Reports of Cases

ORDER OF THE GENERAL COURT (Ninth Chamber)

19 September 2018*

(Action for annulment and for damages — Arbitration clause — Common foreign and security policy — Staff of EU international missions — Consecutive fixed-term employment contracts — Internal competition — Impartiality of the selection board — Non-renewal of a fixed term contract — Partial reclassification of the action — Contractual liability — Non-contractual liability — Material and non-material harm — Action in part manifestly inadmissible and in part manifestly unfounded in law)

In Case T-242/17,

SC, represented by L. Moro and A. Kunst, lawyers,

applicant,

v

Eulex Kosovo, established in Pristina (Kosovo), represented by E. Raoult, lawyer,

defendant,

APPLICATION, first, under Article 263 TFEU seeking annulment of the decision rejecting the applicant's application for the internal competition organised by Eulex Kosovo in 2016 for the position of prosecutor (EK 30077) and the decision of that mission not to renew her fixed-term contract, secondly, application under Article 268 TFEU seeking compensation for the material and non-material harm that the applicant allegedly sustained as a result of the infringement by Eulex Kosovo of its non-contractual obligations and, thirdly, application under Article 272 TFEU seeking an order that Eulex Kosovo be ordered to pay compensation for breach of its contractual obligations,

THE GENERAL COURT (Ninth Chamber),

composed of S. Gervasoni, President, L. Madise and R. da Silva Passos (Rapporteur), Judges,

Registrar: E. Coulon,

makes the following

* Language of the case: English.

Order

Background to the dispute

1 The Eulex Kosovo Mission was created by Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, Eulex Kosovo (OJ 2008 L 42, p. 92). Joint Action 2008/124 has been extended several times. It was extended until 14 June 2016 by Council Decision 2014/349/CFSP of 12 June 2014 amending Joint Action 2008/124 (OJ 2014 L 174, p. 42), applicable to the facts of the present case.

2 The applicant, SC, was employed by Eulex Kosovo as a prosecutor on the basis of five successive fixed-term contracts during the period from 4 January 2014 to 14 November 2016. The first two fixed term contracts contained an arbitration clause designating the courts of Brussels (Belgium) as having jurisdiction in the event of any dispute arising out of the contract. The last three fixed term contracts provided, in Article 21 thereof, that disputes relating to the contract were to be 'referred to the jurisdiction of the Court of Justice of the European Union, pursuant to Article 272 [TFEU]'.

3 On 14 April 2014, the applicant had an interview as part of her evaluation report with the following three persons: her line manager, who was Chief Prosecutor for Eulex Kosovo, her direct supervisor, who was the prosecutor team leader, and a member of the human resources unit. At that meeting, a copy of the applicant's evaluation report was provided to the applicant. The applicant informed the aforementioned persons that she would be challenging the evaluation report because she did not agree with its contents.

4 On 28 April 2014, the applicant lodged a complaint in respect of the evaluation report with the Director of Human Resources. In that complaint, she challenged the assessments set out therein and, in general, the irregularities in the evaluation process. By decision of 12 August 2014, the Head of Eulex Kosovo ('the Head of Mission') informed the applicant that the complaint had been accepted and that its evaluation report of 14 April 2014 had been annulled.

5 On 1 July 2014, the applicant received notification from her direct supervisor that an internal competition was being organised for the post of prosecutor, since, under the Operation Plan ('OPLAN'), the number of prosecutors was to be reduced and that Article 4.3 of the standard operating procedures for the reorganisation provided for the holding of a competition in such circumstances. The internal competition took place in summer 2014 and was subsequently annulled.

6 In 2014, Eulex Kosovo asked the applicant to take a driving test. The applicant attempted but failed that test three times during that period, most recently on 22 October 2014. In October 2014, the applicant provided the human resources unit of Eulex Kosovo with documents attesting to her disability. In November 2015 and February 2016, the applicant was further asked to take a driving test.

7 On 24 June 2016, the applicant was informed by letter from Eulex Kosovo's human resources unit that a new internal competition for the post of prosecutor was planned for July 2016, namely competition EK 30077 ('the 2016 internal competition') due to the reduction in the number of available posts. The letter stated that the failure to take part in the competition or inadequate results would entail the non-renewal of her employment contract expiring on 14 November 2016.

8 On 5 July 2016, the applicant wrote to the Eulex Kosovo human resources unit in order to know the composition of the selection board of the 2016 internal competition.

9 On 19 July 2016, the applicant was interviewed by the selection board. Both before and during the interview, the applicant challenged the composition of the selection board, given the relations between her and the chairman of the selection board. In the period from 4 January until the end of August 2014, the chairman of the selection committee was, in her capacity as Chief Prosecutor for Eulex Kosovo, the applicant's direct supervisor.

