

JUDGMENT OF THE COURT (Fourth Chamber)

29 November 2007^{*}

In Case C-7/06 P,

APPEAL under Article 56 of the Statute of the Court of Justice, brought on 5 January 2006,

Beatriz Salvador García, represented by R. García-Gallardo Gil-Fournier, D. Domínguez Pérez and A. Sayagués Torres, abogados,

appellant,

the other party to the proceedings being:

Commission of the European Communities, represented by J. Currall, acting as Agent, assisted by J. Gutiérrez Gisbert, J. Rivas Andrés and M. Canal, abogados, with an address for service in Luxembourg,

defendant at first instance,

^{*} Language of the case: Spanish.

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of the Chamber, G. Arestis, R. Silva de Lapuerta, J. Malenovský (Rapporteur) and T. von Danwitz, Judges,

Advocate General: Y. Bot,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 22 March 2007,

after hearing the Opinion of the Advocate General at the sitting on 7 June 2007

gives the following

Judgment

- 1 By her appeal, Ms Salvador García seeks the annulment of the judgment of the Court of First Instance of the European Communities in Case T-205/02 *Salvador García v Commission* [2005] ECR-SC I-A-285 and II-1311 ('the judgment under appeal'), dismissing her action for annulment of the decision of the Commission of the European Communities of 27 March 2002 refusing to grant her the expatriation

allowance provided for by Article 4(1) of Annex VII to the Staff Regulations of Officials of the European Communities ('the Staff Regulations') and the allowances associated with it ('the contested decision').

Legal context

- ² The first sentence of Article 69 of the Staff Regulations, in the version applicable at the time of the contested decision, lays down that the expatriation allowance is equal to 16% of the total amount of the basic salary plus household allowance and dependent child allowance to which the official is entitled.
- ³ Article 4(1) of Annex VII to the Staff Regulations provides for payment of the expatriation allowance:

'(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.

...'

Facts

- 4 The factual background to the dispute was summarised by the Court of First Instance in paragraphs 3 to 13 of the judgment under appeal as follows:

'3 The applicant, a Spanish national, was a postgraduate student at the Free University of Brussels from September 1991 to July 1992 and then was a trainee at the Commission in Brussels from October 1992 to February 1993.

- 4 From 1 October 1993 to 31 December 1994, the applicant worked for the government of the autonomous community of Navarre (Comunidad Autónoma de Navarra) in Brussels. From 21 February 1995 to 20 August 1995, she worked in Brussels under a contract concluded on 21 February 1995 with the Sociedad de Desarrollo de Navarra, Sodena SA (Company for the Development of Navarre, "Sodena"), a company entrusted with the economic development of the autonomous community of Navarre.

- 5 From 1 September 1995 to 30 June 1996, the applicant worked as an assistant to a Member of the European Parliament.
- 6 In July and August 1996 the applicant did voluntary work for a non-governmental organisation (NGO) in Peru.
- 7 From 2 September 1996 to 28 February 1997, she worked under an employment contract concluded on 17 July 1996 with a private company, ECO, to which the Commission had entrusted technical assistance assignments.
- 8 From 1 March 1997 to 28 February 1998, the applicant worked, under a contract concluded on 1 March 1997, for the Sociedad de Desarrollo Exterior de Navarra, Sodexna SA (External Development Company of Navarre, “Sodexna”), a company entrusted with the external economic development of the autonomous community of Navarre, preparing for the opening of a new office of the autonomous community of Navarre attached to the Community institutions in Brussels. Subsequently, from 1 April 1998 to 31 March 1999, she worked for Sodexna, under an employment contract signed on 1 April 1998, as manager of the office of that company in Brussels.
- 9 Finally, from 1 April 1999 to 15 April 2001, the applicant worked as the delegate of the government of the autonomous community of Navarre in Brussels by virtue of regional decree No 87/199 of the autonomous community of Navarre of 29 March 1999, appointing the applicant to that post.

