



Reports of Cases

JUDGMENT OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL

(First Chamber)

6 October 2015*

(Civil service — Recruitment — Open competition — Inclusion on the reserve list — Decision of the appointing authority not to recruit a successful candidate — Respective competences of the selection board and the appointing authority — Conditions of admission to the competition — Minimum duration of professional experience — Rules for calculation — Manifest error of assessment by the selection board — None — Loss of a chance of recruitment — Compensation)

In Case F-119/14,

ACTION brought under Article 270 TFEU, applicable to the EAEC Treaty pursuant to Article 106a thereof,

FE, residing in Luxembourg (Luxembourg), represented by L. Levi and A. Blot, lawyers,

applicant,

v

European Commission, represented by J. Currall and G. Gattinara, acting as Agents,

defendant,

THE CIVIL SERVICE TRIBUNAL (First Chamber)

composed of R. Barents, President, E. Perillo (Rapporteur) and J. Svenningsen, Judges,

Registrar: P. Cullen, Administrator,

having regard to the written procedure and further to the hearing on 11 June 2015,

gives the following

Judgment

- 1 By an application lodged at the Tribunal Registry on 24 October 2014, FE brought this action seeking annulment of the decision of the appointing authority of the European Commission ('the appointing authority'), of 17 December 2013, refusing to recruit her to Directorate-General (DG) Justice from the reserve list for competition EPSO/AD/42/05, together with compensation for material and non-material damage claimed to have been suffered as a result of that decision.

* Language of the case: French.

Legal context

- 2 In the field of recruitment of officials, Article 5 of the Staff Regulations of Officials of the European Union, in the version which was in force at the time of the events at issue ('the Staff Regulations') provides, specifically in paragraph 3, as follows:

'Appointment shall require at least:

...

- c) in [the administrators'] function group ... for grades 7 to 16:
- i) a level of education which corresponds to completed university studies attested by a diploma when the normal period of university education is four years or more, or
 - ii) a level of education which corresponds to completed university studies attested by a diploma and appropriate professional experience of at least one year when the normal period of university education is at least three years, or
 - iii) where justified in the interest of the service, professional training of an equivalent level.'
- 3 Article 28 of the Staff Regulations reads:

'An official may be appointed only on condition that:

- (a) he is a national of one of the Member States of the [Union], unless an exception is authorised by the [appointing authority], and enjoys his full rights as a citizen;
 - (b) has fulfilled any obligations imposed on him by the laws concerning military service;
 - (c) produces the appropriate character references as to his suitability for the performance of his duties;
 - (d) he has, subject to Article 29(2) [of the Staff Regulations], passed a competition based on either qualifications or tests, or both qualifications and tests, as provided for in Annex III [of the Staff Regulations];
 - (e) he is physically fit to perform his duties;
 - (f) produces evidence of a thorough knowledge of one of the languages of the [Union] and of a satisfactory knowledge of another language of the [Union] to the extent necessary for the performance of his duties.'
- 4 Article 30 of the Staff Regulations provides:

'For each competition, a selection board shall be appointed by the [appointing authority]. This board shall draw up a list of suitable candidates.

The [appointing authority] shall decide which of these candidates to appoint to the vacant posts.'

5 Article 4 of Annex III to the Staff Regulations reads as follows:

‘The [appointing authority] shall draw up a list of candidates who satisfy the conditions laid down in Article 28(a), (b) and (c) of the Staff Regulations and shall send it, together with the candidates’ files, to the chairman of the Selection Board.’

6 Article 5 of Annex III to the Staff Regulations states:

‘After examining these files, the Selection Board shall draw up a list of candidates, who meet the requirements set out in the notice of competition.

Where the competition is on the basis of tests, all candidates on the list shall be admitted to the tests.

...’

7 Lastly, section A.II of competition notice EPSO/AD/42/05 (see paragraph 8 of this judgment) reads, in connection with the profile sought and the first two conditions of eligibility, as follows:

‘You may apply for the competition if ... you meet the following requirements:

1. Qualifications Kandydaci muszą legitymować się dyplomem ukończenia wyższych studiów prawniczych w Polsce [You must hold a Polish degree in law.]

2. Professional experience Since completing the required abovementioned degree, you must have had at least two years’ professional experience.’

Background to the dispute

8 On 8 December 2005, the European Personnel Selection Office (EPSO) published competition notice EPSO/AD/42/05 (the ‘competition’) to constitute a reserve of lawyer-linguists in grade AD 7 with Polish as their main language, from which to fill vacant posts in the EU institutions (notably the Court of Justice of the European Communities) (OJ 2005 C 310 A, p. 3, ‘the competition notice’). The closing date for registration was 11 January 2006.

9 In section A.I of the competition notice, headed ‘Duties’, the duties to be performed were described in the following terms:

— Translating legal texts into Polish from at least two of the official languages of the European Union and/or revising such texts.

— Checking the Polish version of legislative texts (already translated and revised) for linguistic and legal consistency with the other language versions. Checking their drafting and compliance with formal presentational rules.

...’

10 Furthermore, Section A.II.2 of the competition notice stipulated that, in order to be admitted to the competition tests, candidates were required, as at the closing date for registration for the competition, to show that, ‘since completing the required abovementioned degree, [they had] had at least two years’ professional experience’.

- 11 The applicant applied for the competition on 27 December 2005. She stated under the heading 'Professional Experience' in her application form for the competition ('the application form') that she had six periods of professional experience with a total duration of 31 months, of which 15 months had been as a freelance lawyer-linguist for the Court of Justice, from 15 October 2004 up to the date of her application form, and three months had been as an intern in the W. law firm in Brussels (Belgium), from 1 July to 30 September 2005.
- 12 The applicant was admitted to the competition tests. Upon completion of its work, the selection board included her name on the reserve list for the competition, the expiry date of which had initially been fixed at 31 December 2007 but was deferred, after several extensions, to 31 December 2013, when the list definitively expired.
- 13 By email of 22 May 2013, the applicant was invited by DG Justice to attend for interview on 28 May, in connection with her potential recruitment to an administrator's post in that Directorate-General. With a view to the applicant being so recruited, DG Human Resources and Security ('DG Human Resources') also informed the applicant, by an email sent to her on 24 May 2013 with copy to DG Justice, that as she was currently a member of the temporary staff at the Court of Justice, 'the [pre-recruitment] medical examination [was] not necessary, since, in the event of her being recruited to the Commission, [DG Human Resources] [would] ask for [her] medical fitness [records] to be transferred'.
- 14 In June 2013, the applicant was informed by DG Justice that she had been selected for the post of administrator and that a recruitment request had been sent to DG Human Resources.
- 15 According to the documents on the file, in June 2013, the relevant departments of the Commission had also informed the applicant that 'as the Commission was not involved in organising the competition ... and the reserve list produced by that competition, on which the applicant's name appeared, was a list of lawyer-linguists and not administrators, it was necessary to seek a derogation from the Commissioner for Human Resources and Security, as it was Commission policy not to use such lists, with notable exceptions relating to its Legal Service and certain specialised tasks in other [Directorates-General], subject to certain conditions'.
- 16 By email of 26 July 2013, the head of the contract law unit of DG Justice informed the applicant that DG Human Resources had given its approval for her [derogating] recruitment as an administrator [from] the reserve list of lawyer-linguists, making it clear that DG Human Resources would contact her and that she did not need to take any action before receiving an official communication from that DG.
- 17 At the end of August 2013, DG Human Resources asked the applicant to provide evidence of the professional experience she had had prior to the date of her application form, with reference to the eligibility condition requiring a minimum of two years' work experience set out in the competition notice.
- 18 During the period from the end of August 2013 to November 2013, the applicant had several meetings with representatives of DG Human Resources and provided various documents and explanations so as to clarify matters relating to the professional experience she had relied on in her application form. On several occasions during that period, the representatives of DG Justice confirmed their interest in recruiting her.
- 19 By letter of 17 December 2013, the appointing authority informed the applicant that she could not be recruited by DG Justice, on the ground that she did not meet the condition of eligibility for the competition concerning the professional experience required ('the contested decision'). According to the appointing authority, on the closing date for registration for the competition, the applicant had only 22 months of professional experience, rather than the two years required by the competition

notice. In arriving at that conclusion the appointing authority had only given credit for seven months of professional experience as a ‘freelance translator’ for the Court of Justice, and two months of professional experience as an intern in the W. law firm, which did not correspond to the 15 months and 3 months which the applicant had declared in the application form. The contested decision also stated that, in relation to the ‘freelance [work] for the [Court of Justice]’, the duration of the applicant’s professional experience had been calculated on the basis of the total number of pages translated (721) and a standard rate of 5 pages per day, regarded as adequate by the Commission and considerably below the rate of 8 pages per day used by the Court of Justice.

