



Reports of Cases

JUDGMENT OF THE GENERAL COURT (Eighth Chamber)

22 March 2018*

(Civil service — Officials — Call for expression of interest — Secretary-General in the European Ombudsman's Office — Opinion of the Advisory Committee — Failure to take that opinion into consideration — Breach of the selection procedure — Manifest errors of assessment — Equal treatment — Principle of good administration — Liability)

In Case T-581/16,

Costas Popotas, an official of the Court of Justice of the European Union, residing in Luxembourg (Luxembourg), represented by V. Christianos and S. Paliou, lawyers,

applicant,

v

European Ombudsman, represented by L. Papadias, P. Dyrberg and A. Antoniadis, acting as Agents, and by A. Duron, lawyer,

defendant,

APPLICATION under Article 270 TFEU for, first, annulment of the decision to appoint Ms G. to the post of Secretary-General in the Ombudsman's office, of the Ombudsman's decision of 9 November 2015 rejecting the applicant's complaints against that decision and of the Ombudsman's decision not to invite the applicant for interview and, second, compensation for the damage which the applicant claims to have sustained as a result of those decisions,

THE GENERAL COURT (Eighth Chamber),

composed of A.M. Collins, President, M. Kancheva and R. Barents (Rapporteur), Judges,

Registrar: S. Spyropoulos, Principal Administrator,

Having regard to the written part of the procedure and further to the hearing on 21 September 2017, gives the following

* Language of the case: Greek.

Judgment

Legal framework

- 1 According to the first paragraph of Article 27 of the Staff Regulations of Officials of the European Union ('the Staff Regulations'):

'Recruitment shall be directed to securing for the institution the services of officials of the highest standard of ability, efficiency and integrity, recruited on the broadest possible geographical basis from among nationals of Member States of the [European Union].'

- 2 On 19 February 2015, the European Ombudsman published a call for expression of interest for the recruitment of Secretary-General in the Ombudsman's Office at grade AD 15/16 (OMB/2/2015) ('the CEI').

- 3 The selection criteria set out in point 6 of the CEI are as follows:

- 'Experience working with or in an EU institution, body or agency, or with or in a national Ombudsman's office, or similar body;
- Good knowledge of EU affairs, EU institutions and of EU law;
- Significant management experience and proven success in an area compatible with the activities of the office;
- Good understanding of the role of an Ombudsman in public administration;
- Proven experience of driving through strategic change;
- Knowledge of budget management and planning;
- Understanding of modern HR strategies and processes;
- Understanding of modern IT strategies and processes;
- Excellent communication, networking and motivational skills;
- Strong commitment toward a citizen-focused EU;
- Strong commitment to the Ombudsman's vision and strategy;
- Ability to communicate effectively in English and in French is required for practical reasons. Knowledge of other official languages of the European Union is an advantage.'

- 4 Point 7 of the CEI, entitled 'Selection procedure', states:

'All applicants will receive an acknowledgement of receipt. To assist the Appointing Authority, an Advisory Committee will review the applications received with the assistance of the Personnel Administration and Budget Unit and recommend a list of applicants to be invited for interview. The Advisory Committee may recommend that only some of the eligible applicants should be short-listed for interview.'

The Ombudsman may decide that only some of the applicants on the recommended list will be invited to interview. All applicants will be informed of the outcome of the selection procedure.'

- 5 The closing date and time for receipt of applications was, according to point 8 of the CEI, 22 March 2015 noon.
- 6 Furthermore, point 8 of the CEI states that applications must include:
 - '(a) a completed application form downloaded from the Ombudsman's website ...
 - (b) a letter drafted in English explaining the applicant's reasons for applying and why the applicant believes he or she has the qualifications, knowledge, skills and qualities that are required;
 - (c) a copy of the applicant's curriculum vitae;
 - (d) a copy of a document proving the applicant's citizenship;
 - (e) copies of diplomas (a certified translation is not required but a translation of the diploma in English or French would be helpful);
 - (f) evidence of professional experience, clearly indicating the starting and finishing dates and the exact nature of the duties carried out, establishing that applicants possess the qualifications and the knowledge required under the heading "Selection criteria";
 - (g) applicants should also provide a statement and, where available, evidence concerning their knowledge of languages;
 - (h) for officials of other EU institutions, a copy of the applicant's three most recent staff reports (if available);
 - (i) a valid e-mail address to be used for communications by the Ombudsman's Office concerning this procedure.

Original documents may be requested for checking of the supporting documents provided under (d), (e), (f), (g) and (h) at a later stage.

Applications which are incomplete or submitted (either in part or in their entirety) after the deadline for submission of applications will not be considered.'

Background to the dispute

- 7 On 19 March 2015, the Ombudsman published the list of the members of the Advisory Committee for selection procedure OMB/2/2015. It was composed of the following members: Ms A., Ms D., Ms S. and Mr H. In addition, an observer and a secretary were appointed to assist the committee.
- 8 On 20 March 2015, the applicant, Mr Costas Popotas, sent by email the complete documentation relating to his application for the post of Secretary-General and explained that his staff report for 2014 was in the process of being finalised.
- 9 By email of 24 March 2015, the Ombudsman acknowledged receipt of the applicant's application.

- 10 On 27 March 2015, the applicant sent his most recent staff report, drawn up on the same day and covering the year 2014; he added that, although the staff report had been sent after the closing date, he would nonetheless be grateful if it were made available to the Advisory Committee.
- 11 On 9 April 2015, the Advisory Committee sent an email to the Ombudsman informing her that it had completed its assessment of the applications which had been submitted to it. Furthermore, it drew up the list, in alphabetical order, of 12 applicants which it recommended should be called for interview by the Ombudsman. On that list in alphabetical order the applicant was in 11th position and Ms G. was in seventh position.
- 12 By email of the same date, the Ombudsman informed the observer of the Advisory Committee that she had decided to call for interview only eight of the 12 applicants proposed by that committee, including Ms G., and excluding the applicant from the interview.
- 13 By letter of 10 April 2015, the Head of the 'Personnel, Administration and Budget' Unit informed the applicant that the Advisory Committee had decided that, in spite of the considerable merits of his application, it could not recommend that he be invited for interview. It was also stated that if he disagreed with that decision he might introduce a reasoned request for reconsideration of the decision by 17 April 2015.
- 14 On 17 April 2015 the interviews of the eight applicants who had been selected by the Ombudsman took place and on 22 April 2015 three of them were re-interviewed.
- 15 On 8 May 2015, the applicant became aware, on consulting the website of the magazine *Politico*, that Ms G. had been appointed Secretary-General of the Ombudsman. That information had been communicated to the Advisory Committee on 4 May 2015.
- 16 On 18 May 2015, the applicant lodged with the Ombudsman a request for access to the administrative documents relating to procedure OMB/2/2015, in particular the minutes of the Advisory Committee appointed to assist the appointing authority and the proposal submitted for assessment by the appointing authority.
- 17 On 26 May 2015, the Ombudsman informed the applicant that the Advisory Committee '[had] not take[n] minutes during its one meeting, and we can therefore not consider/examine possible public access to such a document'. Furthermore, as regards the applicant's request for access to the proposal submitted for assessment by the appointing authority, the Ombudsman stated that 'the Advisory Committee [had] not, however, itself submit[ted] a separate document containing a proposal, but [had] administratively made its assessments known to the Ombudsman through the relevant parts of the note of 13 May 2015 referred to above'.
- 18 On 3 June 2015, the Ombudsman sent the applicant, following his request for access to certain documents, the note of 13 May 2015 concerning selection procedure OMB/2/2015 for the recruitment of a Secretary-General. That note, drawn up on 13 May 2015 by the Head of the 'Personnel, administration and budget' Unit and approved by the Ombudsman, summarises the selection procedure followed from the publication of the CEI until the decision to offer the post to Ms G. That note includes three annexes: the first concerns the eligibility of applicants, the second relates to the marks awarded by the Advisory Committee to eligible applicants and the third relates to the marks awarded by the Advisory Committee to the eight applicants who had participated in the first round of interviews.
- 19 On 4 June 2015, the applicant requested the Ombudsman to remove the anonymity from his application in Annex 2 to the note of 13 May 2015.