- 10 On 16 April 2001, the applicant entered the service of the Commission in Brussels as an official. The period of five years referred to in the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations, termed “the reference period”, was, in this case, between 16 October 1995 and 15 October 2000.
- 11 On 23 April 2001, the applicant’s individual record sheet on entering the service was drawn up, indicating that she had been refused the expatriation allowance. This was confirmed by a note of 28 June.
- 12 On 27 September 2001 the applicant lodged a complaint under Article 90(2) of the Staff Regulations against the note of 28 June 2001.
- 13 By [the contested] decision, notified to the applicant on 5 April 2002, the appointing authority rejected the applicant’s complaint. According to that decision, the applicant was refused the expatriation allowance and the allowances associated with it on the ground that she had resided and carried on her occupation in Brussels during the reference period under Article 4(1)(a) of Annex VII to the Staff Regulations. In particular, the appointing authority made the following points:
 - the work as assistant to a Member of the European Parliament from 1 September 1995 to 30 June 1996 could not be considered to be “work done for an international organisation” within the meaning of the exception laid down in Article 4 and therefore be disregarded, because the applicant did not have direct legal links with the Parliament, her only contractual link being a private law contract concluded with the member;

- the work done in Peru from 11 July to 18 August 1996 (one month and one week) was not such as to interrupt her residence in Belgium,
- the work done for Sodena and Sodexna did not fall within the scope of the above provision because, even if it is conceded that those companies were public bodies and were entrusted with the representation of the interests of the autonomous community of Navarre in Brussels, the services provided by the applicant to those companies were governed by private law contracts;
- the work done by the applicant directly for the government of Navarre could not be considered to be “work done for another State” within the meaning of the exception laid down in Article 4 of Annex VII to the Staff Regulations.’

The procedure before the Court of First Instance and the judgment under appeal

- 5 By application lodged at the Registry of the Court of First Instance on 4 July 2002, the applicant brought an action seeking the annulment of the contested decision.
- 6 By the judgment under appeal the Court of First Instance dismissed the applicant’s action. It thus rejected the four pleas in law relied on by the applicant, alleging breach of Article 4(1)(a) of Annex VII to the Staff Regulations, an error of assessment of the facts, breach of the obligation to state reasons and breach of the principle of equal treatment.

- 7 As regards the first plea, the Court of First Instance took the view, in paragraph 39 of the judgment under appeal, that the question to be answered was whether the work done by the applicant in Brussels, for Sodexna and for the government of the autonomous community of Navarre, had to be considered to be work done for another State within the meaning of the second indent of Article 4(1)(a) of Annex VII.
- 8 In rejecting that plea, the Court of First Instance first observed, in paragraph 42 of the judgment under appeal, that, according to the Court of Justice, it is apparent from the general scheme of the EC and EA 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.
- 9 In paragraph 43 of the judgment under appeal, the Court of First Instance went on to hold, essentially, that the provisions of the Staff Regulations employ precise wording and there is no reason to extend their scope by analogy to situations to which they do not expressly refer. Finally, it pointed out, in paragraph 44 of the judgment, that the legislature chose the word 'State' although, at the time when the Staff Regulations were adopted, Member States with a federal or regional structure, such as the Federal Republic of Germany, already existed alongside the States with a centralised internal structure. It inferred from that that if the Community legislature had wanted to introduce political subdivisions or local authorities into that article, it would have done so expressly.
- 10 The Court of First Instance therefore concluded, in paragraph 45 of the judgment under appeal, that 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.

- 11 The Court of First Instance inferred, in paragraph 46 of the judgment under appeal, that the expression ‘work done for another State’, used 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.
- 12 Moreover, the Court of First Instance held, in paragraph 47 of the judgment under appeal, that the activity of the applicant in the service of a publicly owned company falling within one of the categories of commercial undertakings cannot *a fortiori* be considered to be ‘work done for a State’. Such commercial public undertakings, whether public or private limited liability companies, do not, by their very nature, form part of the administrative organs of the State, even if they have the capacity to manage and represent certain public interests or are entrusted with tasks in the public interest.
- 13 In paragraphs 49 to 56 of the judgment under appeal the Court of First Instance also rejected several arguments relied on by the applicant.
- 14 In paragraph 49 it rejected the applicant’s argument based on the existence of an autonomous meaning of ‘State’ in Community law which encompassed decentralised bodies. In paragraphs 50 and 51 the arguments based on the autonomous communities’ own powers in the Spanish legal order and the terms of a decision of the Tribunal Constitucional of 26 May 1994 were rejected. In paragraphs 52 to 54 the Court of First Instance rejected arguments to the effect that the applicant was covered by the same health insurance and tax schemes as the staff working in the Permanent Representation of the Kingdom of Spain to the European Union in Brussels. Finally, in paragraphs 55 and 56, it rejected the applicant’s argument based on the participation of representatives of the autonomous communities in the consultative committees of the Commission.