- 20 On 14 March 2014, the applicant lodged a complaint against the contested decision. That complaint was rejected by a decision of the appointing authority of 14 July 2014 (‘the decision rejecting the complaint’).

Forms of order sought

- 21 The applicant claims that the Tribunal should:

- annul the contested decision;
- annul the decision rejecting the complaint;
- order the Commission to pay the sum of EUR 26132.85, together with default interest, as well as pension scheme contributions as from September 2013, and a symbolic euro for the non-material harm caused;
- order the Commission to pay the costs.

- 22 The Commission contends that the Tribunal should:

- dismiss the action as in part inadmissible and in part unfounded;
- order the applicant to pay the costs.

Law

1. Subject-matter of the action

- 23 It is settled case-law that claims for annulment formally directed against the decision rejecting a complaint have, where that decision has no independent content, the effect of bringing before the Tribunal the act against which the complaint was submitted (see, to that effect, judgment of 17 January 1989 in *Vainker v Parliament*, 293/87, EU:C:1989:8, paragraph 8).
- 24 In the present case, the decision rejecting the complaint confirms the contested decision. The claim for annulment directed against that decision thus has no independent content and, accordingly, should be regarded as formally directed against the contested decision, as clarified by the decision rejecting the complaint (see, to that effect, judgment of 10 June 2004 in *Eveillard v Commission*, T-258/01, EU:T:2004:177, paragraph 32).

2. *Claim for annulment of the contested decision*

- 25 In support of her claim for annulment the applicant raises four pleas in law, based essentially:
- as to the first, on a lack of competence of the appointing authority;
 - as to the second, which is relied on in the alternative, on a manifest error of assessment by the appointing authority, as well as infringement of the competition notice and the principles of legal certainty and equal treatment;
 - as to the third, on infringement of the principle of good administration and the duty to have regard for the welfare of officials, as well as failure to act within a reasonable time;
 - as to the fourth, on unlawfulness of the condition of eligibility for the competition concerning professional experience.

The first plea, based on a lack of competence of the appointing authority

Arguments of the parties

- 26 According to the applicant, the appointing authority exceeded the limits of its power to review decisions of the selection board, as established by the case-law, since in the present case there was nothing to show that the selection board's decision to admit her to the competition tests, and subsequently to include her on the reserve list, was vitiated by a manifest error of assessment.
- 27 In this regard, the applicant asserts, first, that the competition notice did not specify, in relation to the requisite two years' professional experience, whether this was required to be full time or part-time.
- 28 Secondly, in relation to the work carried out by the applicant as a lawyer-linguist for the Court of Justice, the applicant maintains that both the freelance nature of this work and the fact that she had been studying at the same time were clear from the documents she had attached to her application form. She also argues that there is no rule requiring the total number of pages translated to be divided by any standard daily rate in order to determine the full-time duration of such professional experience.
- 29 Thirdly, in relation to the internship with the W. law firm, it is argued that there was nothing to prevent the selection board from comparing the statements made by the applicant in her application form with the supporting evidence which she had attached, so that there is no reason to believe that the selection board had been misled by the way in which the duration of that professional experience had been presented in the application form.
- 30 It is argued that, accordingly, the appointing authority, which would not have had knowledge of the methodology or rules of calculation used by the selection board to assess the duration of the applicant's professional experience, could not justify re-examining her eligibility for the competition without infringing the principles of legal certainty and legitimate expectations which ought to characterise the system by which officials of the EU institutions are selected.
- 31 For its part, the Commission points out, first, that according to the case-law, where a competition notice requires a minimum duration of professional experience, that requirement is to be understood as relating to a period of full-time work of that duration, or a period of part-time work which is equivalent, in terms of working time, to the full-time period required.

- 32 Having regard to the wording of the competition notice and the fact that the activity of ‘freelance translator’ to the Court of Justice cannot be assimilated to full-time work, since the applicant had been completely free to manage her own working time, and indeed had been studying simultaneously, the selection board for the competition ought to have accounted for this professional experience in terms of equivalent full-time work.
- 33 The fact that the applicant’s name was included on the reserve list for the competition demonstrates, according to the Commission, the manifest error of assessment made by the selection board, which had given credit for the applicant’s professional experience as a freelance translator to the Court of Justice on the basis of the dates when that activity began and ended, as stated in the application form, without concerning itself with the fact that it was not full-time work, without regard to the freelance nature of the work and, ultimately, without adopting any method for calculating the corresponding full-time duration.
- 34 Secondly, again according to the Commission, the selection board could not, without making a manifest error of assessment, have proceeded on the basis that three months of professional experience were to be attributed to the internship at the W. law firm, as stated by the applicant in the application form, when the only supporting document available to it, namely the internship certificate attached to the application form, only evidenced an internship of 40 days, taking place over the period from May to September 2005.
- 35 Consequently, the selection board, which ought in any event to have been alerted by the documents attached to the application form, is said to have made several manifest errors of assessment in concluding that the applicant met the condition of eligibility for the competition relating to professional experience. In those circumstances, the appointing authority had been obliged not to give effect to the selection board’s decision to include the applicant on the reserve list, and could not have done otherwise than to refuse to recruit her. The first plea in law should therefore be rejected as unfounded.

Findings of the Tribunal

- 36 The plea of lack of competence advanced by the applicant relates essentially to the issue of what are the conditions for the exercise and the legal scope of the appointing authority’s power to review decisions taken by the selection board in the exercise of its own competence.
- 37 Having regard to the various and numerous arguments advanced in this regard by the applicant and by the Commission, it is useful to organise the analysis of the first plea into five distinct but closely related parts, namely: a first part relating to the division of competences between the appointing authority and the selection board; a second part on whether the professional experience required by the competition notice was full-time or part-time experience; a third part on the method for calculating the minimum duration of two years’ professional experience; a fourth part on the scope of the appointing authority’s power to exclude a successful candidate from the reserve list and, lastly, a fifth part on the manifest error potentially made by the selection board in assessing the duration of the applicant’s professional experience.
- 38 At the conclusion of this analysis it will be appropriate to uphold the first plea, as the appointing authority, in deciding at the recruitment stage to exclude the applicant from the reserve list on grounds of eligibility which were not set out in the competition notice, went beyond the limits of its competence, which had been precisely laid down by the competition notice and which the selection board had duly observed.

