international environment and was not employed in the private sector weakens any presumption of integration into Belgian society.

67 However, as the applicant herself concedes, she worked at the Commission only by means of two successive contracts with two Belgian companies acting as service providers to the Commission. The case-law has excluded triangular situations, in which a new official or new staff member had previously worked in EU institutions but only for private companies by which he or she was employed, from the scope of the second sentence of the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations (judgment of 28 February 2019, *Pozza* v *Parliament*,

T-216/18, not published, EU:T:2019:118, paragraph 51). Therefore, the fact that the applicant had worked at the Commission in those circumstances cannot be taken as an indicator of her non-integration in Belgium during the reference period.

68 As for the applicant's work at the Permanent Representation of the Republic of Poland to the European Union, that pre-dates the reference period. It could not, therefore, have a decisive influence on the AECE's assessment of whether or not the applicant was integrated into Belgium during that period.

69 In the light of the foregoing, the second part of the plea is unfounded and the plea must be rejected in its entirety.

70 The action must, therefore, be dismissed.

Costs

71 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, she must be ordered to pay the costs, in accordance with the form of order sought by the Commission.

On those grounds,

THE GENERAL COURT (Fifth Chamber)

hereby:

1. Dismisses the action;

2. Orders Ms Katarzyna Wywiał-Prząda to pay the costs.

Gratsias Marcoulli Frendo

Delivered in open court in Luxembourg on 28 November 2019.

[Signatures]