Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber, Extended Composition)

22 January 2025 *

(Civil service – Members of the contract staff – Remuneration – Expatriation allowance – Refusal to grant the expatriation allowance – Calculation of the five-year reference period – Article 4(1)(a) of Annex VII to the Staff Regulations – Liability)

In Case T-1093/23,

AH, represented by A. Guillerme, T. Bontinck and L. Bouchet, lawyers,

applicant,

v

European Commission, represented by T. Bohr and L. Hohenecker, acting as Agents,

defendant,

THE GENERAL COURT (Fourth Chamber, Extended Composition),

composed of R. da Silva Passos, President, N. Półtorak (Rapporteur), I. Reine, P. Nihoul and T. Pynnä, Judges,

Registrar: L. Ramette, Administrator,

having regard to the written part of the procedure, in particular, the measure of organisation of procedure of 11 July 2024 and the Commission's response filed with the Registry of the General Court on 25 July 2024,

further to the hearing on 25 September 2024,

gives the following

Judgment

1 By his action under Article 270 TFEU, the applicant, AH, seeks, first, the annulment of the decision of the 'Office for the Administration and Payment of Individual Entitlements' (PMO) of the European Commission of 9 February 2023 refusing to grant him entitlement to the

* Language of the case: French.

expatriation allowance ('the contested decision'), secondly, the 'recognition' of his right to receive the expatriation allowance with effect from 1 February 2023 and, thirdly, compensation for the non-material damage he allegedly suffered as a result of the contested decision.

Background to the dispute

2 The applicant is an Italian national who has been living in Brussels (Belgium) since 16 May 2017.

3 On 1 October 2022, the applicant was appointed as an FG 1 contract agent at the Committee of the Regions for the period from 1 October 2022 to 30 September 2023. In assessing his financial entitlements upon his entry into service at the Committee of the Regions, the latter granted him the expatriation allowance referred to in Article 69 of the Staff Regulations of Officials of the European Union ('the Staff Regulations'), calculated in accordance with Article 4(1)(a) of Annex VII to the Staff Regulations.

4 Since he was recruited for the position of FG 1 contract agent at the General Secretariat of the Council (GSC), the applicant terminated his duties at the Committee of the Regions on 31 January 2023. He took up his duties at the GSC the following day.

5 On 9 February 2023, the PMO communicated the contested decision, which set his financial entitlements upon his entry into service at the GSC.

6 Upon receipt of the contested decision, the applicant sent an email to the PMO Officer, asking for clarification as to why he would not receive the expatriation allowance in respect of his appointment at the GSC, whereas he had been granted that allowance upon his appointment at the Committee of the Regions, prior to his entry into service at the GSC.

7 By emails of 6 and 7 March 2023, the PMO Officer replied to the applicant that, first, his appointment at the GSC was a new entry into service, notwithstanding the fact that his contract at the GSC followed his appointment at the Committee of the Regions without interruption. Secondly, since he had worked and lived in Belgium for the entire reference period provided for in Article 4(1)(a) of Annex VII to the Staff Regulations, namely between 1 August 2017 and 31 July 2022, he was not entitled to receive the expatriation allowance.

8 On 28 April 2023, the applicant lodged a complaint against the contested decision under Article 90(2) of the Staff Regulations.

9 On 11 August 2023, in its capacity as the authority empowered to conclude contracts of employment ('the AECE'), the Commission took a decision rejecting the complaint, which was notified to the applicant on the same day.

Forms of order sought

10 The applicant claims that the Court should:

– annul the contested decision;

– recognise his right to receive the expatriation allowance with effect from 1 February 2023;

– order the Commission to pay him EUR 5 000 in compensation for the non-material damage sustained;

– order the Commission to pay the costs.

11 The Commission contends that the Court should:

– dismiss the action;

– order the applicant to pay the costs.

Law

The claims for annulment

12 In support of his claim for annulment, the applicant puts forward two pleas in law. The first plea alleges a manifest error of assessment and an error of law in the interpretation of Article 4(1) of Annex VII to the Staff Regulations. The second plea alleges a breach of the principle of good administration, enshrined in Article 41 of the Charter of Fundamental Rights of the European Union.