– As to the division of competences between the appointing authority and the selection board

- 39 In the area of recruitment of staff of the European institutions by means of open competitions, the EU judicature has consistently affirmed that, by reason of the principle of the independence of competition selection boards, the appointing authority does not have the power to annul or amend a decision taken by such a board within its sphere of competence, as defined, in particular, by Article 30 of the Staff Regulations and Article 5 of Annex III to those regulations (see judgment of 20 February 1992 in *Parliament v Hanning*, C-345/90 P, EU:C:1992:79, paragraph 22, and Order of 10 July 2014 in *Mészáros v Commission*, F-22/13, EU:F:2014:189, paragraph 48).
- 40 However, since the appointing authority is required to take decisions free of irregularities, it cannot be bound by the decision of a selection board the illegality of which decision is liable to vitiate its own decisions (see, to this effect, judgment of 20 February 1992 in *Parliament v Hanning*, C-345/90 P, EU:C:1992:79, paragraph 22). It is for that reason that the appointing authority is obliged to verify, before appointing an official, that the candidate satisfies the conditions laid down by the Staff Regulations (in default of which the recruitment decision is invalid) in order for the recruitment of that official into the service of the European Union to be regular. Where, for example, it is evident that the selection board's decision to allow a candidate to take the competition tests is unlawful, because it is vitiated by a manifest error, the appointing authority to which the selection board has sent the reserve list on which the candidate's name appears (the candidate having passed the tests in the meantime) must thus refuse to appoint that successful candidate (see, to this effect, judgments of 23 October 1986 in *Schwiering v Court of Auditors*, 142/85, EU:C:1986:405, paragraphs 19 and 20, and 23 October 2012 in *Eklund v Commission*, F-57/11, EU:F:2012:145, paragraph 49).
- 41 While that is so, and still in relation to the division of competences between the appointing authority and the competition selection board, it is also necessary to point out that the purpose of a competition notice is essentially to inform the members of the selection board and those applying to take part in the competition, in as transparent, thorough and precise a manner as possible, of the legal conditions which must be met (if and when the issue arises) in order to be appointed to the post in question. Moreover, this purpose of the competition notice meets the basic requirement to observe the principle of legal certainty.
- 42 Accordingly, the competition notice would be deprived of its purpose if the appointing authority were able to exclude a successful candidate from the reserve list on the basis of eligibility conditions or arrangements which were not stated in that notice or in the Staff Regulations, or in any case, which had not been published, prior to the adoption of the competition notice, in such a way as to be accessible or necessarily known to both the selection board and the candidates concerned (see to this effect, in relation to vacancy notices, judgments of 14 April 2011 in *Šimonis v Commission*, F-113/07, EU:F:2011:44, paragraph 74, and 15 October 2014 in *Moschonaki v Commission*, F-55/10 RENV, EU:F:2014:235, paragraph 42).
- 43 The competition notice thus constitutes the legal framework for any selection procedure to fill a post within the EU institutions, in that, subject to the relevant higher-ranking provisions of the Staff Regulations, including Annex III to those regulations, it governs the division of competences between the appointing authority and the selection board with regard to the organisation and conduct of the competition tests, as well as laying down the conditions relating to the participation of candidates, in particular their profile and their specific rights and obligations.
- 44 In the present case, as to the division of competences between the appointing authority and the selection board in relation to the competition, the competition notice specified in section B, which was concerned with the conduct of the competition, at 1.a, that, as regards admission to the competition, 'the appointing authority will draw up a list of candidates who meet the general requirements set out at A.II.4 [of the competition notice] and send it to the Chair of the selection

board together with their application files'. The 'general requirements set out at A.II.4 [of the competition notice]' were general conditions of eligibility for the competition, which in fact restated Article 28 of the Staff Regulations (see paragraph 3 of this judgment).

45 By contrast, in accordance with the wording of section B.1.b: 'after consulting [the candidates' files], the selection board will [as in fact is required by Article 5 of Annex III to the Staff Regulations] draw up a list of candidates who meet the specific requirements set out at A.II.1, 2 and 3 [of the competition notice] and can therefore be admitted to the competition'. The 'specific requirements set out at A.II.1, 2 and 3 [of the competition notice]' were requirements for qualifications, professional experience and language skills which had to be met in order to be admitted to the competition (see paragraph 7 of this judgment).

46 In particular, under section A.II.2 of the competition notice, candidates were required, in order to be admitted to the tests, not only to fulfil the condition set out in Article 5(3)(c) of the Staff Regulations (that is, to hold a Polish university diploma in law) but also to prove, as an additional requirement, that since completing the required university studies, they had had 'at least two years' professional experience'. Neither that provision nor section B.1.b of the competition notice gave the competition selection board any precise instructions to follow or any indication as to the nature of the minimum professional experience of two years or how it related to the duties to be performed as an EU official. Equally, those provisions gave no details as to the arrangements relating to the work carried out during those two years of professional experience, for example whether it was required to have been on a full-time or part-time basis, or on an employed or self-employed basis.

47 Furthermore, the 'Guide for applicants' (OJ 2005 C 327 A, p. 3), to which the competition notice, in the introduction to section C, headed 'How to apply,' invited candidates to refer, in order to help them submit their applications correctly ('the guide for applicants'), also did not contain any useful explanation such as to provide effective guidance for either the members of the competition selection board in performing the duties set out in the competition notice or the applicants in completing their application forms. The guide limited itself to clarifying in section A.II.4, under the heading 'Details of professional experience', that applicants were to 'state in [their] application the exact dates when [they] started and finished each period of employment, the position [they] held and the nature of [their] duties in that position'. The guide specifically stated that 'for any unsalaried employment (such as self-employed or freelance activity in one of the liberal professions), we will accept copies of ... tax returns or any other relevant official document'.

48 Those being the provisions of the competition notice and the guide for applicants relating to the division of competences between the appointing authority and the selection board, it must be observed, as regards the body responsible for verifying the nature and duration of the professional experience required to take part in the competition, and for verifying that the factors taken into account in calculating its duration had been correctly applied, that the legal framework established by those two documents was silent on the point, but the competition notice left it to the jury alone to draw up, in the performance of its functions and in the exercise of its broad discretion, the list of applicants who were admitted to the competition tests.

– Whether the professional experience required by the competition notice was full-time or part-time

49 In this regard, particularly in relation to the professional experience which the applicant acquired at the Court of Justice as a freelance lawyer-linguist, a professional activity which is, by definition, carried out independently and which, in the present case, was the most relevant having regard to the purpose of the competition, which was precisely to recruit lawyer-linguists, neither the competition notice nor the other acts which could be taken into account legally in relation to the competition contained any indication as to what was to be understood by 'professional experience', or as to the basis on which the working time relating to such 'professional experience' was to be calculated, for

example the number of hours worked or the number of pages translated per day, and in the latter case, whether it was necessary to distinguish between the translation of complex legal documents and that of documents of other kinds.