- 20 On 9 June 2015, the applicant was informed by the Ombudsman's services that his application bore the number 51.
- 21 On 10 June 2015, the applicant requested the Ombudsman to provide him with access to the following documents:
- 'copies of the [curricula vitae] of applicants nos 3, 7 and 47 (anonymised if necessary) and of Ms G.;
 - the criteria on which the applicants referred to in Annex 3 to the Ombudsman's note of 13 May 2015 were invited for interview ...;
 - copies of all the emails and letters (anonymised if necessary) sent to applicants nos 7 and 47 as from 10 April'.
- 22 On 11 June 2015, the applicant informed the Ombudsman that he considered that the marks awarded to him bore no relation to the documents submitted.
- 23 The applicant therefore asked to 'receive from the Advisory Committee specific reasons for:
- the sub-criteria which [had been] applied for the assessment concerning elements A, G and H of Annex 2, in particular the reasoning which [had] allowed the maximum possible marks to be awarded to certain applicants;
 - the elements of [his] file which [had] not allowed the maximum points to be awarded for element A;
 - the reasons why, having regard to all of [his] almost constant involvement in staff management matters, especially at interinstitutional level, the Committee [had not considered] it appropriate to award [him] the maximum points, indeed more than 3.50 for element G;
 - the criteria applied to [his] file which [had] resulted in particularly low marks concerning element H, considering that [he] informed the Committee of the specific IT studies, constant involvement in IT applied to the activities which he [had] carried out, advanced training and publications in that field and participation in high-class associations in the field.'
- 24 The applicant further stated that, at the same time, he had submitted request INC2015-005124 to the Ombudsman's registry for access to the documents.
- 25 By letter of 17 June 2015, sent to the applicant by email of 18 June 2015, the Ombudsman, in answer to his request of 10 June 2015, communicated Ms G's curriculum vitae, stating that the curricula vitae of the other applicants could not be communicated to him owing to the rights linked with the protection of personal data. In addition, he was sent a copy of the correspondence with applicants nos 7 and 47, in accordance with his request.
- 26 On 26 June 2015, in answer to the applicant's email of 11 June 2015, the Ombudsman's Office informed him that a reply to his request was being prepared and would be sent to him as soon as possible.
- 27 The applicant informed the Ombudsman that he would expect the answer by 10 July 2015 in principle.
- 28 On 10 July 2015, the applicant submitted, as a precautionary measure, a complaint based on Article 90(2) of the Staff Regulations. He maintained that the procedure was characterised by defects and inconsistencies which indicated an abuse of procedure, in particular by the fact that he had not been invited to an oral interview, unlike applicant 47, who had been classified jointly equally with him

in ninth position, without any objective justification being provided, and, moreover, that errors of assessment had been made as regards his qualifications in relation to elements ‘G. Understanding of modern HR strategies and processes’ and ‘H. Understanding of modern IT strategies and processes’, in the light of the information provided in his application and in the curriculum vitae annexed thereto. He therefore requested the appointing authority to annul the stages of the selection procedure following the note of 13 May 2015, in particular the appointment of Ms G. to the post of Secretary-General in the Ombudsman’s Office, and to compensate him for the pecuniary and non-pecuniary damage which he had sustained.

- 29 On 17 July 2015, the Ombudsman’s office acknowledged receipt of that complaint.
- 30 On 21 September 2015, the applicant requested a copy of the decision appointing Ms G, which was sent to him by email of 5 October 2015.
- 31 On 14 October 2015, the applicant lodged a second complaint based on Article 90(2) of the Staff Regulations, in which he maintained the objections set out in his first complaint (see paragraph 28 above). He added, however, that elements of assessment that were not provided for had been taken into account for the applicant eventually selected, in breach of the principle of equal treatment, and that the selection procedure overall did not comply with the standards of good administration that should guide an institution such as the Ombudsman. He therefore requested annulment of the stages of the selection procedure following the note of 13 May 2015, in particular the appointment of Ms G. to the post of Secretary-General in the Ombudsman’s Office made by the Ombudsman’s decision of 16 July 2015. Furthermore, he maintained his claim for compensation for the pecuniary and non-pecuniary damage sustained.
- 32 By decision of 9 November 2015 (‘the contested decision’), the applicant was informed by the Ombudsman that his complaints of 10 July and 14 October 2015 were rejected.

Procedure and forms of order sought

- 33 By application lodged at the Registry of the Civil Service Tribunal on 17 February 2016, the applicant brought the present action.
- 34 The Ombudsman lodged a defence at the Registry of the Civil Service Tribunal on 26 June 2016.
- 35 In application of Article 3 of Regulation (EU, Euratom) 2016/1192 of the European Parliament and of the Council of 6 July 2016 on the transfer to the General Court of jurisdiction at first instance in disputes between the European Union and its servants (OJ 2016 L 200, p. 137), the present case was transferred to the General Court as it was found on 31 August 2016. It was registered as number T-581/16 and assigned to the Eighth Chamber.
- 36 The applicant lodged a reply at the Court Registry on 3 January 2017 and the Ombudsman lodged a rejoinder on 16 March 2017.
- 37 By request lodged at the Court Registry on 7 April 2017, the applicant asked the Court, on the basis of Article 85(4) of the Rules of Procedure of the General Court, to order that Annex D 1 be removed from the file and not to take account of the Ombudsman’s arguments relating to that annex.
- 38 On a proposal from the Judge-Rapporteur, the Court (Eighth Chamber) decided to open the oral part of the procedure and, in the context of the measures of organisation of procedure provided for in Article 89 of its Rules of Procedure, put a written question to the applicant, who complied with that request within the prescribed period.