13 In his first plea, the applicant claims that, taking into account the functional continuity of his employment relationship with the European Union and the objective of the expatriation allowance, the AECE made a manifest error of assessment and an error of law as regards the interpretation of Article 4(1) of Annex VII to the Staff Regulations, by setting a new reference period starting from the date of his entry into service at the GSC.

14 In that regard, in the first place, the applicant claims that the fact that there was no gap between his two employment contracts, concluded with the Committee of the Regions and with the GSC, respectively, shows that there is 'functional continuity' in his employment relationship with the administration of the European Union, which is such as to lead to the automatic extension of the right to the expatriation allowance that was granted upon his entry into service at the Committee of the Regions.

15 According to the applicant, first, it follows from the judgment of 15 December 2022, *Picard* v *Commission* (C-366/21 P, EU:C:2022:984), that the employment relationship of a member of staff with the 'administration of the European Union' must be assessed as a whole, without taking into consideration the employing institutions or bodies. Secondly, it is apparent from that judgment and from the judgment of 14 December 2018, *Torné* v *Commission* (T-128/17, EU:T:2018:969), that the provisions of the Staff Regulations concerning the employment relationship between a member of staff and the administration of the European Union must be interpreted in such a way as to preserve its 'functional continuity'.

16 In the second place, the applicant claims that it follows from settled case-law that the purpose of the expatriation allowance, as set by Article 4(1) of Annex VII to the Staff Regulations, is to compensate members of staff for the extra expense and inconvenience of taking up employment with the European Union if they have been thereby obliged to change their residence from their State of residence and move to the State of employment and to integrate themselves into a new environment (see, to that effect, judgment of 14 July 2021, *KO* v *Commission*, T-389/20, not

published, EU:T:2021:436, paragraph 17 and the case-law cited), without making a distinction as to whether employment is taken up with a particular institution or with a particular body. Consequently, in the event that a member of staff who initially changed his or her residence to the State of employment changes employment within the European Union, without changing his State of employment and with no gap between the two employment contracts, the functional continuity of his or her employment relationship with the European Union would be preserved. Such a change is purely formal in nature, without affecting the nature and degree of the extra expense and inconvenience for a member of staff of taking up employment with the European Union.

17 The applicant adds that the contrary interpretation – assuming that the calculation of the right to the expatriation allowance must be carried out upon each entry into service in the event of successive employment in the institutions and bodies of the European Union located in the same Member State – would lead to discriminating against members of staff for whom no mobility mechanism exists, in comparison, in particular, with the officials and other agents referred to in Article 2(f) of the Conditions of Employment of Other Servants ('the CEOS') for whom inter-agency mobility mechanisms are in place.

18 In the third place, the applicant claims that the AECE made a manifest error of assessment in refusing him entitlement to the expatriation allowance pursuant to the judgment of 5 December 2012, *Grazyte* v *Commission* (F-76/11, not published, EU:F:2012:173). The situation of the claimant in the case which gave rise to that judgment is different from that of the applicant, since the former was successively employed at EU agencies established in different Member States.

19 The Commission disputes the applicant's arguments.

20 In the first place, the Commission argues, first, that the judgments of 15 December 2022, *Picard* v *Commission* (C-366/21 P, EU:C:2022:984), and of 14 December 2018, *Torné* v *Commission* (T-128/17, EU:T:2018:969), provide an interpretation of the concept of 'entry into service' which is specific to the particular situation of contributions to the EU pension scheme. Since there is only one pension scheme to which all officials and members of staff contribute throughout their service within the various institutions and bodies of the European Union, the Court of Justice and the General Court have interpreted that concept in the light of the functional continuity in the staff's employment relationship.

21 Secondly, the Commission maintains that it is not necessary to refer to the judgments of 15 December 2022, *Picard* v *Commission* (C-366/21 P, EU:C:2022:984), and of 14 December 2018, *Torné* v *Commission* (T-128/17, EU:T:2018:969), since there is specific case-law relating to the concept of 'ent[ry] into service' referred to in Article 4(1)(a) and (b) of Annex VII to the Staff Regulations concerning the expatriation allowance.