- 50 In circumstances where, as intended by the competent appointing authority, the competition notice and the guide for applicants were silent as to the factors to be taken into account in assessing the duration of the required professional experience, the Commission nevertheless asserts that, where a competition notice provides, as a condition of eligibility for the tests, that the applicant must have professional experience of a minimum duration, that period of work must be understood, both by the selection board and by applicants, as relating, by definition, to professional activity carried out on a full-time basis.
- 51 As to this, it should be borne in mind, first of all, that, in the cases referred to by the Commission, which gave rise to the judgment of 31 January 2006 in *Giulietti v Commission* (T-293/03, EU:T:2006:37), and the Orders of 14 December 2006 in *Klopfer v Commission* (F-118/05, EU:F:2006:137) and 10 July 2014, *Mészáros v Commission* (F-22/13, EU:F:2014:189), the EU judicature undoubtedly held that the duration of the required professional experience was, even where there was no specific indication in the relevant competition notices, to be understood as a duration of full-time professional experience. However, those cases related to professional activity carried out very largely on an employed basis, the duration of which could therefore be readily determined from the contracts of employment or statements of employment provided by the employers. By contrast, in the present case, while the competition notice undoubtedly required a minimum of two years' professional experience in the field of translation or, more realistically, legal translation, it contained no explanation as to how professional experience acquired as a self-employed individual was to be taken into account or quantified in terms of duration, despite the fact that experience of freelance work of that kind corresponds exactly to the nature of the duties described in the competition notice.
- 52 Accordingly, in default of any express indication in the competition notice as to how the duration of the required professional experience was to be calculated, or any other useful indication in that regard, the legal rationale of that eligibility condition, particularly as regards candidates, such as the applicant, who were able to declare specific experience of freelance work as a lawyer-linguist, certainly could not be to require candidates, in order to prove that the experience in question was equivalent to full-time work, to have translated, on each day of work carried out in that capacity during the two-year reference period, a given number of pages of legal documents. No such condition was laid down by the competition notice, either expressly or by implication, particularly having regard to the other conditions set out in the competition notice.
- 53 Thus, in the absence of any criteria or detailed provision in the competition notice as to the calculation of the professional experience required to be admitted to the competition, it must be held that the selection board, even on the basis that the duration of professional experience at issue was supposed to be a duration of full-time work, was entitled to rely, in assessing whether to admit the applicant to the tests, on the fact that what was required was 'professional' activity as a lawyer-linguist — and thus that the activity could not be 'occasional' in nature, and that it was required to concern, mainly, the translation of legal documents — carried out on a continuing basis, or in other words for a significant period of time, to fulfil an order from a professional party, being a public or private person who, on the basis of the relevant contract, was entitled to call for translations of legal documents at any time and, where applicable, within strict deadlines, precisely because its professional or institutional activity required legal translations of a certain standard.
- 54 Secondly, again in assessing the professional experience that was required, the selection board was obliged to base its assessment, under the relevant provisions of the guide for applicants, on evidence that the professional services had in fact been provided, not only over a continuing period, but also, in quantitative terms, to a consistent extent, which it was for the selection board, made up of persons

with expertise in that area, to assess by reference to the duties described in the competition notice and by reference to all other activities which might have been carried out, by each candidate, during the reference period of two years.

55 Thus, the guide for applicants requiring candidates to state, in their application forms, the nature of the duties which they had carried out, the selection board, in the exercise of the competences assigned to it by the competition notice, was required to assess whether the experience acquired was professional experience differently according to whether it related to activity as a 'freelance translator' or as a 'freelance lawyer-linguist', particularly where the latter activity had been carried out for the benefit of an EU institution which, like the Court of Justice, requires its service providers to translate only documents which are entirely legal in content.

56 Accordingly, since, having regard to the fact that the wording of the competition notice is silent on the point, it is not possible to ascribe any other scope to this additional condition of eligibility than that described above, as the principle of legal certainty (see paragraph 41 of this judgment) would otherwise be infringed, the Commission's argument that the minimum duration of two years' professional experience must, in the specific case of the competition, be understood as relating, by definition, to professional activity carried out on a full-time basis, the duration of which, moreover, is to be calculated in the manner set out in the contested decision (see paragraph 19 of this judgment), cannot be accepted, in default of any indication having been given in the competition notice that, particularly in relation to candidates declaring professional experience as a freelance lawyer-linguist, the full-time duration in question was required to correspond to that calculated by the method used internally by that institution, or in any event by a specific method.

– The method of calculation of the minimum duration of two years' professional experience

57 In this regard, it must be held that the selection board, which was not bound by any specific provision in the competition notice as to the calculation of the duration of the minimum two years' professional experience required for admission to the competition, could reasonably consider, on the basis of its broad discretion in the area, that it was not appropriate to follow the specific method of calculation of any particular institution, the Commission not being, in any case, the institution principally concerned by the competition notice. According to the second paragraph of section A of the competition notice, the reserve list in question was to be used to 'fill vacant posts in the EU institutions (notably the Court of Justice ...)'.

58 If, in order to calculate the period of two years' professional experience, the selection board had to draw upon a method of calculation which was already in existence in one or other of the EU institutions, it could, on the basis of the criteria of good administration of the competition and effectiveness of the procedure, have referred in the first instance to the method of calculation used by the Court of Justice, and not necessarily or solely that used by the Commission which, as appears from paragraph 15 of this judgment, does not consider that it played any part in organising the competition.

59 On this point, furthermore, the Commission's argument that the method of calculation in use at the Court of Justice, as regards the number of pages translated per working day, would be less favourable, in relation to the applicant's professional experience, than that adopted by the Commission (see paragraph 19 of this judgment) is not relevant, given that, according to the Commission, the question is whether the selection board ought to have used the Commission's method of calculation and not that of other institutions or its own method of calculation.

60 Still on this point, it should also be observed that the Commission referred, both in the decision rejecting the complaint and in its defence, to the applicant's professional experience as a 'freelance translator', whereas it is apparent from the documents attached to the application form that she had provided the selection board with employment statements relating to work as a freelance

'lawyer-linguist' to the Court of Justice. These are, in the present case, clearly different roles, as the competition selection board, made up of specialists in the field, must have been aware, in relation to a competition which was intended precisely to recruit lawyer-linguists (who, in administrative terms, are recruited directly into grade AD 7 for this reason) and not translators (who, by contrast, are recruited at the entry grade, AD 5, of the administrators' function group).

61 It follows that the fact that the competition selection board did not adopt the method of calculation that is used by the Commission, in order to calculate the minimum duration to be ascribed to a period of professional experience which is to be credited on the basis of full-time work experience, does not automatically mean that the selection board erred in assessing the condition requiring the applicant to demonstrate a minimum of two years' professional experience in order to be admitted to the competition tests.

– As to the appointing authority's power to exclude the applicant from the reserve list of successful candidates

62 On the basis of the foregoing considerations and in particular those set out in paragraphs 39 to 48 concerning the division of competences between the appointing authority and the competition selection board, it should be observed that where, as in the present case, in relation to the prior professional experience required, a competition notice requires, as a specific condition of eligibility for the tests, at least two years of professional experience, the appointing authority cannot, when it is on the point of recruiting a successful candidate selected as such by the selection board, remove that successful candidate from the reserve list in reliance on methods of assessment and calculation of the requisite professional experience which the appointing authority itself did not set out in the competition notice, or which do not appear in a measure which is binding on the members of the selection board and on any candidate in the competition.

63 The principle of legal certainty, which is one of the governing principles of any competition procedure (see paragraph 41 of this judgment), would otherwise be irremediably undermined if a candidate who had duly provided the exact dates of the beginning and end of each of her contracts, amounting to a total duration sufficient to meet the requirement of professional experience provided for by a competition notice, only learned of the existence of other detailed provisions, essential to the fulfilment of the condition as to the duration of professional experience, at the point in time when, having received an offer of recruitment as a successful candidate in the competition, the appointing authority informed her of the existence of those arrangements and the fact that, having regard to them, she ought not have been admitted to the competition tests.

64 Furthermore, in a case such as this, concerning an interinstitutional open competition, in addition to infringement of the principle of legal certainty there would also be infringement of the principle of equal treatment. The appointing authority of each of the institutions potentially concerned by the competition could, at the recruitment stage, take the view that it was entitled and empowered to make its own independent assessment as to whether the eligibility condition relating to professional experience was met, and that, wherever the selection board had used a method of calculating the requisite minimum duration of professional experience which differed from its own, the selection board had necessarily made a manifest error of assessment, justifying the appointing authority in reopening the selection board's assessment. If such reasoning were to be adopted, each appointing authority would be entitled to replace the method of calculation that the selection board had applied indiscriminately to all candidates, in calculating the requisite duration of professional experience, with its own method of calculation. The entirety of the work done by the selection board in carrying out its responsibilities and in the interest of all the institutions concerned by a competition could ultimately be called into question on the basis of requirements which varied from one institution to the next, or even on the basis of a certain propensity of the departments responsible for recruitment in a particular institution to wish to substitute their own assessment for that of the selection board.