39 The applicant claims that the Court should:

- annul the contested decision, by which the Ombudsman rejected his administrative complaints;
- annul the decision of 10 April 2015, which denied the applicant an interview, and the decision of 16 July 2015 appointing Ms G. to the post of Secretary-General of the Ombudsman's office;
- order the Ombudsman to pay the applicant the sum of EUR 112 472.64 as compensation for the pecuniary damage sustained by him;
- order the Ombudsman to pay the applicant the sum of EUR 30 000 as compensation for the non-pecuniary damage sustained by him;
- order the Ombudsman to pay all the costs.

40 The Ombudsman contends that the Court should:

- dismiss the action as inadmissible in part;
- dismiss the application in its entirety;
- order the applicant to pay the costs of the proceedings.

41 At the hearing, the applicant made a preliminary declaration whereby he stated that he intended to limit the amount of his claim relating to pecuniary damage and that he no longer claimed payment of the sum of EUR 112 472.64. He explained that the pecuniary damage which he claimed to have sustained related to a loss of opportunity and that he therefore requested the Court to determine a lump sum on an equitable basis, which the Court noted in the minutes of the hearing.

Law

1. Admissibility

42 Without formally putting forward an objection of inadmissibility, the Ombudsman relies on a number of pleas of inadmissibility against certain pleas raised by the applicant.

43 In the first place, the Ombudsman claims that the rule of consistency, which requires that a plea raised before the Courts of the European Union must have already been raised in the context of the pre-litigation procedure, was not observed. Thus, the objections made against information provided in the note of 13 May 2015, communicated to the applicant on 3 June 2015, and against Ms G.'s curriculum vitae, communicated to the applicant on 18 June 2015, should have already been submitted in the context of the pre-litigation procedure. In the Ombudsman's submission, the objections that could have been made before the present action was lodged are therefore inadmissible.

44 In that regard, it should be borne in mind that Article 91(2) of the Staff Regulations provides that an appeal to the Court of Justice of the European Union is to lie only if the appointing authority had previously had a complaint submitted to it.

45 It has consistently been held that the rule requiring consistency between the complaint, within the meaning of Article 91(2) of the Staff Regulations, and the subsequent application requires, on pain of inadmissibility, that a plea raised before the Courts of the European Union has already been raised in the context of the pre-litigation procedure, so that the appointing authority has been in a position to

know the criticisms which the person concerned formulates against the contested decision (see judgment of 25 October 2013, *Commission v Moschonaki*, T-476/11 P, EU:T:2013:557, paragraph 71 and the case-law cited).

46 That rule is justified by the very objective of the pre-litigation procedure, which is to permit an amicable settlement of the differences which have arisen between officials and the administration (see judgment of 25 October 2013, *Commission v Moschonaki*, T-476/11 P, EU:T:2013:557, paragraph 72 and the case-law cited).

47 It follows that, as has consistently been held, in actions brought by officials, the form of order sought before the Courts of the European Union can contain only heads of claim based on the same matters as those forming the basis of the heads of claim put forward in the complaint, although those heads of claim may be developed before the Courts of the European Union by pleas and arguments which do not necessarily appear in the complaint but must be closely linked to it (see judgment of 25 October 2013, *Commission v Moschonaki*, T-476/11 P, EU:T:2013:557, paragraph 73 and the case-law cited).

48 The Ombudsman submits, first, that part of the first plea, alleging, as the applicant made clear at the hearing, in answer to a question to that effect put by the Court, that there had been a breach of the selection procedure. Thus, in the Ombudsman's submission, the applicant can no longer call into question the fact that the applicants were evaluated during the pre-interview stage against certain selection criteria, that two rounds of interviews and six criteria with weighting factors were used to evaluate the interviews and that applicants' language abilities were not evaluated in accordance with the CEI. The Ombudsman thus claims that the applicant was perfectly aware, at the actual time of lodging his first complaint, of the following factors:

- 'eight selection criteria [were] used during the pre-interview stage;
- [the applicant] was evaluated against those criteria;
- the evaluation led to [the applicant's] being excluded from the following stages of the selection procedure;
- there were two rounds of interviews;
- there were six evaluation criteria;
- weighting factors were applied both during the pre-interview stage and during the interview stage;
- language abilities were evaluated during the interview stage; and
- the languages of the applicant selected for the post were English, French and German.'

49 In that regard, it should be observed that, in the context of his first complaint, the applicant stated that the procedure was characterised by defects and inconsistencies which indicated that the selection procedure had not been observed, referring by way of example to the fact that he had not been invited to an oral interview, unlike applicant no 47, who had been classified jointly with the applicant. The applicant further stated, in the context of his second complaint, that elements of assessment that were not provided for had been taken into account for the applicant eventually selected, in breach of the principle of equal treatment.

50 It must be stated that the defects and inconsistencies referred to by the applicant specifically and necessarily encompass all the objections on which he relied in the context of his first plea, which all relate to the breach of the selection procedure, and which are recited by the Ombudsman (see paragraph 48 above). It follows that even though those objections are not expressly set out in the

applicant's first complaint, they are linked with the complaint relating to breach of the selection procedure and therefore do not constitute a 'sub-plea', as the Ombudsman claims, but arguments in support of the plea already raised.

51 It follows that this first plea of inadmissibility must be rejected.

52 The Ombudsman submits, second, that the 'sub-plea' alleging that weighting factors not provided for in the CEI were attributed to the selection criteria is inadmissible.

53 It must be stated, once again, that this objection undeniably forms part of the plea alleging breach of the selection procedure, in that the Ombudsman is accused of not having observed the selection criteria which she herself had fixed. This objection, too, cannot be classified as a 'sub-plea', a classification which appears to be particularly inappropriate.

54 It follows that this second plea of inadmissibility must also be rejected.

55 The Ombudsman submits, third, that the objection that a criterion concerning the 'overall impression' was taken into consideration is inadmissible, when that objection could have been made by the applicant in his complaint, since he had been aware of the existence of that criterion since 3 June 2015.

56 The applicant claims that the 'overall impression' was not a criterion set out in the CEI.

57 However, it should be observed that, in the second complaint of 14 October 2015, the applicant took issue with the Ombudsman, more specifically, for having taken elements of assessment which were not provided for into consideration. It follows that, in accusing the Ombudsman of having taken the criterion relating to 'overall impression' into consideration, the applicant merely developed the plea which he had already mentioned in his second complaint. The Ombudsman is therefore manifestly incorrect to claim that that objection was not raised in the context of the pre-litigation procedure.

58 This third plea of inadmissibility must therefore be rejected.

59 In the second place, as regards the objections to alleged errors made in the subsequent stages of the selection procedure and which do not relate to the applicant's case, it must be stated that those objections are not inadmissible, as the Ombudsman claims, but possibly inoperative, and will therefore be examined when the Court examines the substantive pleas.

60 In the third place, the Ombudsman raises a plea of inadmissibility, in that, although the applicant had the opportunity to submit a reasoned request to the Advisory Committee and to the Ombudsman before 17 April 2015 to reconsider his application, and although he was expressly informed that he might do so, he did not avail himself of that opportunity, when it was in his legitimate interest to do so. That reconsideration was not pointless, since other applicants took advantage of it, even though the negative decision taken in respect of them had been confirmed.