22 In the second place, the Commission contends that it follows from the case-law referred to in paragraph 16 above that the assessment of the entitlement to the expatriation allowance must be carried out upon each entry into service with a new employer. Thus, although there was no gap between the applicant's contracts, those contracts were concluded with two different employers, each with their own legal personality.

23 The Commission also contends that officials and members of staff are not in a comparable situation. It follows from the case-law that members of the contract or temporary staff are not entitled to mobility, in so far as the CEOS do not provide for reassignment, contrary to the rules applicable to officials.

24 In the third place, as regards the judgment of 5 December 2012, *Grazyte* v *Commission* (F-76/11, not published, EU:F:2012:173), the Commission argues that the fact that the change of employment does not result in a change of State of employment does not call into question the application of that judgment. On the basis of the latter, in the judgment of 13 July 2018, *Quadri di Cardano* v *Commission* (T-273/17, EU:T:2018:480), the General Court found that there was no continuity in the various contracts between the applicant and the various institutions and bodies of the European Union established in the same Member State.

25 In that regard, it should be borne in mind that Article 92 of the CEOS, to which the applicant is subject as a member of the contract staff, provides, by the successive references to Articles 20 and 21 of the CEOS, that members of the contract staff may be entitled to the expatriation allowance established in Article 69 of the Staff Regulations, the terms of allocation of which are set in Article 4 of Annex VII to the Staff Regulations.

26 Article 4(1)(a) of Annex VII to the Staff Regulations provides that the expatriation allowance, which is equal to 16% of the total of the basic salary, household allowance and dependent child allowance paid to the official, is to be granted to officials who fulfil two cumulative conditions, namely:

– 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 are not to be taken into account.

27 It is apparent from the decision rejecting the complaint that the five-year reference period provided for in the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations was set from 1 August 2017 to 31 July 2022, that is to say five years expiring six months before 1 February 2023, when the applicant was recruited by the GSC.

28 The AECE thus found that the applicant's appointment at the GSC constituted a new 'entry into service' on the basis of the judgment of 5 December 2012, *Grazyte* v *Commission* (F-76/11, not published, EU:F:2012:173). In paragraph 20 of the decision rejecting the complaint, the AECE referred to that judgment, explaining that an 'official or member of staff who has been successively employed by different institutions or bodies of the European Union, with their own legal personalities, cannot claim continuity between the various contracts' and that a 'new contract concluded with another employer presupposes the discontinuity of the employment relationship'.

29 Since the applicant stated in the entry into service form that he arrived in Belgium on 16 May 2017, the AECE found, in paragraphs 26 and 27 of the decision rejecting the complaint, that he had established his habitual residence in Brussels during the entire reference period and, therefore, that he was not entitled to receive the expatriation allowance.

30 The applicant disputes that finding, arguing that the reference period for assessing the right to the expatriation allowance should be calculated from the date of his initial entry into service with the European Union, which occurred on 1 October 2022, at the Committee of the Regions. Thus, since he arrived in Belgium on 16 May 2017, he did not live there habitually for the entire period thus established (that is to say, from 1 April 2017 to 31 March 2022) and, accordingly, the entitlement of the expatriation allowance granted to him upon his entry into service at the Committee of the Regions should have been automatically extended.

31 The applicant claims that, in the light of the objective of the expatriation allowance, in the absence of a gap between his two employment contracts, the change of employer within the European Union, which did not result in a change of State of employment, is of a purely formal nature, with no impact on the nature and degree of the extra expense and inconvenience for him of taking up employment with the European Union.

32 In that regard, as the applicant correctly maintains, the purpose of the expatriation allowance is to compensate officials and members of staff for the extra expense and inconvenience of taking up employment with the European Union if they have been thereby obliged to change their residence from their State of residence and move to the State of employment and to integrate themselves into a new environment (see judgment of 14 July 2021, *KO* v *Commission*, T-389/20, not published, EU:T:2021:436, paragraph 17 and the case-law cited).