- 65 Admittedly, in the present case, the competition notice provided, as is usual, in section D, headed 'General information', that 'if you are offered a post you will subsequently be asked to produce the originals of all the requisite documents such as diplomas, certificates and statements of employment so that copies can be authenticated' and that 'recruitment will depend on posts and funds becoming available'.
- 66 However, such clauses do not, in themselves, provide a legal basis empowering and entitling the appointing authority to exclude a successful candidate from the reserve list, after the event, on the basis that she had not met a condition of eligibility which did not appear in the competition notice that the appointing authority itself had adopted and which, equally, did not appear in a provision of the Staff Regulations or any other legal text which was binding on candidates.
- 67 The unlawfulness on which the appointing authority would seek to rely, in those circumstances, as against the successful candidate, would not arise from a manifest error made by the selection board in assessing a specific condition of eligibility intended by the competition notice or appearing in a provision of the Staff Regulations, but from the error made by the appointing authority itself in not incorporating, in the competition notice, an additional clause stipulating that the minimum of two years' professional experience which was required for admission to the competition tests was two years of full-time professional experience, and that this was to be calculated according to principles laid down clearly in advance, non-observance of which would prevent the candidate from being admitted to the competition tests. Ultimately, the appointing authority cannot regularise the competition notice after the event in this way, at the recruitment stage, without encroaching on the competence of the selection board, which, during the competition, is bound by the terms set out in the competition notice, or without causing prejudice to the successful candidate concerned.
- 68 Accordingly, there is no room for the argument seeking to maintain that the appointing authority was unable, in any circumstances, to adopt a recruitment decision which would have been unlawful because of an unlawful decision previously taken by the selection board, since, in the present case, the decision of the selection board to which the appointing authority refers is not vitiated by unlawfulness with regard to the Staff Regulations or the conditions clearly set out in the competition notice. It is a question, at the very most, of a difference between the method used by the selection board in assessing, in the exercise of its competence, the minimum professional experience required by the competition notice, and the method of calculating the full-time duration in accordance with specific principles which the appointing authority considers itself entitled to use at the appointment stage. However, since the appointing authority did not state in the competition notice that the condition requiring two years' professional experience was to be understood as two years' full-time professional experience, which would have been a legally binding requirement as regards both the selection board and the candidates, such that candidates who did not fulfil it would have been eliminated from the competition, that difference of assessment, which arises from the choice of method made by the appointing authority, has been brought about by the appointing authority alone, since it is only the appointing authority, and not the selection board, which has power to lay down conditions of eligibility in the competition notice.
- 69 In this regard, the Commission also argues that in the present case the selection board, in breach of the provisions of the competition notice specifically requiring it to verify, in respect of each candidate, that the eligibility condition relating to professional experience was met, totally failed, in practical terms, to take account of those provisions. The DG Human Resources of the Commission, which tried to understand how the selection board could have calculated the duration of the applicant's professional experience, were forced to the conclusion that the board had not used any method to calculate the duration of that professional experience. That omission is thus said to justify a competence on the part of the appointing authority to exclude the applicant, legitimately, from the reserve list.

- 70 Those, however, are not the facts of the present case, since the Commission has not produced evidence of any such manifest omission on the part of the selection board or, for that matter, evidence that the applicant was admitted to the competition tests on the basis of a decision of the selection board which had been taken in a manifestly arbitrary way as regards the terms of the competition notice. It is apparent from the material on the file submitted to the Tribunal that, as regards the applicant's admission to the tests, the selection board had documents before it, attached by the applicant to her application form, evidencing professional activity as a freelance lawyer-linguist to the Court of Justice over an uninterrupted period of 15 months, and that there is nothing to indicate that the board had not examined those documents, for example on the basis set out in paragraphs 53 to 55 of this judgment, which, by contrast, the appointing authority, regarding itself as bound only to use the internal method of calculation of the institution, certainly did not take into account.
- 71 It follows that, in adopting the contested decision, the appointing authority overstepped its competence to review compliance with the additional condition of eligibility relating to professional experience and thus encroached on the competence which the competition notice had expressly reserved, in this regard, to the selection board, as well as the prerogatives of autonomy and independence of competition selection boards.
- 72 Equally, the Commission has not demonstrated that the competition selection board, if it had nevertheless proceeded, in respect of each candidate, to assess the duration of the professional experience required by the competition notice, would at that stage have made a manifest error in calculating that duration, thus justifying the appointing authority in revising the list of candidates admitted to the competition and therefore also justifying a competence on the part of the appointing authority to exclude the applicant from the reserve list, even on the eve of possible recruitment.
- As to the manifest error potentially made by the competition selection board in assessing the duration of the applicant's professional experience
- 73 In this regard, it should be observed that an error is manifest where it can be readily detected, in the light of the criteria which the legislature intended to apply to the exercise by the administration of its broad discretion. In particular, there can be no manifest error if the contested assessment may be accepted as true or valid (judgment of 23 October 2012 in *Eklund v Commission*, F-57/11, EU:F:2012:145, paragraph 51, and Order of 10 July 2014 in *Mészáros v Commission*, F-22/13, EU:F:2014:189, paragraph 52).
- 74 As has been pointed out in paragraphs 45 and 48 of this judgment, the competition selection board, to which the competition notice had expressly assigned the task of verifying that candidates met the condition of eligibility relating to professional experience, and in particular the duration of such experience, without, however, requiring specific principles of calculation to be observed, was obliged to carry out that task on the basis of the evidence that each candidate was required to provide, in accordance with the provisions set out in the guide for applicants (see paragraph 47 of this judgment), particularly as regards 'the exact dates when [they] started and finished each period of employment, the position [they] held and the nature of [their] duties in that position'.
- 75 In the present case, it should be observed that, in her application form, the applicant relied specifically on several periods of professional experience with a total duration of 31 months. On the one hand, she set out various professional activities with a cumulative duration of 13 months, which were not challenged by the Commission. On the other, she stated that she had completed 15 months of activity as a freelance lawyer-linguist for the Court of Justice and three months of internship at the W. law firm, as regards which the appointing authority only credited her, respectively, with seven and two months of professional experience.

- 76 The Commission, however, asserts that the selection board did not in fact take account of the freelance nature of the activity of ‘translator’ carried out by the applicant for the Court of Justice, in that the applicant ‘did not receive consideration in the form of a salary, was not subject to a work schedule or hierarchy and was not required to be present at the Court [of Justice] in order to perform her duties’ (see, in that regard, paragraph 87 of this judgment).
- 77 Nonetheless, it is clear from the statement from the Court of Justice and the purchase orders that, between 1 October 2004 and the submission of her application form, the applicant was called on to work for the Court of Justice, in an uninterrupted fashion, as a ‘freelance lawyer-linguist’. There is thus no reason to believe, as the Commission suggests, that the selection board, made up of experts in the field, overlooked the freelance nature of this professional activity which, by its nature, is not subject to a predetermined schedule of work. It is the Commission which seems, potentially, to have confused the activity of freelance ‘translator’ with that of freelance ‘lawyer-linguist’, by treating them in the same way.
- 78 Similarly, as regards the specialised studies in international law pursued by the applicant from October 2004 until June 2005, simultaneously with part of her activity as a freelance lawyer-linguist to the Court of Justice, it suffices to point out that the documents attached to the application form confirmed this fact unequivocally. Thus there is, equally, no reason to believe that the selection board did not duly take it into account in assessing the duration of the professional experience required for admission to the competition.
- 79 Furthermore, it should be observed that the purchase orders attached to the application form highlighted, by the regularity and volume of the orders raised by the Court of Justice and fulfilled by the applicant during her 15 months of working with that institution, that the work carried out by the applicant as a freelance lawyer-linguist (and thus not as a ‘freelance translator’) was continuing and consistent in nature, notwithstanding that she was pursuing studies in international law at the same time.
- 80 Finally, as has already been noted in paragraph 57 of this judgment, the selection board had a broad discretion concerning the equivalence, in terms of working time, between activity carried out on a freelance basis with variable working hours and work carried out on a full-time basis, and in particular, to that end, had significant room for manoeuvre given that the cumulative duration of the applicant’s periods of professional experience, taken together, exceeded the required minimum of two years by seven months.
- 81 Having regard to those observations, it is appropriate to conclude that the Commission has equally not proved that the selection board made a manifest error in calculating the duration of the applicant’s professional experience.
- 82 In the light of all of the preceding considerations, the first plea, based on a lack of competence on the part of the appointing authority, must be upheld.