61 In that regard, it should be recalled that, by email of 10 April 2015, the applicant was informed that the Advisory Committee had not recommended that he be invited for interview.

62 It is correct that the Advisory Committee added that, if the applicant disagreed with that decision, he could submit a reasoned request for reconsideration of his application before 17 April 2015.

63 It has consistently been held that when a party whose request to be admitted to an EU competition has been rejected seeks reconsideration of that decision on the basis of a specific provision which is binding on the administration, it is the decision taken by the selection board after reconsideration that constitutes the act affecting him adversely, within the meaning of Article 90(2) or, where appropriate,

Article 91(1) of the Staff Regulations. It is also that decision, taken after reconsideration, that causes time to begin to run for the purposes of lodging a complaint and bringing an action, without there being any need to ascertain whether, in such a situation, that decision may be regarded as a purely confirmatory act (judgments of 23 January 2002, *Gonçalves v Parliament*, T-386/00, EU:T:2002:12, paragraph 39, and of 7 June 2005, *Cavallaro v Commission*, T-375/02, EU:T:2005:199, paragraph 58).

64 However, that option to request reconsideration of a decision rejecting an application cannot be interpreted as meaning that an action against a decision rejecting a complaint would be inadmissible on the ground that there had been no prior request for a reconsideration. The prior request for reconsideration is not a condition of the admissibility of the action, as, moreover, is apparent from the actual words of the email of 10 April 2015, in which it is expressly stated that the applicant may submit a reasoned request for reconsideration.

65 It follows that this plea of inadmissibility must also be rejected.

66 In the fourth place, as regards the pleas of inadmissibility formulated by the Ombudsman in her rejoinder, and in particular in Annex D 1, and which were not formulated in the defence, they are necessarily inadmissible, since they were raised at the stage of the rejoinder and are not a matter of public policy, when they could have been raised at the stage of the defence. The Ombudsman has not claimed that she was unable to raise those pleas of inadmissibility until the stage of the rejoinder because of information which she obtained after the applicant had lodged the reply.

67 It follows that all the pleas of inadmissibility raised by the Ombudsman are rejected.

2. Substance

The claims of annulment

68 In support of his action, the applicant raises four pleas in law. The first plea alleges abuse of the selection procedure, the second plea alleges a manifest error of assessment, the third plea alleges breach of the principle of equal treatment and the fourth plea alleges breach of the principle of good administration.

69 It should be noted that the applicant's heads of claim will be examined together, as follows from the pleas which he has put forward, since he drew no distinction on that point.

First plea, alleging abuse of the selection procedure

70 The applicant relies on four complaints in support of the first plea. He claims that the Ombudsman, in the first place, took no account, when evaluating the applicants, of the criteria set out in the CEI; in the second place, evaluated the selection criteria using coefficients that were not provided for in the CEI; in the third place, carried out the evaluation on the basis of criteria that were not provided for in the CEI; and, in the fourth place, admitted having failed to take account of the Advisory Committee which she herself had established in the CEI and having committed irregularities in evaluating the applicant.

71 As a preliminary point, it should be noted that, as the applicant acknowledged at the hearing in answer to a question put by the Court, the first plea, alleging 'abuse of the selection procedure', must be understood as alleging 'breach of the selection procedure', and a note to that effect was made in the minutes of the hearing. Incidentally, it was in that context that the Ombudsman responded to the first plea raised by the applicant and she thus made no comment at the hearing on that reclassification by the Court.

– *First and second complaints, alleging that the Ombudsman took no account, when evaluating the applicants, of the criteria provided for in the CEI and that she evaluated the selection criteria using coefficients that were not provided for in the CEI*

- 72 The applicant claims, in essence, that although the CEI contained, in point 6, 12 criteria (see paragraph 3 above), only the first eight criteria were taken into account. Thus, by taking only eight of those 12 criteria into consideration, the Ombudsman was in breach of the CEI. Furthermore, the Ombudsman applied a weighting coefficient to each of those criteria, whereas the CEI had made no provision for such weighting.
- 73 It should be borne in mind that, according to settled case-law, the Ombudsman is required to comply with the CEI which she has adopted, since such a call for expression of interest determines the conditions governing access to the post in question. Thus, the function of the CEI is to inform interested parties as precisely as possible of the nature of the conditions required to occupy the post to be filled, in order to put them in a position to determine whether to apply, and to set the framework of legality in the light of which the institution intends to examine the comparative merits of the applicants. By taking into consideration, when examining the applications, conditions other than those set out in the CEI, the Ombudsman does not respect that framework of legality (see, to that effect, judgment of 11 February 1999, *Leite Mateus v Commission*, T-21/98, EU:T:1999:28, paragraph 31 and the case-law cited).
- 74 In that regard, it should be observed that the CEI set out all the criteria that were to be taken into consideration, which were 12 in number (see paragraph 3 above), although neither the weighting attributed to each of those criteria nor the stage at which they were to be taken into consideration was determined.
- 75 The Ombudsman has a wide discretion when carrying out her work. It is therefore permissible for her, where, as in the present case, the CEI does not set out criteria for marking, to fix such criteria or to determine, if the CEI does not so provide, the stage at which the criteria must be taken into consideration (see, to that effect, judgments of 26 February 1981, *Authié v Commission*, 34/80, EU:C:1981:57, paragraph 14; of 13 December 1990, *Gonzalez Holguera v Parliament*, T-115/89, EU:T:1990:84, paragraph 53; and of 14 July 1995, *Pimley-Smith v Commission*, T-291/94, EU:T:1995:142, paragraph 48).
- 76 In that regard, it is common ground that the Advisory Committee and the Ombudsman evaluated the applications in the context of the second stage, namely the evaluation of the curricula vitae alone, against the following eight criteria:
- ‘Experience working with or in an EU institution, body or agency, or with or in a national Ombudsman’s office, or similar body;
 - Good knowledge of EU affairs, EU institutions and of EU law;
 - Significant management experience and proven success in an area compatible with the activities of the office;
 - Good understanding of the role of an Ombudsman in public administration;
 - Proven experience of driving through strategic change;
 - Knowledge of budget management and planning;
 - Understanding of modern HR strategies and processes;

– Understanding of modern IT strategies and processes.’