33 Admittedly, in view of that objective, the Civil Service Tribunal held that the provisions of Article 4(1)(b) of Annex VII to the Staff Regulations must be interpreted as meaning that, where a person applying for the expatriation allowance has worked for a number of separate agencies, the date on which the reference period expires is the date on which that person took up employment with the agency concerned, as provided for in the temporary staff contract on the basis of which the expatriation allowance is being applied for (judgment of 5 December 2012, *Grazyte* v *Commission*, F-76/11, EU:F:2012:173, paragraph 46).

34 However, it should be noted that the situation of the applicant in the case which gave rise to the judgment of 5 December 2012, *Grazyte* v *Commission* (F-76/11, EU:F:2012:173), was different from that of the applicant in the present case. As the applicant maintains, in the case at issue, the taking into account of the new entry into service was justified by specific circumstances, namely the fact that the conclusion of a new contract resulted in a change of the applicant's State of employment. The Civil Service Tribunal held that it was common ground that a person recruited by an agency, after having worked for another agency in the territory of another Member State, is in the situation of 'an expatriate' because he or she must integrate into a new environment (judgment of 5 December 2012, *Grazyte* v *Commission*, F-76/11, EU:F:2012:173, paragraph 46).

35 The Commission maintains that the interpretation of Article 4(1) of Annex VII to the Staff Regulations adopted in the judgment of 5 December 2012, *Grazyte* v *Commission* (F-76/11, EU:F:2012:173), was followed by the Civil Service Tribunal in its subsequent case-law, from which it follows that financial entitlements, including entitlement to the expatriation allowance, must be reassessed upon each entry into service with a new employer.

36 In that regard, it should be noted that, in the judgments of 14 July 2021, *KO* v *Commission* (T-389/20, not published, EU:T:2021:436, paragraph 45); of 15 September 2021, *LF* v *Commission* (T-466/20, EU:T:2021:574, paragraph 113); and of 13 July 2018, *Quadri di Cardano* v *Commission*, T-273/17, EU:T:2018:480, paragraph 112), the General Court found, in essence, that, in the absence of continuity of the various contracts between a member of staff and the institutions and

bodies of the European Union which successively employ him or her, the financial entitlements of the person concerned, including entitlement to the expatriation allowance, had to be reassessed upon each entry into service with a new employer. The Court stated that, consequently, the reference period and the relevant facts to be taken into account for the examination of the conditions provided for in Article 4(1)(a) of Annex VII to the Staff Regulations were different for each contract and that, in those circumstances, upon his or her entry into service with an institution, the person concerned could not rely on previous decisions concerning the granting of the expatriation allowance.

37 As the Commission submits, in none of the cases cited in paragraph 36 above has the Court recognised the existence of continuity between the various contracts concluded between the staff member and the EU institutions and bodies that would justify the new institution or agency not reassessing the entitlement to the expatriation allowance, in view of the conclusion of a new contract with the new employer.

38 However, it must be found that the situations of the persons concerned in those cases differed from the situation of the applicant in the present case.

39 As regards the case which gave rise to the judgment of 14 July 2021, *KO* v *Commission* (T-389/20, not published, EU:T:2021:436), there was a gap of more than a year between two contracts concluded with the Commission (judgment of 14 July 2021, *KO* v *Commission*, T-389/20, not published, EU:T:2021:436, paragraph 5). Furthermore, the refusal to grant the expatriation allowance was justified by the fact that, in that case, the applicant had established the habitual centre of her interests in her State of employment, namely in Belgium, well before the start of the reference period (judgment of 14 July 2021, *KO* v *Commission*, T-389/20, not published, EU:T:2021:436, paragraphs 30 to 32).

40 With regard to the case which gave rise to the judgment of 15 September 2021, *LF* v *Commission* (T-466/20, EU:T:2021:574), although the applicant's contracts in that case did not entail a change of the State of employment, they were concluded with two different employers and were separated by a period of four months during which the applicant was registered as a jobseeker (judgment of 15 September 2021, *LF* v *Commission*, T-466/20, EU:T:2021:574, paragraph 113).