The second, alternative, plea, based on a manifest error of assessment by the appointing authority and on infringement of the competition notice and the principles of legal certainty and equal treatment

- 83 As this plea relates essentially to the assessment of the facts of the case, the Tribunal considers, on that basis and in the interests of administration of justice, that it is able to consider it, even after upholding the first and principal plea.

Arguments of the parties

- 84 The applicant maintains that, even if the appointing authority was legally entitled to substitute its own assessment of the condition relating to professional experience for that of the selection board, it nevertheless examined that condition in a manifestly erroneous way, particularly with regard to the calculation of the full-time duration of her professional experience as a freelance lawyer-linguist to the Court of Justice, the duration of her internship at the W. law firm, and the application to her professional experience as a freelance lawyer-linguist to the Court of Justice of a standard daily rate of a given number of pages of translation which, however, had not been mentioned in the competition notice.
- 85 The Commission contends that the second plea should be dismissed.

Findings of the Tribunal

- 86 In examining whether the appointing authority's assessment of the duration of the applicant's professional experience was manifestly erroneous, it is appropriate first of all to ascertain whether there was a relevant legal basis for the method or principles used by the appointing authority in this regard, by reference to the legal framework represented by the competition notice, such that the appointing authority was justified in using, for the purposes of assessing a mandatory condition of eligibility, a principle of calculation which was specific and legal as regards persons external to the institution.
- 87 It is apparent from the decision rejecting the complaint that the appointing authority considered that 'the selection board probably did not take account of the fact that the [applicant's] work for the Court [of Justice] was ... freelance work and should, accordingly, be credited not on the basis of the number of months for which the [applicant] worked with that institution, but on the basis of the work actually carried out, since the [applicant] did not receive consideration in the form of a salary, was not subject to a work schedule or hierarchy and was not required to be present at the Court [of Justice] in order to perform her duties; on that basis, a calculation based on the number of days worked in those circumstances, on the basis of the number of pages translated, *was required*. This was particularly so given that the translation purchase orders were in the file, and the possibility of such purchase orders being used in relation to self-employed professional activity was provided for by the guide [for applicants]' (Tribunal's emphasis).
- 88 According to the Commission, the guide for applicants thus constituted a sufficient legal basis for the use of the mechanisms for converting the quantity of work produced into days worked, as used by the Commission in relation to translation work carried out within that institution. It follows that, in the Commission's view, the appointing authority '*was entitled* to verify the applicant's working time as a freelancer for the Court of Justice' (Tribunal's emphasis).
- 89 In its defence, the Commission also asserts that 'as the applicant had asked to be recruited by the Commission, it was *inevitable* that the appointing authority would use its own principles in calculating the full-time professional experience' (Tribunal's emphasis).
- 90 While it is undoubtedly true that, in the present case, it was the Commission that was, potentially, to recruit the applicant, it must nevertheless be pointed out that the Commission has nowhere identified, either when it rejected the complaint or during the course of these proceedings, the legal basis (available to the Commission as against the applicant) on which it says that the appointing authority was obliged to correct the manifest error allegedly made by the selection board in calculating the applicant's professional experience, by reference to the number of pages translated per day and the

rate used by the Commission's translation services, namely five pages per working day, regardless of the fact that the case specifically concerned the translation of legal texts and/or the verification of the linguistic and legal consistency of legislative texts.

- 91 While such a method of calculation is referred to in the Communication from the Vice-President of the Commission SEC (2004) 638 of 25 May 2004 on translation requirements, it was not set out in that document as a mandatory criterion of selection for admission to the tests of a competition directed specifically to the recruitment of lawyer-linguists. In any event, that method of calculation was not set out in the competition notice, nor had it been published in such a way as to be accessible or necessarily known to the selection board or the candidates concerned. Furthermore, that criterion, as the Commission itself affirmed, does not correspond to those used by the translation departments of the other institutions which were able to recruit lawyer-linguists, if they saw fit, from the competition reserve list. Accordingly it is not common to the EU institutions.
- 92 Consequently, the appointing authority, taking the place of the selection board in verifying that a condition of eligibility for the tests had been met (a condition of eligibility which was required to be assessed and applied in a uniform manner in relation to all candidates) could not use a method of calculation which was exclusive to the Commission's internal operations, and thus not interinstitutional, and which was therefore not pertinent, as the competition in fact concerned the recruitment of lawyer-linguists, and not binding on persons external to the institution.
- 93 It follows that the analysis of the applicant's professional experience carried out by the Commission with a view to calculating, in accordance with the principles used by its translation services, the number of pages translated by the applicant during her period of activity as a freelance lawyer-linguist to the Court of Justice, as if it was the work of a Commission 'translator' that was in question, even supposing it to be plausible, has no basis in any relevant legal provision which can be relied upon directly against the applicant and, accordingly, constitutes a manifest error on the part of the appointing authority which can be readily detected by the Tribunal (see paragraph 70 of this judgment).
- 94 In the light of the foregoing, it is therefore appropriate to uphold the second plea, raised in the alternative though it is, without the need to examine the other arguments advanced by the applicant in this regard.

The third plea, based on infringement of the principle of good administration and the duty to have regard for the welfare of officials, as well as failure to act within a reasonable time

- 95 As this plea relates essentially to the assessment of the facts of the case, the Tribunal considers, on that basis and in the interests of administration of justice, that it is able to consider it, even after upholding the first and principal plea.

Arguments of the parties

- 96 The applicant's first criticism of the appointing authority is that it questioned the validity of the selection board's decision to admit her to the competition at the final stage of the recruitment procedure, almost seven years after the reserve list had been drawn up and, more specifically, after DG Human Resources had granted a derogation with a view to her being recruited as an administrator. Furthermore, the validity of the reserve list had been extended several times and the applicant had been invited to several recruitment interviews in the meantime, without her eligibility for the competition ever being checked or questioned.

- 97 Secondly, the applicant maintains that DG Human Resources staff refused to give her access to her EPSO file at the interviews she had with them in September and October 2013, access only having been granted in November of that year.
- 98 Furthermore, according to the applicant, in taking four months to adopt the contested decision, the appointing authority exceeded a reasonable time for examining the matter. Having regard, firstly, to the nature of the review that it was for the appointing authority, in the circumstances, to carry out, which was limited to manifest errors of assessment on the part of the selection board, and secondly, to the unwavering interest shown by DG Justice in the recruitment of the applicant, which had originally been expected to take place in September 2013, that period of time was excessive and, furthermore, was attributable in its entirety to DG Human Resources.
- 99 Finally, the appointing authority is said to have dealt with the matter unfairly, in that representatives of DG Human Resources gave contradictory and incoherent opinions as to the factors relevant to the calculation of professional experience, as well as the documents to be submitted in this regard, opinions which were later discarded. That conduct is also said to have delayed the recruitment procedure.
- 100 The Commission contends that the third plea should be dismissed.