- 77 On the other hand, the last four criteria, referred to in paragraph 3 above, were not taken into consideration in the context of the second stage, but in the context of the third stage, namely when only the selected applicants were interviewed.
- 78 The applicant’s complaint that the Ombudsman did not comply with the CEI, on the ground that only eight criteria were taken into consideration when the applications were examined on the basis of applicants’ curricula vitae, cannot be upheld.
- 79 As is apparent from the note of 13 May 2015 and also from the contested decision, all the criteria mentioned in the CEI were taken into consideration in the selection procedure and no criterion other than those mentioned in the CEI was taken into account during that procedure.
- 80 The fact that the first eight criteria set out in paragraph 3 above were taken into consideration in the second stage and that the last four were taken into consideration in the context of the interviews is within the discretion of the Ombudsman, who, as the CEI was silent on that point, was therefore free to determine the stage at which those criteria should be taken into consideration.
- 81 Furthermore, it must be stated that the last four criteria, namely ‘excellent communication, networking and motivational skills’, ‘strong commitment toward a citizen-focused EU’, ‘strong commitment to the Ombudsman’s vision and strategy’ and ‘ability to communicate effectively in English and in French, ... [K]nowledge of other official languages of the European Union [being] an advantage’, are criteria which naturally lend themselves to examination in interviews.
- 82 In fact, it is in the context of the interviews that the Ombudsman may form a view, in the light of the questions put to applicants and their answers, in particular, of their commitment toward a citizen-focused European Union or to the Ombudsman’s vision and strategy, and of their ability to communicate in English, French or any other language of the European Union.
- 83 Furthermore, as regards the applicant’s complaint concerning the weighting applied to the various criteria, the first five being marked out of 10 and the last three out of five, it must be stated that, as the CEI is silent on that point, the Ombudsman was free to place weightings on those criteria, which is within the wide discretion recognised to her by the case-law (judgment of 16 May 2013, *Canga Fano v Council*, T-281/11 P, EU:T:2013:252, paragraph 123; see also, to that effect, judgment of 19 April 1988, *Santarelli v Commission*, 149/86, EU:C:1988:179, paragraph 10).
- 84 It follows from the foregoing that the applicant has put forward no evidence and no indicium that would show that the Ombudsman displayed the slightest intention to reject his application in favour of that of Ms G. (see, to that effect, judgment of 25 May 2000, *Elkaïm and Mazuel v Commission*, T-173/99, EU:T:2000:142, paragraph 121).
- 85 It follows that the first and second complaints must be rejected.

– *Third complaint, alleging that the Ombudsman carried out the evaluation on the basis of criteria not provided for in the CEI*

- 86 In the first place, the applicant takes issue with the Ombudsman for having invited applicants participating in the second round of interviews to make personal recommendations, a requirement which does not appear among the selection criteria.

- 87 In that regard, it is sufficient to state that this complaint is inoperative since the applicant's application was rejected at an earlier stage than the interview stage, so that the fact that recommendations may have been taken into consideration cannot have had the effect of harming him. Furthermore, as the Ombudsman explained at the hearing in answer to a question put by the Court, that requirement was formulated only with respect to the applicant Ms G. at the end of the recruitment procedure.
- 88 In any event, it should be observed that the applicant himself mentioned in his curriculum vitae the names of the individuals who might recommend his application.
- 89 In the second place, the applicant takes issue with the Ombudsman for having given a comparative advantage to applicants who had worked in the institutions that have frequent dealings with the Ombudsman, although that criterion does not appear in the CEI.
- 90 The Ombudsman wrote in the contested decision:
- ‘I also gave a comparative advantage to applicants who have worked in institutions which have frequent dealings with the institution of the European Ombudsman. You have little experience of the European Ombudsman, while other applicants had much more such experience.’
- 91 In that regard, it is correct, as the applicant claims, that the criterion ‘frequent dealings with the Ombudsman’ does not appear, as such, among the criteria mentioned in the CEI.
- 92 However, it must be stated that that criterion may be linked with the criterion requiring ‘good understanding of the role of an Ombudsman in public administration’, as the Ombudsman confirmed in answer to a question put by the Court.
- 93 Thus, a person who has had frequent professional dealings with the Ombudsman will naturally be more familiar with the tasks and problems associated with that function by comparison with a person who has worked in an institution or an agency or body of the Union which has had more distant dealings with the Ombudsman, or indeed no professional dealings at all.
- 94 In fact, the applicant was unable to demonstrate that, in the context of his activities within the Court of Justice of the European Union, he had frequent dealings with the Ombudsman.
- 95 He relies solely, by way of examples, on three cases in which he was involved when he was a legal secretary. However, apart from the fact that involvement in cases is not capable of demonstrating the frequency of dealings with the Ombudsman, it should be observed, moreover, that the first case gave rise to the order of 4 June 2015, *Mirelta Ingatlanhasznosító v Commission and Ombudsman* (C-576/14 P, not published, EU:C:2015:370), whereby the appeal was dismissed as manifestly unfounded in part and manifestly inadmissible in part without being notified to the Ombudsman. As regards the cases before the General Court, namely the cases that gave rise to the judgment of 24 September 2008, *M v Ombudsman* (T-412/05, not published, EU:T:2008:397), and to the order of 5 September 2006, *O’Loughlin v Ombudsman and Ireland* (T-144/06, not published, EU:T:2006:237), they were determined by the General Court, where the applicant has not occupied the post of legal secretary. In any event, as regards the case that gave rise to the order of 5 September 2006, *O’Loughlin v Ombudsman and Ireland* (T-144/06, not published, EU:T:2006:237), it too was not notified to the Ombudsman, as the application was dismissed by the General Court on the grounds that it was manifestly inadmissible and that the Court clearly had no jurisdiction. Furthermore, it must be stated that working on cases concerning the Ombudsman does not imply the existence of ‘frequent dealings’ with the Ombudsman.
- 96 The Ombudsman therefore did not breach the selection procedure by taking into consideration the fact that applicants had worked in institutions which had frequent dealings with the Ombudsman.

- 97 In the third place, the applicant claims that, in the contested decision, the Ombudsman had assessed applicants who had occupied senior management posts more favourably than those who had occupied more junior management posts.
- 98 The applicant takes issue with the Ombudsman for having considered, in the contested decision, that:
- ‘I gave a comparative advantage to applicants who have occupied senior management posts by comparison with applicants who have occupied more junior management posts. You have been head of unit, while a number of other applicants have occupied posts as director.’
- 99 In that regard, it should be stated that the post of Secretary-General with the Ombudsman, which is the highest senior management post in the Ombudsman’s Office, undeniably requires management qualities, so that, as the Ombudsman claims, it is not wrong to attach importance to applicants who have already occupied senior management posts.
- 100 In any event, it is apparent from Ms G.’s curriculum vitae that she was also head of unit and therefore did not carry out management functions, so that that criterion was not used as an eliminatory criterion, but for the purpose of assessing the applications.
- 101 Nor, therefore, did the Ombudsman breach the selection procedure when she took into consideration the fact that applicants had carried out senior management functions.
- 102 In the fourth place, the applicant takes issue with the Ombudsman for having taken into consideration in the interviews the criterion of ‘overall impression’, which did not appear in the CEI.
- 103 In that regard, it must be stated that this complaint is inoperative, since the applicant’s application was rejected at an earlier stage than the interview stage, so that the fact that an ‘overall impression’ was taken into consideration, which happened only at the interview stage, cannot have the consequence of adversely affecting him.
- 104 In any event, that criterion must be understood as an overview of the applicants’ performance by reference to all the other criteria and not as a new or independent criterion.
- 105 It follows that the third complaint must be rejected in its entirety as inoperative in part and unfounded in part.