- 15 In order to reject the second plea in the action, alleging an error in the assessment of the facts by the Commission, the Court of First Instance made the point, in paragraphs 85 to 87 of the judgment under appeal, that during the reference period the applicant habitually lived and carried on her main occupation in Brussels and that the centre of her interests was also in that city. The Court of First Instance pointed out, in paragraph 88 of the judgment, that that finding would not be called into question in the event that the period from 1 September 1995 to 30 June 1996, when the applicant worked as an assistant to a Member of the European Parliament, were to be considered to be work done for an international organisation within the meaning of the exception provided for by the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations.
- 16 The Court of First Instance rejected the third plea in the action alleging breach of the obligation to state reasons, taking the view, in paragraph 96 of the judgment under appeal, that the applicant was fully aware of the reasons why the appointing authority refused her payment of the expatriation allowance.
- 17 Finally, in paragraphs 107 and 108 of the judgment under appeal, the Court of First Instance held that the fourth plea relied on by the applicant in support of her action, alleging breach of the principle of equal treatment, had to be declared inadmissible on the ground that it was not raised in the initial complaint.
- 18 As regards the claim for the grant of the allowances associated with the expatriation allowance, the Court of First Instance held, in paragraph 110 of the judgment under appeal, that, as it had held that the applicant was not entitled to receive the expatriation allowance, that claim should be rejected.

Forms of order sought in the appeal

19 By her appeal, the appellant claims that the Court should:

- annul the judgment under appeal, remit the case back to the Court of First Instance, and
- order the Commission to pay the costs both at first instance and on appeal.

20 The Commission contends that the Court should:

- dismiss the appeal in its entirety;
- order the appellant to pay the costs.

The appeal

Arguments of the parties

21 By her single plea the appellant complains that the Court of First Instance made an error of law in misinterpreting the expression '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. The plea is in four separate parts.

- 22 First, the appellant points out that the Court of First Instance interpreted the exception provided for by the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations strictly. In so doing, the Court of First Instance departed from previous case-law, notably from its judgment in Case T-4/92 *Vardakas v Commission* [1993] ECR II-357, paragraph 34, in which it was held that, as an exception to an exception, that provision must be interpreted broadly.
- 23 Secondly, the appellant alleges that that exception was provided for in order to take account of the fact that the persons it concerns cannot be deemed to have established a lasting tie with the State in which they are employed due to the temporary nature of the secondment in that State.
- 24 The judgment under appeal, by excluding from the scope of that exception work done for the Member State concerned through the intermediary of the autonomous communities, disregarded the reason why that provision was laid down and, moreover, created discrimination between officials who provided services to that State through the intermediary of the central administration, in a permanent representation, whose right to the expatriation allowances is recognised (Case T-72/04 *Hosman-Chevalier v Commission* [2005] ECR II-3265, paragraph 40), and those who provided their services through the intermediary of the administration of an autonomous community. In both situations the official has not established lasting ties with the State where he is employed before entering the service of the Communities because of the temporary nature of his secondment in that State. What matters ultimately is whether or not the links established by the official with his State of employment are of a lasting nature.
- 25 Finally, contrary to what the Court of First Instance held in paragraph 45 of the judgment under appeal, that wide interpretation does not lead to all public bodies with separate legal personality being considered to be 'States'. The scope of such an interpretation is limited to bodies with responsibilities in Community matters, as in

the case of the autonomous communities, and has the merit of being in harmony with other provisions of the EC Treaty, such as those on State aid or public procurement.

26 Thirdly, the appellant complains that the Court of First Instance made an error of law in excluding from the definition of ‘circumstances arising from work done for another State’ work done as an employee of a company entrusted with tasks in the public interest, without considering whether, in view of its composition, its functions and its dependence on public authority, that company fell within the notion of the State. In so doing the Court of First Instance contradicted both the provisions of Spanish law, according to which such a company was part of the public administration, and Community case-law, in particular, Case 31/87 *Beentjes* [1988] ECR 4635, paragraph 12, and Case C-353/96 *Commission v Ireland* [1998] ECR I-8565, paragraph 26.