10 During that period, the applicant lodged a complaint against the evaluation report drafted and signed by her direct supervisor, which led to that report being annulled (see paragraph 4 above). Furthermore, during that period, the applicant lodged a complaint on 25 August 2014 against the result of the internal competition in which she participated in 2014. She challenged, in particular, the presence of her direct supervisor in the selection board, given her involvement in the complaints procedure relating to her evaluation report — at the time, that complaint was still pending — as well as the direct supervisor's bias against her. The Head of Mission upheld that complaint on other grounds, relying on the fact that two members of the selection board had the same nationality. It therefore took the view that it was not necessary to examine the applicant's claim in respect of the presence of her direct supervisor in the selection board.

11 A few moments before she was interviewed by the 2016 internal competition selection board, the applicant claimed that the composition of the panel did not meet the requirement of impartiality laid down in the provisions of the Standard Operating Procedures ('the SOP') and the OPLAN.

12 By letter from the head of the human resources unit of 30 September 2016, the applicant was informed that she had not passed the 2016 internal competition ('the decision relating to the 2016 internal competition'). By the same letter, the head of unit confirmed to the applicant that her contract would be ending on 14 November 2016, informed the applicant of the decision not to renew her contract and that the arrangements in respect thereof would be notified to her ('the decision not to renew her contract of employment').

13 By letter of 10 October 2016, the applicant lodged a complaint with the Head of Mission against the decision relating to the 2016 internal competition and the decision not to renew her contract of employment.

14 By letter of 31 October 2016, the Head of Mission dismissed that objection, holding that the principles for selecting staff had not been infringed. The Head of Mission noted that no conflict of interest could be identified and that, before the 2016 internal competition, the applicant had not submitted any complaint concerning possible harassment or intimidation by her direct supervisor. The Head of Mission took the view that the re-evaluation of subordinates did not constitute a conflict of interest. She added that it followed from Annex 13 to the OPLAN that the Head of the Executive Division and the Chief Prosecutor of Eulex Kosovo had to be members of the selection board and that the panel had to be the same for all candidates.

15 On 1 November 2016, the applicant sent an email to the Head of Mission requesting arbitration under Article 20(2) of her contract with Eulex Kosovo. That request was rejected on 14 November 2016, on the day of expiry of her employment contract.

Procedure and forms of order sought

16 By application lodged at the Court Registry on 25 April 2017, the applicant brought the present action. The applicant further requested anonymity, which was granted by decision of the Court of 19 September 2017.

17 In her application, the applicant claims, in essence, that the Court should:

– find that Eulex Kosovo, on the one hand, breached its contractual obligations in the performance of the contract and in the application of the OPLAN and the Concept of Operations (Conops), the SOP relating to the reorganisation and the SOP concerning the selection of staff, and, on the other, infringed the 'principles of fairness and of good faith', and order Eulex Kosovo to pay compensation for the damage;

– find that Eulex Kosovo breached its non-contractual obligations and order Eulex Kosovo to pay compensation for the damage;

– annul the decision relating to the 2016 internal competition and the decision concerning the non-renewal of her contract of employment ('the contested decisions');

– order Eulex Kosovo to pay her, in respect of material damage, an amount corresponding to unpaid wages amounting to 19 months' gross salary, to which should be added a daily subsistence allowance and salary increase, and, moreover, in respect of non-material damage, the sum of EUR 50 000 on account of 'unlawful decisions/acts' of Eulex Kosovo;

– order Eulex Kosovo to pay the costs, plus interest calculated at the rate of 8%.

18 By separate document lodged at the Court Registry on 24 August 2017, Eulex Kosovo raised an objection of inadmissibility under Article 130(1) and (7) of the Rules of Procedure of the General Court.

19 In its objection of inadmissibility, Eulex Kosovo contends that the Court should:

– dismiss the action as inadmissible;

– order the applicant to pay the costs.

20 The applicant lodged its observations on the plea of inadmissibility on 20 October 2017.

21 In its observations on the objection of inadmissibility, the applicant claims, in essence, that the Court should declare the action admissible.

Law

22 Under Article 126 of the Rules of Procedure, where it is clear that the Court has no jurisdiction to hear and determine an action or where that action is manifestly inadmissible or manifestly lacking any foundation in law, the Court may, on a proposal from the Judge-Rapporteur, at any time decide to give a decision by reasoned order without taking further steps in the proceedings.

23 In the present case, the Court, considering that it has sufficient information from the documents in the file, has decided to give a decision without taking further steps in the proceedings.