– *Fourth complaint, alleging that the Ombudsman acknowledged not having taken account of the opinion of the Advisory Committee which she herself had established in the CEI and having committed irregularities when assessing the applicant*

- 106 The applicant takes issue with the Ombudsman, first, for not having taken into consideration the opinion of the Advisory Committee which she had established, since she did not know the order of classification made by that committee when she invited eight of those applicants for interview, and that she therefore failed to comply with her obligation to take that opinion into account, and, second, for having committed irregularities in her assessment of the applicant.
- 107 The Ombudsman wrote in the contested decision:

‘Through my head of cabinet, the [Advisory Committee] then sent me a list of the 12 best applications classified in alphabetical order ... On the basis of the applications and the same eight criteria as those used by the [Advisory Committee], I myself selected the eight applicants to be invited for interview on 17 April 2015 and made my choice known by replying to the email from my head of cabinet. I chose to invite only eight applicants because my assessment of the applications led me to take the view that the

other applicants on the list did not have all the necessary qualities to be recruited for the vacant post. I would emphasise that my comparative assessment was carried out independently of the classification and the marks awarded by the [Advisory Committee]. I do not consider that that classification was binding on me when I selected the applicants whom I wished to interview.’

- 108 It is clear from that answer that the Ombudsman relied on her own assessment as regards the 12 applicants recommended by the Advisory Committee in the list drawn up in alphabetical order, but not on the marks which that committee had awarded to each of those 12 applicants or on its classification of the applicants.
- 109 The Ombudsman states in the defence that ‘de facto’ she acted in accordance with the Advisory Committee’s opinion and makes clear that she did not ‘make her choice by simply approving a list drawn up in order of merit’.
- 110 In that regard, it should be borne in mind that when an institution, a body or an agency sets up within it an Advisory Committee not provided for in the Staff Regulations in order to obtain an opinion, regarding appointments to certain posts, in relation to the abilities and aptitudes of applicants, that measure is designed to ensure that that institution, body or agency, as appointing authority, has a better basis for examining the comparative merits of applicants. It follows that the opinion expressed by that Advisory Committee in the form of a recommendation for interview must, in so far as that committee actually makes such a recommendation, form part of the matters which the appointing authority is required to take into consideration as a basis for its own assessment of the officials’ merits, even if it considers itself obliged not to follow it (see, to that effect, judgments of 9 July 1987, *Hochbaum and Rawes v Commission*, 44/85, 77/85, 294/85 and 295/85, EU:C:1987:348, paragraphs 16 and 17; of 30 January 1992, *Schönherr v ECS*, T-25/90, EU:T:1992:8, paragraphs 27 and 28; and of 18 September 2003, *Pappas v Committee of the Regions*, T-73/01, EU:T:2003:237, paragraph 60).
- 111 At the hearing, in answer to a question put by the Court, the Ombudsman acknowledged that, contrary to what had been stated in the email of 10 April 2015 informing the applicant that the Advisory Committee had decided not to recommend his application for interview, the Advisory Committee had, on the contrary, selected 12 candidates, including the applicant, to be invited for interview. The Ombudsman added that it was she herself that had decided to invite only eight of those 12 applicants, including Ms G. and excluding the applicant, to an interview. The Ombudsman stated, however, that this constituted negligence on her part.
- 112 It is common ground that, in the present case, the CEI stated, in point 7, that an Advisory Committee would assist the Ombudsman, recommend a list of applicants to be invited for interview and might recommend that only some of the eligible applicants should short-listed for interview. It was also stated that the Ombudsman might decide that only some of the applicants on the list recommended by the Advisory Committee would be invited for interview.
- 113 It is also common ground that in the present case the Ombudsman invited for interview eight applicants out of the 12 proposed by the Advisory Committee without being aware at the time of issuing that invitation of the marks and merits awarded to each of the applicants by that committee, since she was aware only of the alphabetical list of those applicants. It follows from the facts, however, that the Ombudsman invited the same first seven applicants as those recommended by the Advisory Committee. On the other hand, the eighth applicant invited by the Ombudsman was in joint ninth position with the applicant. Neither the eighth applicant on the list in order of merit drawn up by the Advisory Committee nor the applicant was invited for interview.

- 114 It follows that the Ombudsman followed the opinion of the Advisory Committee, in that she invited for interview only applicants recommended by that committee on the alphabetical list sent to her on 9 April 2015. However, by not inviting the eighth applicant in order of merit on the Advisory Committee's list, but inviting the ninth applicant on that list, the Ombudsman did not follow the Advisory Committee's opinion.
- 115 In the first place, it should be pointed out that the Ombudsman stated that she was not aware of the classification until after she had invited the eight applicants whom she had selected for interview. That assertion has not been disputed by the applicant, and the Ombudsman thus invited for interview only applicants on the list drawn up by the Advisory Committee. It follows that the Ombudsman did not depart from the alphabetical list.
- 116 In the second place, it should be observed that the Ombudsman herself claims that she was not required merely to approve a list drawn up in order of merit.
- 117 It must therefore be determined whether, in the circumstances of the present case, by departing from the classification in order of merit in the opinion drawn up by the Advisory Committee, the Ombudsman made an error capable of vitiating the procedure in such a way as to affect the applicant adversely.
- 118 It must be stated that, owing to the purely advisory nature of the opinion, the Ombudsman was entitled to depart from it, provided that she stated the reason why she decided to follow a different order from that established by the Advisory Committee (see the case-law cited in paragraph 110 above).
- 119 In that regard, the Ombudsman took into consideration the applications of the first seven applicants on the list in order of merit drawn up by the Advisory Committee, but invited for interview not the eighth applicant recommended by that committee but the applicant in ninth position, it being noted that the Ombudsman was not at that time aware of the order of merit.
- 120 In the contested decision, the Ombudsman explained that she had chosen to invite only those eight applicants, because her assessment had led her to take the view that the other applicants on the list did not have all the necessary qualities to be recruited for the vacant post.
- 121 It should be stated that the Ombudsman invited for interview only applicants who appeared on the list drawn up by the Advisory Committee. In addition, given the procedure provided for in the CEI (see paragraph 112 above), the Ombudsman was not required merely to approve a list drawn up in order of merit and it was not inappropriate not to invite the candidates included in the list who in her view did not have all the necessary qualities to be recruited for the vacant post.
- 122 It follows that, although the Ombudsman did not take the order drawn up by the Advisory Committee into consideration, that finding cannot entail the annulment of the contested decision.
- 123 In fact, even if the Ombudsman had followed the order of classification on the list drawn up by that committee, it was not the applicant, but the applicant who had been classified eighth that would have been invited for interview, and the ninth on the list, who was classified jointly with the applicant, would not have been invited.
- 124 It follows from the foregoing that the fourth complaint must be rejected, as must the first plea in its entirety.