27 Fourthly, the appellant submits that, should the Court consider that the Court of First Instance made an error of law in the analysis of her work for the government of the autonomous community of Navarre in Brussels and for Sodexna, the question of the classification of her duties during the time she was employed as an assistant to a Member of the European Parliament should be considered. In the light of current Community law, that period of work should be regarded as equivalent to ‘work done for an international organisation’.

28 In its defence, the Commission contends, first, that the Court of First Instance, far from interpreting the exception provided for by the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations strictly, interpreted that exception widely, subject to the requirement of legal links between the person concerned and the Member State in question. However, in the present case, the appellant did not have such legal links with the Kingdom of Spain.

- 29 Secondly, the Commission contends that the appellant's argument is based on a false premiss which vitiates the remainder of her argument. She was confusing two concepts, that is to say, first, the ratio legis of the exception set out in the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations, and secondly, the ratio legis of the use of the term 'State' which appears in that exception. It was only the interpretation of the term 'State' which was discussed by the Court of First Instance and which is relevant.
- 30 There is no discrimination between officials who have worked for the Member State concerned and have done so through a permanent representation which falls under the central administration of that State and those who have provided their services through an autonomous community. The two situations are not comparable as regards the functions carried out because, as is apparent from paragraph 51 of the judgment under appeal, the delegations of the autonomous communities had as their mission the management of the interests of the administrations they represent and those interests did not necessarily coincide with those of the autonomous communities or with those of the Kingdom of Spain as a State.
- 31 In any event, it is appropriate to respect the decision of the Community legislature which did not intend to include within that exception the political subdivisions of a State, such as governments of regions, autonomous communities and other local bodies.
- 32 Moreover, the Commission contends that, as the Court of First Instance held in paragraph 45 of the judgment under appeal, an interpretation such as that put forward by the appellant could lead to 'regarding as States all public entities which have their own legal personality and to which a central government has transferred internal powers, including town councils or any body to which an administration has delegated duties'.

33 As regards the argument that ‘what matters ultimately is whether or not the links established by the official with his State of employment are of a lasting nature’, this is a new issue which, at the very least, was not expressed in those terms before the Court of First Instance so that there must be some doubt as to its admissibility.

34 Thirdly, as regards the part of the plea alleging that the exclusion of the work done as an employee of a public company was erroneous, the Commission takes the view that the judgments in *Beentjes* and *Commission v Ireland*, which the appellant cites, concern a separate area of Community law, namely that governed by Council Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the award of public works contracts (OJ, English Special Edition 1971 (II), p. 682) the ratio legis of which was different from that of Article 4 of Annex VII to the Staff Regulations.

35 The Commission also contends that a person who has worked for a commercial public undertaking, whether a public or private limited liability company, does not have a direct legal link with the State concerned, whereas the existence of such a link is an essential condition, established by case-law, for the application of the exception provided for by the second indent of Article 4(1)(a) of that Annex.

36 Fourthly, the Commission contends that the Court of First Instance did not fail to rule on the question whether the work of an assistant to a Member of the European Parliament should be considered to be work done for an international organisation, in that it held, in paragraphs 88 and 89 of the judgment under appeal, that the answer to that question had no effect on the right to be granted the expatriation allowance, as the appellant had her habitual residence in Brussels both before and after that period of work. Moreover, such work did not fall within the scope of the exception because the applicant did not have direct legal links with the Parliament in the course of that work.

Findings of the Court

Admissibility

37 According to the Commission, the argument relied on by the appellant that what matters ultimately is whether or not the links established by the official with his State of employment are of a lasting nature, is liable to constitute a new issue or, at the very least, one which was not expressed in that way before the Court of First Instance.

38 It must be observed that it follows from Article 58 of the Statute of the Court of Justice, in conjunction with Article 113(2) of the Rules of Procedure of the Court of Justice, that, on appeal, an appellant may put forward any relevant argument, provided only that the subject-matter of the proceedings before the Court of First Instance is not changed in the appeal (Case C-229/05 P *PKK and KNK v Council* [2007] ECR I-439, paragraph 66).