41 As to the case which gave rise to the judgment of 13 July 2018, *Quadri di Cardano* v *Commission* (T-273/17, EU:T:2018:480), although the applicant had concluded several contracts with agencies and institutions established in the same Member State, there was a gap between some of those contracts (judgment of 13 July 2018, *Quadri di Cardano* v *Commission*, T-273/17, EU:T:2018:480, paragraph 112). However, it follows from that judgment that there was no gap between the last two contracts concluded between the applicant and the agencies concerned and that, moreover, the applicant had been wrongly granted the expatriation allowance during the first of those two contracts (judgment of 13 July 2018, *Quadri di Cardano* v *Commission*, T-273/17, EU:T:2018:480, paragraphs 24 to 26 and 29).

42 Thus, in the cases examined above, there was a gap between the contracts concluded between the members of staff and the institutions and agencies of the European Union. Such a circumstance is lacking in the present case, since the applicant started working at the GSC the day after his contract with the Committee of the Regions expired.

43 Furthermore, it should be noted that it is apparent from the Commission's response to the measure of organisation of procedure of 25 July 2024 that the approach taken by the PMO in the present case was not necessarily followed by other institutions and agencies of the European Union. In that regard, it follows that, for some EU institutions, provided that there is no gap between the contracts and that the State of employment does not change, the change of employer within the European Union has no impact on the right to the expatriation allowance. In that situation, there is no need to reassess the right to the expatriation allowance, but it is appropriate to renew the right set by the previous employer, unless the latter made an obvious error in the assessment of that right.

44 In the present case, it is common ground between the parties that the applicant terminated his duties at the Committee of the Regions after being recruited by the GSC (see paragraph 4 above) and that there was therefore no gap between the contract concluded with the Committee of the Regions and that concluded with the GSC. Furthermore, since the Committee of the Regions and the GSC are both located in Belgium, the change of employment did not entail a change of State of employment.

45 Taking into account the objective of the expatriation allowance, recalled in paragraph 32 above, it should be noted that the applicant's situation, as established upon his entry into service at the Committee of the Regions, did not change upon his entry into service at the GSC. The same applies as regards the extra expense and inconvenience of taking up employment which the expatriation allowance seeks to offset.

46 In the light of the foregoing, it must be found that, in the present case, the fact that there is no gap between the contracts concluded by the applicant successively with the Committee of the Regions and the GSC, and the fact that he did not change his State of employment, leads to the conclusion that, notwithstanding the change of employer, there was, in the present case, continuity between the applicant's contracts which justified the renewal of his right to receive the expatriation allowance that had been assessed upon his entry into service at the Committee of the Regions.

47 Consequently, it must be found that the PMO made a manifest error of assessment and an error of law as regards the interpretation of Article 4(1) of Annex VII to the Staff Regulations, in refusing the applicant the right to receive the expatriation allowance upon his appointment at the GSC.

48 It follows that the first plea in law must be upheld and the contested decision must be annulled, without there being any need to examine the other arguments and the second plea in law put forward by the applicant.

The claim seeking the recognition of the applicant's right to receive the expatriation allowance

49 The applicant requests the Court to exercise its full jurisdiction to recognise the existence of his right to receive the expatriation allowance with effect from 1 February 2023.

50 It should be borne in mind that, according to settled case-law, in an action for annulment, the EU judicature cannot, without encroaching on the prerogatives of the administrative authority, order an EU institution to take the measures necessary for the enforcement of a judgment by which a decision is annulled (see judgment of 14 September 2011, *Marcuccio* v *Commission*, T-236/02, not published, EU:T:2011:465, paragraph 163 and the case-law cited).

51 Nevertheless, in disputes of a financial character, the General Court has unlimited jurisdiction under the second sentence of Article 91(1) of the Staff Regulations, which entrusts it with the task of providing a complete solution to the disputes brought before it, that is to say to rule on all the rights and obligations of the member of staff, save for leaving to the institution in question, under the control of the Court, the implementation of such part of the judgment, under such precise conditions as it shall determine (judgment of 18 December 2007, *Weißenfels* v *Parliament*, C-135/06 P, EU:C:2007:812, paragraph 67).