Findings of the Tribunal

- 101 First, it should be pointed out that the appointing authority need only examine the legality of the selection board's decision to include a candidate on the reserve list when the question of actual recruitment of that candidate arises, and not when the selection board sends it the reserve list (judgment of 15 September 2005 in *Luxem v Commission*, T-306/04, EU:T:2005:326, paragraph 24). The time which elapsed after the drawing-up of the reserve list and the number of extensions of the validity of the list are not, therefore, relevant circumstances in assessing, in this case, whether the appointing authority infringed the principle of good administration by questioning the selection board's decision to admit the applicant to the competition tests.
- 102 Furthermore, as to the derogation in respect of the reserve list in question (see paragraph 15 of this judgment) it should be observed that that decision was necessarily taken after the selection board's decision to include the applicant on that list, but before the requisite verification, by the appointing authority, of her aptitude to be appointed as an official. That derogating decision, although made at the wrong point in time, that is, well before the appointing authority had been able to verify the applicant's aptitude to be appointed to the post in question, does not mean, in law, that the appointing authority was no longer able to verify, within the limits of its competence, that those conditions of appointment, laid down in mandatory terms by the Staff Regulations, were satisfied. In other words, a derogating decision such as that at issue is not automatically to be equated with a decision that the person concerned has the aptitude to be appointed as an official. Among the conditions of appointment laid down by the Staff Regulations, is that, set out in Article 28 of those regulations, requiring the candidate to have passed a competition based on qualifications and tests which, in the circumstances, could only the competition at issue in the present case.
- 103 Secondly, as regards access to the EPSO file, it must be observed that there is no evidence to support the applicant's allegation that DG Human Resources staff refused her verbal requests for access. Although the applicant refers to such a refusal in an email of 11 November 2013, sent to DG Human Resources, what she says is not confirmed by the recipient who, on the contrary, invited her to access her file the following day. Furthermore, the applicant, who accepts that she had access to her application form and attached documents on 12 November 2013, does not state how the earlier refusal which she alleges would constitute an infringement of the principle of good administration or the duty to have regard for the welfare of officials.

- 104 Thirdly, as to the time taken by the appointing authority to make its decision, it should be observed that no period is laid down by any provision of EU law for the taking of a decision as to the recruitment of an official in the context of a competition procedure such as that in which the applicant participated. It follows that, in accordance with settled case-law, the reasonableness of the period of time taken by the institution to adopt a measure at issue is to be appraised in the light of all of the circumstances specific to each case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the parties (see, to this effect, judgment in Review of 28 February 2013 in *Arango Jaramillo and Others v EIB*, C-334/12 RX-II, EU:C:2013:134, paragraph 28 and the case-law cited therein).
- 105 In the present case, following the recruitment interview of 28 May 2013, DG Justice sent the recruitment request relating to the applicant to DG Human Resources in June 2013, and in July 2013 DG Human Resources granted the derogation which was necessary for a candidate who had been included on a reserve list of lawyer-linguists to be appointed to an administrator's post. The EPSO file was sent to the Commission in September 2013 and the contested decision was adopted on 17 December 2013. In the meantime, at the end of August 2013, the applicant enquired of DG Human Resources, and was informed, as to the progress of the recruitment procedure.
- 106 In relation, first, to the importance of the case, while the prospect of recruitment was undeniably important to the applicant, she had no right to be appointed as an official and, in the absence of approval from DG Human Resources, she equally had no legitimate expectation in that regard, notwithstanding the unwavering interest shown by DG Justice in her recruitment (see judgment of 19 May 2015 in *Brune v Commission*, F-59/14, EU:F:2015:50, paragraph 78 and the case-law cited therein). Furthermore, given that the appointing authority had taken the view, albeit wrongly, that the selection board had made a manifest error of assessment in admitting the applicant to the competition, verifying whether the applicant met the condition of eligibility relating to the professional experience required by the competition notice was a matter, in itself and within the limits stated in paragraphs 53 to 55 of this judgment, of a certain complexity. Lastly, taking the view that the information contained in the EPSO file was, in some respects, contradictory and insufficient, the appointing authority asked the applicant for further documents and explanations. No unjustified delay in the recruitment procedure can therefore be imputed to the appointing authority.
- 107 Accordingly, the period of about six months which elapsed between the recruitment request being sent by DG Justice to DG Human Resources in June 2013, and the adoption of the contested decision on 17 December of that year, cannot, in the circumstances, be considered unreasonable overall.
- 108 Fourthly, the fact that DG Human Resources staff kept the applicant informed, at various interim stages of the recruitment procedure, of the factors which they considered relevant for the purposes of calculating the duration of her professional experience, and of the evidence to be supplied in that regard, does not constitute unfair handling of her situation. On the contrary, the applicant was thus given the opportunity to adopt a position on the controversial aspects of her case, and to put forward in her favour, during the course of the recruitment procedure, all the arguments and evidence available to her. The appointing authority was, of course, free to assess the probative value of such evidence.
- 109 It follows that no finding of an infringement of the principle of good administration, an infringement of the duty to have regard to welfare, or a failure to act within a reasonable time, can be made on the basis of the matters put forward by the applicant and, accordingly, that the third plea must be dismissed.

The fourth plea, based on unlawfulness of the condition of eligibility for the competition relating to professional experience

Arguments of the parties

- 110 The applicant maintains, by means of a plea of unlawfulness, that the condition of eligibility relating to professional experience which appears in the competition notice is contrary to the principle of equal treatment, in that other competition notices relating to the recruitment of lawyer-linguists do not contain any condition of that kind.
- 111 The Commission contends that the Tribunal should dismiss the fourth plea as inadmissible or, in the alternative, as unfounded.

Findings of the Tribunal

- 112 As the first plea advanced in support of the claim for annulment, based on a lack of competence on the part of the appointing authority, has been upheld, there is no longer any need to consider the fourth plea. Furthermore, since it has been established, by reference to the provisions of the competition notice regarding the division of competences between the appointing authority and the selection board, that the appointing authority was bound by the selection board's decision to admit the applicant to the competition on the basis that she satisfied the condition relating to professional experience, since that decision was free of manifest error, the unlawfulness of that condition, if established, would not give rise to any further harm to the applicant in respect of which she would be entitled to compensation.

3. The claim for compensation

Arguments of the parties

- 113 The applicant asserts that she would undoubtedly have been recruited in September 2013, had it not been for the unlawfulness vitiating the contested decision. Given that the applicant was unemployed between 1 September 2013 and 1 February 2014 (the date on which she states that she was employed as legal secretary to a member of the General Court of the European Union), that unlawfulness is said to have caused her material damage represented by the loss of the income which she would have received, together with other benefits associated with appointment, including the possibility of being appointed as an official under the more advantageous provisions of the Staff Regulations which were in force until 31 December 2013.
- 114 Accordingly, the applicant argues that she should be compensated by granting her 'the full effect' of appointment in September 2013 as an administrator in grade AD 7, step 1, posted to DG Justice, that is, 'amongst other things', seniority in grade as from 1 September 2013, reconstitution of her career, retrospective payment of pension scheme contributions, and payment of remuneration for the period during which she was unemployed, such remuneration being assessed, subject to additions, at EUR 26132.85, to which default interest is to be added at a rate two percentage points above the main refinancing operations rate set by the European Central Bank for the period in question.
- 115 The applicant also claims to have suffered, by reason of the contested decision, non-material damage resulting from the stress and anxiety due to the fact that, almost seven years after she was included in the reserve list, the rights that she had acquired as a successful candidate in the competition were called into question, and she found herself obliged to approach her previous employers in order to obtain the information required by DG Human Resources for the purposes of evaluating her professional experience. The applicant limits her claim in this regard to a symbolic euro.