39 It must be said that this argument was put forward in support of the plea alleging breach by the Court of First Instance of the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations. Therefore, even if that argument were not expressed before the Court of First Instance in the same terms as those mentioned in paragraph 37 of this judgment, it does not alter the subject-matter of the dispute before the Court of First Instance and, therefore, does not constitute a new plea within the meaning of the first subparagraph of Article 42(2) of the Rules of Procedure of the Court of Justice.

40 It follows that the single ground of appeal relied on by the appellant in support of her appeal is admissible in its entirety.

Merits

- 41 In order to deal with the plea raised by the appellant it is necessary to rule on the question whether, in interpreting the term ‘work done for another State’ used in the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations, the Court of First Instance made an error of law.
- 42 It must be observed, as a preliminary point, that contrary to the contentions of the Commission, the term ‘State’ must not be detached from the expression of which it forms part in order to be interpreted separately. The scope of a term of Community law such as that of work done for another State must be assessed as a whole and interpreted according to the structure and the objectives of the rules of which it is part (Case C-301/98 *KVS International* [2000] ECR I-3583, paragraph 21; Case C-156/98 *Germany v Commission* [2000] ECR I-6857, paragraph 50; Case C-191/99 *Kvaerner* [2001] ECR I-4447, paragraph 30; and Case C-63/00 *Schilling and Nehring* [2002] ECR I-4483, paragraph 24).
- 43 In that regard, according to settled case-law, the purpose of the expatriation allowance provided for by Article 69 of the Staff Regulations, the conditions for granting which are set out in Article 4(1) of Annex VII to those regulations, and where the expression ‘work done for another State’ appears, is to compensate officials for the extra expense and inconvenience of taking up employment with the Communities if they have been thereby obliged to change their residence and move to the country of employment and to integrate themselves in a new environment. The concept of expatriation also depends on the personal position of an official, that is to say, on the extent to which he is integrated in his new environment, which is demonstrated for example, by habitual residence or by the pursuit of his main occupation (see Case C-452/93 P *Magdalena Fernández v Commission* [1994] ECR I-4295, paragraph 20, and Case C-424/05 P *Commission v Hosman-Chevalier* [2007] ECR I-5027, paragraph 35).

- 44 The grant of the expatriation allowance is thus intended to correct actual instances of inequality arising between officials who are completely integrated into the society of the country of employment and those who are not (*Commission v Hosman-Chevalier*, paragraph 36).
- 45 An official who, whilst residing or carrying on an occupation within the European territory of the State in which his place of employment is situated during the five years ending six months before he entered the service, worked for another State or for an international organisation is also in such a situation of expatriation (*Commission v Hosman-Chevalier*, paragraph 37).
- 46 The performance of work ‘for another State or an international organisation’ has the effect of preserving a specific tie of the party concerned linking him to that other State or that international organisation, thereby hindering the creation of a lasting tie to the country of employment and thus his sufficient integration in the society of the country of employment (*Commission v Hosman-Chevalier*, paragraph 38).
- 47 In that regard, there is nothing in the provisions of the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations to suggest that work done ‘for another State’ is necessarily work done for a Member State of the European Union. That conclusion is not invalidated by the fact that, in practice, future officials of the Union work, in the vast majority of cases, for a Member State and not for a non-Member State.
- 48 Where non-Member States are also involved, reference should be made, in order to interpret the term ‘State’ as used in the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations, to public international law which governs relations between Member States and non-Member States.

- 49 Even if the distribution of responsibilities at intra-State level varies according to the institutional make-up of each State, that State must be considered to be a unitary subject of public international law. In the light of that approach, it is essential that the State be represented, vis-à-vis other States and international organisations, by a system of a single diplomatic representation, which reflects the unitary nature of the State concerned, at international level.
- 50 The Court has held in that connection that, although it is not essential, in order for the official concerned to be considered to have worked for ‘another State’, that he should have been employed by the central administration of that State, his functional integration within the permanent representation of that State constitutes a decisive factor (see, to that effect, *Commission v Hosman-Chevalier*, paragraph 42).
- 51 The Court held in paragraph 43 of its judgment in *Commission v Hosman-Chevalier* 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. That privileged status, which allowed her to enjoy various privileges and immunities under the Vienna Convention of 18 April 1961 on Diplomatic Relations, in itself creates an obstacle which prevents 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.
- 52 The foregoing arguments are moreover borne out by a compelling argument based on one of the documents on the court file. In reply to a question from the Court of First Instance in the course of measures of organisation of the procedure, the Kingdom of Spain explained, without being contradicted on that point, that the integration of officials in the permanent representation of that Member State and their accreditation with the Belgian authorities resulted in their retaining their legal residence in their Member State of origin and that, as they were not registered with the municipal authorities of the Kingdom of Belgium, they are not considered by the competent authorities to be resident in that Member State.