Subject matter of the dispute

24 It should be recalled that under the first paragraph of Article 21 of the Statute of the Court of Justice of the European Union, which is applicable to proceedings before the General Court by virtue of the first paragraph of Article 53 of that Statute, and under Article 76(d) and (e) of the Rules of Procedure, all applications must state the subject matter of the dispute, the pleas and arguments put forward and a

brief statement of the applicant's pleas in law and heads of claim. Those particulars must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the application, even without further information. In order to guarantee legal certainty and the sound administration of justice, it is necessary, for an action to be admissible, that the essential matters of law and fact relied on are stated, at least in summary form, coherently and intelligibly in the application itself (see order of 27 March 2017, *Frank* v *Commission*, T-603/15, not published, EU:T:2017:228, paragraphs 37 and 38 and the case-law cited).

25 As regards, more specifically, the forms of order sought, it should be noted that they define the subject matter of the proceedings. Those conclusions must therefore state explicitly and unequivocally what the parties are seeking (see order of 27 March 2017, *Frank* v *Commission*, T-603/15, not published, EU:T:2017:228, paragraphs 39 and the case-law cited).

26 Furthermore, where an applicant does not submit any plea in law in support of a head of claim, the requirement laid down in Article 76(d) of the Rules of Procedure, that there must be a summary of the pleas in law relied on, is not satisfied (judgments of 12 April 2013, *Koda* v *Commission*, T-425/08, not published, EU:T:2013:183, paragraph 71, and of 16 September 2013, *Dornbracht* v *Commission*, T-386/10, EU:T:2013:450, paragraph 44).

27 Finally, it is for the applicant to choose the legal basis of its action and not for the Courts of the European Union themselves to choose the most appropriate legal basis (see judgment of 9 November 2016, *Trivisio Prototyping* v *Commission*, T-184/15, EU:T:2016:652, paragraph 41 and the case-law cited).

28 In the present case, as regards the heads of claim in support of the present action, it should be noted that they are reproduced twice in the application, at the beginning and at the end thereof. Those heads of claim are not formulated in the same way.

29 With regard to the pleas and arguments put forward in support of the action, it should be noted that the application is formally structured into two parts, namely a claim 'pursuant to Article 272 TFEU' and a claim under 'Article 340 TFEU'. The first part, relating to the claim based on 'Article 272 TFEU', consists of five pleas. The second part, concerning the request based on 'Article 340 TFEU', consists of three subsections, containing, in essence, two pleas, relating to the contractual and non-contractual liability of the European Union. However, the application does not set out which plea in law supports which head of claim.

30 Therefore, it must be held that, despite the unclear structure and wording of the application, the applicant has, in fact, brought, first, an application for the annulment of the contested decisions (third head of claim), secondly, an application for a finding by the Court that Eulex Kosovo infringed its contractual and non-contractual obligations (first head of claim), thirdly, an application for a finding by the Court that Eulex Kosovo infringed its non-contractual obligations (second head of claim) and, fourthly, a claim for compensation for the material and non-material damage suffered as a result of the contested decisions and for the non-material harm resulting from the 'unlawful decisions/acts' of Eulex Kosovo (fourth head of claim).

The third head of claim, seeking annulment of the contested decisions

31 By the third head of claim, the applicant seeks, in essence, annulment of the contested decisions, namely the decision on the 2016 internal competition and the decision not to renew her contract of employment.

32 It should be noted that the applicant sets out the third head of claim for annulment on the basis of 'Article 272 TFEU'. In support of that claim, the applicant puts forward five pleas in law alleging, first, procedural irregularities in the 2016 internal competition, secondly, conflict of interest, failure to withdraw and misuse of power by the chairman of the selection board, thirdly, infringement of the principle of impartiality and of the applicant's right to sound administration, fourthly, infringement of the applicant's right to working conditions which respect her health, safety and dignity, and breach of the requirements set out in the 2014 calls for applications and of the right to sound administration and, fifthly, infringement of the right to fair and just working conditions.

33 In that regard, with respect to the fourth and fifth pleas, the applicant complains that Eulex Kosovo, on the one hand, erred in law when assessing her driving skills and determining how she was to be treated as a result of her invalidity and, on the other, infringed her right to fair and just working conditions. However, it must be stated that those claims are not directly linked either to the contested decisions or to the third head of claim, which seeks to challenge the lawfulness of those decisions. Therefore, they should be examined as part of the first and second heads of claim.

34 As regards the first, second and third pleas, the applicant seeks, in essence, to call into question the decision on the 2016 internal competition and the decision not to renew her contract of employment.

35 Although Eulex Kosovo did not raise a plea of inadmissibility in its objection of inadmissibility in that regard, it should be ascertained, at the outset, whether the decisions which are the subject matter of the third head of claim fall under the rules governing the contractual relationship in question, as a result of which the application may be considered as having been brought on the basis of Article 272 TFEU.