- 116 The Commission contends that the claim for compensation should be dismissed. In relation to the material damage based on loss of chance, it is said that the claim for compensation is closely linked to the claim for annulment and should therefore be dismissed as unfounded. Furthermore, it is said that the applicant cannot rely on any serious chance of recruitment and cannot suggest that she ought to have been appointed on a particular date. In any case, as the Commission clarified at the hearing in response to a question set out in the preparatory report for the hearing, it would not have been possible in the circumstances, allowing for any notice period, for her to be recruited prior to 1 March 2014.
- 117 Furthermore, the claims that the applicant should be given the benefit of ‘the full effect’ of appointment and that her career should be reconstituted are said to be manifestly inadmissible, the first because of its imprecision and the second by reason of the fact that, in accordance with the case-law, it is not for the EU judicature to issue directions to the administration in the course of a review of lawfulness based on Article 91 of the Staff Regulations.
- 118 As to the non-material damage, the claim for compensation is said to be inadmissible due to the lack of any prior request under Article 90 of the Staff Regulations, such harm arising, according to the Commission, from conduct of the administration which was not in the nature of a decision, namely the delay in dealing with the applicant’s case.
- 119 The claim for compensation for non-material damage is said in any event to be unfounded. The allegations of stress and anxiety are said to be unrealistic in the circumstances of the case, especially since the fact that a candidate has been successful in a competition does not give him any right to be appointed as an official, and it is for each candidate to produce the material necessary for the existence and relevance of his qualifications and professional experience to be assessed.

Findings of the Tribunal

- 120 In accordance with settled case-law, the administration can be held liable for damages only if a number of conditions are satisfied: the illegality of the allegedly wrongful act committed by the institutions, actual harm suffered, and the existence of a causal link between the act and the damage alleged to have been suffered (see, amongst others, judgments of 1 June 1994 in *Commission v Brazzelli Lualdi and Others*, C-136/92 P, EU:C:1994:211, paragraph 42, and 21 February 2008 in *Commission v Girardot*, C-348/06 P, EU:C:2008:107, paragraph 52).
- 121 Since, as has been held in examining the first plea, the contested decision is vitiated by unlawfulness, it is necessary to consider whether the applicant has suffered any damage by reason of that decision.
- 122 As regards material damage, it is clear that, as a result of the contested decision, the applicant lost a real chance of being recruited as an official to the vacant post at DG Justice, a post in relation to which the DG had in fact shown, on several occasions, its interest in the applicant (see paragraph 18 of this judgment and, to this effect, judgment of 7 October 2013 in *Thomé v Commission*, F-97/12, EU:F:2013:142, paragraph 76).
- 123 Thus, regardless of the measures which the Commission will have to adopt, in accordance with Article 266 TFEU, to implement this annulling judgment, it must be held that the applicant definitively lost the chance to be employed as an administrator in grade AD 7 in the post which was vacant at DG Justice, as to which that DG had in fact obtained, so as to be able to offer the post to the applicant, an administrative derogation relating to the competition reserve list, which had in fact been directed, in the first instance, to the recruitment of lawyer-linguists. That damage thus gives rise to a right, provided that the other legal conditions are met, to compensation (see, to this effect, judgment of 13 September 2011 in *appointing authority v Commission*, F-101/09, EU:F:2011:133, paragraphs 79 to 82).

- 124 Furthermore, the applicant asserts, on the basis of the interest of the DG Justice unit to which she ought to have been posted, the fact of which the Commission does not challenge, that had it not been for the unlawfulness which vitiates the contested decision, she would have been recruited on 1 September 2013.
- 125 It should be noted in this regard, first, that the EPSO file did not reach the appointing authority until September 2013.
- 126 Secondly, while the Commission maintains that, from an administrative perspective, the earliest possible date of recruitment to the vacant post would have been 1 March 2014, the fact remains that if the appointing authority had not wrongly taken the view that the selection board had made a manifest error of assessment, the time taken to consider the matter would realistically have been shorter, not least because of the interest which DG Justice had shown, on several occasions, in filling that post.
- 127 In the circumstances of the case, it should thus be held that the chance that the applicant would have had, in the absence of the unlawful conduct of the Commission, of being recruited to the administrator's post in question arose in her favour on 1 November 2013 at the earliest, also taking into account the fact that, as is apparent from the email of 24 May 2013 sent by DG Human Resources to the applicant (see paragraph 13 of this judgment), there would have been no need for a pre-recruitment medical examination in the event of recruitment by the Commission, as the applicant had already undergone such an examination at the Court of Justice.
- 128 Lastly, the applicant maintains that the quantum of the material damage she suffered amounts, in respect of the period from 1 September 2013 to 1 February 2014, during which she remained without employment pending the adoption of the contested decision, to EUR 26132.85, representing the income which she would have received as an official in grade AD 7, step 1. The applicant adds that the Commission should also be ordered to pay pension scheme contributions from September 2013.
- 129 It suffices however (there being no need to adopt a position as to the absolute bar contended for by the Commission in relation to the claims for the applicant to be given the benefit of 'the full effect' of the appointment and for reconstitution of her career) to point out that the material damage in respect of which the applicant is entitled to compensation does not relate to lost benefits, but to the loss of a chance of being employed as an official in the post to which the recruitment procedure in question related.
- 130 Accordingly, taking account of the circumstances of the case and in the exercise of the Tribunal's power to assess damages on an equitable basis, the material damage suffered by the applicant can be fairly and fully compensated, having regard amongst other things to the monthly salary attaching to the post to be filled, the real nature of the lost chance, the earliest possible date for recruitment and the applicant's employment situation during the reference period, by ordering the Commission to pay her a lump sum of EUR 10 000.
- 131 As to the non-material damage, it should first be stated that, contrary to the Commission's argument, the damage alleged to have been suffered does not arise from conduct of the administration which is not in the nature of a decision, namely the delay in dealing with the matter, but from the contested decision.
- 132 Nonetheless, it is appropriate to hold that the annulment of the contested decision constitutes in itself adequate and appropriate compensation for the non-material damage alleged by the applicant, who has not been able to establish that she suffered any non-material loss which can be separated from the unlawfulness forming the basis for the annulment of the contested decision.

133 It follows that the Commission must be ordered to pay the applicant, by way of compensation, the sum of EUR 10 000.

Costs

134 Pursuant to Article 101 of the Rules of Procedure, subject to the other provisions of Chapter 8 of Title 2 of those Rules, the unsuccessful party is to bear his own costs and is to be ordered to pay the costs incurred by the other party if they have been applied for in the other party's pleadings. Under Article 102(1) of those Rules, if equity so requires, the Tribunal may decide that an unsuccessful party is to bear his own costs, but is to pay only part of the costs incurred by the other party, or even that he is not to be ordered to pay any costs.

135 It follows from the grounds set out in the present judgment that it is essentially the Commission which has been unsuccessful. Moreover, the applicant expressly applied in her pleadings for the Commission to pay the costs. As the circumstances of the present case do not justify the application of Article 102(1) of the Rules of Procedure, the Commission must bear its own costs and be ordered to pay the costs incurred by the applicant.

On those grounds,

THE CIVIL SERVICE TRIBUNAL (First Chamber)

hereby:

1. **Annuls the decision of 17 December 2013 by which the European Commission refused to recruit FE.**
2. **Orders the European Commission to pay FE the sum of EUR 10 000.**
3. **Dismisses the action as to the remainder.**
4. **Declares that the European Commission shall bear its own costs and pay the costs incurred by FE.**

Barents

Perillo

Svenningsen

Delivered in open court in Luxembourg on 6 October 2015.

W. Hakenberg
Registrar

R. Barents
President