- 53 Such circumstances are also liable to prevent such officials from integrating in the Member State to which they are posted to the requisite degree and, therefore, they are liable to contribute to the situation of expatriation in which such officials find themselves.
- 54 In that regard, the appellant complains, as stated in paragraph 24 of this judgment, that the Court of First Instance discriminates between officials who worked for a State through the intermediary of the central administration in a permanent representation, whose entitlement to the expatriation allowance is recognised, and those who worked through the intermediary of the administration of an autonomous community.
- 55 However, the question whether work was done for the State through the intermediary of its central administration or the administration of an autonomous community does not constitute, contrary to the appellant's contention, the relevant criterion to take into account for the purposes of granting the expatriation allowance.
- 56 Both those who work for a State through the intermediary of its central administration and those who work for an autonomous community through its administration must be considered to be in a situation of expatriation within the meaning of Article 4(1) of Annex VII to the Staff Regulations, as long as they are formally integrated into the permanent representation of that State.
- 57 In the present case, it is common ground that, during the reference period, the appellant did not work for the Spanish central administration and nor was she formally integrated in the permanent representation of the Kingdom of Spain to the European Union.

58 In those circumstances, the appellant's argument based on breach of the principle of equal treatment can only be rejected.

59 Moreover, by way of example, it must be observed that, in Spain, under the agreement on the department for matters falling within the remit of the autonomous communities within the permanent representation of the Kingdom of Spain to the European Union and on the participation of the autonomous communities within the working groups of the Council of the European Union, adopted by the Spanish Government on 9 December 2004 within the framework of the Conferencia para Asuntos con las Comunidades Europeas, even if that agreement did not exist at the time of the facts of this case and is thus not applicable to it, at least two posts of adviser on matters relating to the autonomous communities in that representation are occupied by officials of the autonomous communities with responsibilities at intra-State level but integrated into that permanent representation.

60 Accordingly, where, for the purposes of interpretation of the expression 'work done for another State' used in the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations, the only fact to be considered relevant is that the work is done within a permanent representation of a State, it follows that the Court of First Instance has not committed any error of law, in paragraph 46 of the judgment under appeal, in interpreting that expression as not referring to work done for governments of political subdivisions of States.

61 For the same reason, the Court of First Instance was correct to hold, in paragraph 47 of the judgment under appeal, that activity in the service of a publicly owned company falling within one of the categories of commercial undertakings cannot be considered to be work done for a State.

62 Finally, the appellant submits that, if the Court of Justice takes the view that the Court of First Instance made an error of law in its analysis of the work she did for the government of the autonomous community of Navarre in Brussels and for Sodexna, the question of the classification of her duties as assistant to a Member of the European Parliament should be examined.

63 In that regard, it is sufficient to note that it follows from paragraphs 60 and 61 of this judgment that the Court of First Instance did not make such an error of law. Accordingly, there is no need for the Court to rule on the fourth part of the single plea relied on by the appellant in support of her appeal.

64 It follows from all the foregoing considerations that the appeal must be dismissed.

Costs

65 Under the first subparagraph of Article 69(2) of the Rules of Procedure, applicable to appeal proceedings by virtue of Article 118 thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. In accordance with Article 70 of those rules, in disputes between the Communities and their servants, the institutions are to bear their own costs. Nevertheless, it follows from the first indent of the second paragraph of Article 122 of the Rules of Procedure that Article 70 does not apply to appeals brought by an official or any other servant of an institution against that institution. As the Commission asked for an order for costs against the appellant and the appellant was unsuccessful she must be ordered to pay the costs.

On those grounds, the Court (Fourth Chamber) hereby:

- 1. Dismisses the appeal;**
- 2. Orders Ms Salvador García to pay the costs.**

[Signatures]