Second plea, alleging a manifest error of assessment

- 125 The applicant claims, first, that the Ombudsman acted in an arbitrary manner when she examined his curriculum vitae, on the ground that he was a legal secretary when he applied for the post and not a head of unit. He maintains that the Ombudsman thus made a manifest error of assessment.
- 126 In that regard, it is sufficient to observe that in the contested decision the Ombudsman merely pointed out that the applicant had been a ‘head of unit’ and not a ‘director’ like other applicants. On the other hand, the Ombudsman did not claim that the applicant currently occupied the post of legal secretary at the time when he applied for the post.
- 127 It follows that this complaint is factually incorrect.
- 128 Furthermore, it is correct, as is apparent from the applicant’s curriculum vitae, that in the course of his career he had been a ‘head of unit’.
- 129 Moreover, as regards his duties in the cabinet of the President of the Court of Justice, it is apparent from the applicant’s curriculum vitae that his duties in that cabinet consisted in ‘monitoring the procedural steps, preparing the allocation of new cases, monitoring the case-law of the Grand Chamber, monitoring the administrative activities of the institution [and] participating in committees on behalf of the President’. As regards the applicant’s staff report of 27 March 2015, it contains, as a description of the duties corresponding to the post of the official covered by the report, the following information: ‘Legal secretary (responsible in particular for administrative cases, monitoring the procedural steps until the cases are allocated and also the case-law of the Grand Chamber)’.
- 130 It follows that the Ombudsman did not make any manifest error of assessment in that regard.
- 131 The applicant claims, second, that the mark which he obtained for the assessment criterion relating to good knowledge of EU affairs, EU institutions and EU law ought to have been higher than that obtained by Ms G.
- 132 In that regard, it should be borne in mind that, according to consistent case-law, it is for the appointing authority to assess whether an applicant fulfils the conditions required by the vacancy notice and that that assessment may be questioned only in the event of manifest error. Consequently, the Court cannot substitute itself for the appointing authority and review the latter’s assessment of the professional abilities of applicants, except in so far as it finds a manifest error of assessment (judgment of 13 December 1990, *Kalavros v Court of Justice*, T-160/89 and T-161/89, EU:T:1990:86, paragraph 29; see, to that effect, judgment of 30 May 1984, *Picciolo v Parliament*, 111/83, EU:C:1984:200, paragraph 16).
- 133 First of all, it is apparent from the CEI that the duties of the Secretary-General were described thus:
- ‘The Secretary-General is responsible for the overall management of the office and for the implementation of the Ombudsman’s strategy. The Secretary-General reports directly to the Ombudsman and is the leader of her management team. S/he works closely with the Ombudsman’s cabinet and represents the office externally.’
- 134 As regards ‘good knowledge of EU affairs, EU institutions and of EU law’, it must be stated that it is apparent from Ms G.’s curriculum vitae that, apart from various activities as a journalist, Ms G. occupied different roles within the Commission, such as spokesperson for the Member of the Commission responsible for health and consumer protection (1999-2004), adviser on communications strategy for a Vice-President of the Commission (2004-2006), assistant to a Director-General of the

Commission's Directorate-General (DG) 'Communication' (2006-2007), head of unit for human resources and IT in the Commission's DG 'Justice' (2007-2011) and head of unit for the Director-General for Maritime Affairs and Fisheries (from 2011).

135 Considering that variety of experience acquired in the various services of the Commission, it is appropriate to conclude that the Advisory Committee did not make a manifest error of assessment when it awarded a very high score to Ms G. The fact that Ms G. does not have a degree in law cannot, in the light of her diversified experience, demonstrate that the Advisory Committee made a manifest error of assessment.

136 Furthermore, 'good knowledge of [EU] affairs, institutions and law' must be examined not independently, but by reference to the functions described in the CEI, which are focused on the Ombudsman's strategy and on the management of the Ombudsman's team, and it must therefore be considered that the applicant sought was not a specialist in EU law but a person who had occupied various posts in different sectors of activity.

137 As regards the applicant's complaint that the Ombudsman could not consider that he had 'no practical experience in HR management', it should be observed that the Ombudsman wrote in the contested decision:

'I also gave a comparative advantage to applicants who have had practical experience in HR, in particular by implementing the restructuring of organisational entities. Whereas some applicants had wide experience in that sphere, you did not.'

138 The Ombudsman therefore considered that, unlike other applicants, the applicant did not have wide practical experience in HR management, in particular in restructuring, and not, as the applicant claims, that he had no experience in that sphere.

139 In fact, the applicant did not claim to have acquired any experience in restructuring and this claim must therefore be rejected.

140 Next, the applicant claims that, in particular, his duties as head of unit for 'Rights under the Staff Regulations, social and medical matters, working conditions' pre-eminently concerned HR management.

141 In that regard, it follows from the applicant's curriculum vitae that his main activities and responsibilities consisted in 'management of the rights under the Staff Regulations of the staff of the Court, coordination of social action, administrative monitoring of the medical service', 'management of the rights of Members of the institution arising under the Statute of the Court of Justice and the Members' financial regime', the role of 'president of the preparatory committee for social affairs within the [College of Heads of Administration] (until 2013)', 'member of the preparatory committee for Staff Regulations issues', 'former president of the management committee of the Early Childhood Centre', 'president of the [sickness insurance management committee]' and 'alternate member of the Staff Committee'.

142 While those activities do indeed have a certain connection with 'HR management', they do not either directly concern the strategies or organisations of the different human resources or, in particularly, relate to the implementation of the restructuring of organisational entities.

143 As regards the fact that the duties as legal secretary in the cabinet of the President of the Court, 'apart from the fact that they are connected with the judicial work of the Court, extend in particular to supervising the administrative functioning of the Court, on behalf of the President of the Court, which includes staff matters (including questions of staff reduction), preparing the budget, the IT organisation of the Court, infrastructures and, more generally, the entire functioning of the administration', it must

be stated that all of those activities do not appear in the applicant's curriculum vitae, which, as already pointed out in paragraph 129 above, mentioned only monitoring the case-law of the Grand Chamber, monitoring the administrative action of the institution and participating in committees on behalf of the President of the Court. Nor do they appear in the applicant's staff reports drawn up on 17 March 2015 (for the periods from 1 January 2012 to 31 December 2012 and from 1 January 2013 to 31 December 2013) and 27 March 2015 (for the period from 1 January 2014 to 31 December 2014). In the first two reports, the applicant's duties are described as 'head of unit for 'Rights under the Staff Regulations, social and medical matters, working conditions' and, in the last report, 'legal secretary (responsible in particular for administrative cases, monitoring the procedural steps until cases are allocated and also the case-law of the Grand Chamber)'.

144 It follows that the Ombudsman cannot be accused of having made a manifest error of assessment.

145 Last, the applicant takes issue with the Ombudsman for having considered that his IT knowledge and experience were obsolete.

146 The Ombudsman wrote in the contested decision:

'I gave a comparative advantage to applicants who had recent IT experience in the last 10 years (it is a constantly changing area in which developments are rapid, experience acquired some time ago being less relevant in current circumstances). You have not had IT experience in the last 10 years, experience accumulated by in the field of IT in the more distant past [being] less relevant for the current needs of my institution.'

147 Although the applicant relies on the various training pursued within the Court, he does not deny that it was between 1981 and 2007 that his duties related to IT.