52 'Disputes of a financial character' within the meaning of the second sentence of Article 91(1) of the Staff Regulations include not only actions brought by members of staff seeking to have an institution held liable, but also all those seeking payment by an institution to a member of staff of a sum which he or she considers to be due to him or her under the Staff Regulations or other measure governing their working relations. It is for the EU judicature, where appropriate, to order an institution to pay a sum to which the applicant is entitled under the Staff Regulations or another legal measure (judgment of 18 December 2007, *Weißenfels* v *Parliament*, C-135/06 P, EU:C:2007:812, paragraphs 65 and 68) or to recognise the existence of a right to receive allowances (see judgment of 19 June 2007, *Asturias Cuerno* v *Commission*, T-473/04, EU:T:2007:184, paragraph 23 and the case-law cited).

53 In the present case, it follows from paragraph 47 above that the PMO incorrectly refused the applicant the right to receive the expatriation allowance upon his appointment at the GSC and that, therefore, the applicant is entitled to receive that allowance with effect from 1 February 2023 (see, to that effect, judgment of 19 June 2007, *Asturias Cuerno* v *Commission*, T-473/04, EU:T:2007:184, paragraph 77).

The claim for compensation

54 The applicant maintains that the contested decision caused him non-material damage, which he assesses at EUR 5 000.

55 The Commission contends that the claim for compensation should be rejected.

56 In an application for damages brought by an official or member of staff, in order for liability to arise on the part of the European Union, three cumulative conditions must be satisfied, namely the conduct of which the institution is accused must be unlawful, actual damage must have been suffered, and there must be a causal link between the unlawful conduct and the damage pleaded (see judgment of 22 November 2023, *QN* v *eu-LISA*, T-484/22, EU:T:2023:741, paragraph 198 (not published) and the case-law cited).

57 However, the annulment of an unlawful measure may constitute, in itself, adequate and, in principle, sufficient compensation for all non-material damage which that measure may have caused, except where the applicant shows that he or she has suffered non-material damage which is incapable of being entirely repaired by that annulment (see judgment of 22 November 2023, *QN* v *eu-LISA*, T-484/22, EU:T:2023:741, paragraph 199 (not published) and the case-law cited).

58 In the present case, the applicant states that the alleged non-material damage results from the disappointment and loss of motivation he allegedly experienced in the face of the unlawful behaviour of the PMO, as well as from the loss of time resulting from the steps he took to assert his rights.

59 In that regard, it follows from the case-law that the feeling of injustice and distress caused by the fact that an individual is required to undergo a pre-contentious procedure and then a contentious procedure in order to ensure recognition of his or her rights constitutes harm which may be inferred from the mere fact that the administration acted unlawfully. That harm must give rise to reparation where it is not compensated by the satisfaction resulting from the annulment of the measure in question (judgment of 28 May 2020, *Cerafogli* v *ECB*, T-483/16 RENV, not published, EU:T:2020:225, paragraph 448).

60 In the circumstances of the case, since the applicant has invoked, in respect of the unlawfulness of the contested decision, a manifest error of assessment and an error of law as regards the interpretation of Article 4(1) of Annex VII to the Staff Regulations, relied on by the Court in order to annul that decision, it must be found that the non-material damage alleged is adequately and sufficiently remedied by the annulment of the contested decision.

61 It follows that the applicant's claim for compensation must be dismissed.

Costs

62 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

63 Since the Commission has been largely unsuccessful, it must be ordered to bear its own costs and to pay those incurred by the applicant, in accordance with the form of order sought by the latter.

On those grounds,

THE GENERAL COURT (Fourth Chamber, Extended Composition)

hereby:

1. **Annuls the decision of the 'Office for the Administration and Payment of Individual Entitlements' (PMO) of the European Commission of 9 February 2023 refusing to grant AH entitlement to the expatriation allowance;**

2. **Orders that AH be entitled to receive the expatriation allowance provided for by Article 4 of Annex VII to the Staff Regulations of Officials of the European Union with effect from 1 February 2023;**

3. **Dismisses the action as to the remainder;**

4. **Orders the Commission to pay the costs.**

da Silva Passos Półtorak Reine

Nihoul Pynnä

Delivered in open court in Luxembourg on 22 January 2025.

[Signatures]