148 In that regard, it cannot be denied that IT is a field in which change is very rapid, so that experience acquired some time ago is less relevant than that acquired recently.

149 Moreover, although the applicant considers that his experience lasted until 2007, it must be stated that the activity of legal secretary to a judge of the Civil Service Tribunal from 2005 to 2007 cannot be regarded as participating in the exercise of IT.

150 The Ombudsman therefore did not make a manifest error of assessment when she considered that the applicant's IT experience was acquired some time ago and less relevant than newly acquired experience.

151 It follows from all of the foregoing that the second plea must be rejected.

Third plea, alleging breach of the principle of equal treatment

152 In the first place, the applicant takes issue with the Ombudsman for having acted arbitrarily, following an abuse of a procedure which she herself had determined in the CEI, when she evaluated the recommendations produced by each of the applicants. He submits that, in so far as the recommendations were taken into consideration in respect of only the three applicants invited to the last interview, the Ombudsman breached the principle of equal treatment.

153 As observed in paragraph 75 above, the Ombudsman has a wide discretion when carrying out her work. It is therefore permissible for her, where, as in the present case, the CEI does not set out the way in which each of the criteria for marking is to be taken into consideration, to determine such

criteria (see, to that effect, judgments of 13 December 1990, *Gonzalez Holguera v Parliament*, T-115/89, EU:T:1990:84, paragraph 53, and of 14 July 1995, *Pimley-Smith v Commission*, T-291/94, EU:T:1995:142, paragraph 48).

154 It should be observed that, as the Ombudsman explained at the hearing in answer to a question put by the Court, the obligation to provide recommendations was made only in respect of the applicant Ms G. at the end of the recruitment procedure.

155 It is therefore sufficient, in any event, to find that this complaint is inoperative in so far as the applicant's application was rejected at an earlier stage than that of the interviews, so that the fact that the recommendations were taken into consideration cannot have the consequence of harming him (see paragraph 87 above).

156 In the second place, the applicant takes issue with the Ombudsman for having breached the principle of equal treatment by altering the selection criteria during the selection procedure, in breach of the framework which she herself had fixed. Thus, the criterion relating to 'good knowledge of EU affairs, EU institutions and of EU law' was examined in a non-objective manner and the criterion relating to 'knowledge of other official languages of the European Union' was examined only in respect of the eight applicants invited for interview.

157 It must be stated that these two complaints cannot be dissociated from the first two complaints set out in the context of the first plea and must therefore be rejected for the same reasons as those stated in paragraphs 73 to 83 and 131 to 136 above.

158 As regards, more specifically, the complaint concerning the criterion relating to 'good knowledge of EU affairs, EU institutions and of EU law', which in the applicant's submission was examined in a non-objective manner by the Ombudsman, it should also be stated that, in any event, the applicant has not put forward the reasons why that criterion was examined in a non-objective manner, so that, to the extent to which it is not inextricably associated with other complaints on which the applicant has relied and to which the Court has responded in the context of the pleas examined above, it must be rejected as inadmissible. A mere statement of this complaint does not allow the Court to determine the true nature of the complaint alleged.

159 It follows from all of the foregoing that the third plea must be rejected.

Fourth plea, alleging breach of the principle of good administration

160 In the context of this plea, the applicant puts forward two complaints.

161 It should be observed that, according to consistent case-law, the principle of good administration requires the competent authority to apply legislation correctly (judgments of 14 June 1988, *Christianos v Court of Justice*, 33/87, EU:C:1988:300, paragraph 23, and of 18 September 2008, *Angé Serrano and Others v Parliament*, T-47/05, EU:T:2008:384, paragraph 159).

162 In the first place, the applicant takes issue with the Ombudsman for having excluded him from the interview stage without stating reasons, whereas the request for reconsideration must be reasoned at lodged within a brief period, thus preventing him from effectively lodging an administrative appeal. In the applicant's submission, the Ombudsman thus breached the principle of good administration.

163 In that regard, it should be stated that, although the Ombudsman informed the applicant only that, in spite of his merits, he would not be called for interview, he did not ask the Ombudsman to provide further details so that he could submit a request for reconsideration.

- 164 In those circumstances, the applicant cannot complain of maladministration, when he himself failed to ask the administration for details and also failed, while awaiting the requested details, to request an extension of the deadline for submitting a request for reconsideration.
- 165 In the second place, the applicant takes issue with the Ombudsman for having provided him with inaccurate, inconsistent and incorrect information.
- 166 On that point, it is correct that the Ombudsman did in fact recognise, in the contested decision, that some of the information which had been provided to the applicant was incorrect or inaccurate and had probably encouraged him to lodge a complaint.
- 167 However, it must be stated that those inaccuracies cannot render the contested decision unlawful, since it was specifically at the stage of the response to the applicant's complaints that that correction was made (see, to that effect, judgment of 25 May 2000, *Elkaïm and Mazuel v Commission*, T-173/99, EU:T:2000:142, paragraph 103).
- 168 The fourth plea must therefore be rejected.
- 169 It follows that the claims for annulment of the contested decision must be rejected, without there being any need to take Annex D 1 to the rejoinder into consideration. There is thus no need to rule on the applicant's request of 7 April 2017 referred to in paragraph 37 above.

The claim for compensation

- 170 The applicant claims that the contested decision caused him to sustain pecuniary and non-pecuniary damage.
- 171 In accordance with settled case-law, if a claim for compensation is closely linked to a claim for annulment, the rejection of the latter claim, whether as inadmissible or as unfounded, also entails rejection of the claim for compensation (see judgment of 30 September 2003, *Martínez Valls v Parliament*, T-214/02, EU:T:2003:254, paragraph 43 and the case-law cited).
- 172 In the present case, since there is a close link between the claims for annulment and the claims for compensation, and since the claims for annulment have been rejected, it follows that the claims for compensation must also be rejected.
- 173 It follows from all of the foregoing that the action must be dismissed in its entirety.

Costs

- 174 Under Article 134 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. However, under Article 135(1) of the Rules of Procedure, if equity so requires, the General Court may, exceptionally, decide that an unsuccessful party is to pay only a proportion of the costs of the other party in addition to bearing his own, or even that he is not to be ordered to pay any.
- 175 In the circumstances of the present case, the Court observes that the Ombudsman acknowledges having been negligent in incorrectly informing the applicant that his application had not been recommended for an interview, and considers that the Ombudsman did not provide the applicant with the detailed reasons for not following the list of candidates in order of merit submitted to her by the Advisory Committee which she had established.

- ¹⁷⁶ In those circumstances, the present proceedings may be considered to have been caused in part by the Ombudsman's conduct.
- ¹⁷⁷ Such circumstances constitute an exceptional ground for ordering each of the parties to bear his or her own costs.

On those grounds,

THE GENERAL COURT (Eighth Chamber)

hereby:

- 1. Dismisses the action;**
- 2. Orders Mr Costas Popotas and the European Ombudsman to bear their own costs.**

Collins

Kancheva

Barents

Delivered in open court in Luxembourg on 22 March 2018.

[Signatures]