36 In that regard, it follows from the case-law that acts which form part of a contract from which they are inseparable are contractual in nature (see, to that effect, order of 31 August 2011, *IEM* v *Commission*, T-435/10, not published, EU:T:2011:410, paragraph 30). On the other hand, where an act is intended to produce binding legal effects which are outside the contractual relationship between the parties and involve the exercise of public powers conferred on the contracting institution in its capacity as administrative authority, that act must be the subject of an action for annulment under Article 263 TFEU (see, to that effect, judgment of 9 September 2015, *Lito Maieftiko Gynaikologiko kai Cheirourgiko Kentro* v *Commission*, C-506/13 P, EU:C:2015:562, paragraph 20).

37 In the present case, it should be noted that Article 21 of the employment contract, as regards the last three contracts concluded for the second contractual period, from 15 October 2014 to 14 November 2016, provided that 'disputes arising out of or relating to this contract [were to] be referred to the jurisdiction of the Court of Justice of the European Union pursuant to Article 272 of the [TFEU]'. Therefore, in order to determine whether the contested decisions are of a contractual nature or separable from the contract, it must be ascertained whether those decisions are based on the contractual provisions in force for the second contractual period.

38 In that regard, in the first place, as regards the decision on the 2016 internal competition, it should be recalled that, by letter of 30 September 2016, the applicant was informed that she had failed that competition.

39 However, it must be stated that that decision was not based on the terms in the employment contract between the applicant and Eulex Kosovo, but was adopted by the selection board of the 2016 internal competition.

40 First, that competition was organised by Eulex Kosovo following the decision to reduce staff relating to that mission, which was adopted after approval, on 17 June 2016, of the OPLAN and, on 20 June 2016, of the Eulex Kosovo deployment plan. As regards the OPLAN, it is apparent from Article 4(4) of Joint Action 2008/124 that it is defined by the EU Planning Team (EUPT Kosovo) and is to be approved by

the Council of the European Union. As regards the deployment plan of Eulex Kosovo approved by the Civilian Operations Commander, it follows from Article 7(2) of Joint Action 2008/124 that the Commander is to exercise command and control of Eulex Kosovo at strategic level, under the political control and strategic direction of the Political and Security Committee (PSC) and the overall authority of the High Representative of the Union for Foreign Affairs and Security Policy. In the light of the foregoing, the decision to hold the 2016 competition is an administrative act and was not taken on the basis of the contract of employment between the applicant and Eulex Kosovo.

41 Secondly, the decision on the 2016 internal competition was adopted by the selection board in the context of the scheme described in point 40 above. It was not therefore taken on the basis of the employment contract between the applicant and Eulex Kosovo.

42 It follows that the decision relating to the 2016 internal competition, on the one hand, is separable from that contract and, on the other, is a measure against which an action for annulment may be brought in so far as it seeks to produce binding legal effects which lie outside the contractual relationship between the parties and which result from the exercise of the prerogatives of public authority conferred on Eulex Kosovo in its capacity as an administrative authority (see, to that effect, judgment of 9 September 2015, *Lito Maieftiko Gynaikologiko kai Cheirourgiko Kentro* v *Commission*, C-506/13 P, EU:C:2015:562, paragraph 20, and order of 29 September 2016, *Investigación y Desarrollo en Soluciones y Servicios IT* v *Commission*, C-102/14 P, not published, EU:C:2016:737, paragraphs 55 and 58).

43 Furthermore, it must be noted that, in support of its claim under the third head of claim seeking annulment of the contested decisions, the applicant does not expound any plea in law, head of claim or argument based on the terms of the contract between herself and Eulex Kosovo. On the contrary, the applicant raises pleas for annulment alleging infringement of the rules of EU law with a view to finding that the contested decisions are vitiated by defects specific to administrative acts, such as, in particular, procedural irregularities in the context of the internal competition, irregularity in the composition of the selection board for that competition, the lack of impartiality of that board, and infringement of the principles of sound administration and equal treatment (see, to that effect and by analogy, order of 31 August 2011, *IEM* v *Commission*, T-435/10, not published, EU:T:2011:410, paragraph 39).

44 In the second place, as regards the decision not to renew her contract of employment, the applicant contests the Eulex Kosovo decision not to offer her a new contract.

45 In that regard, it is apparent from the file that not offering the applicant a new contract was justified by her failure to pass the 2016 internal competition. Article 16.1 of the fixed term contract in force provided that its duration covered the period from 15 June to 14 November 2016. However, that contract contained no clause providing for its renewal. It must therefore be held that the decision whether to offer the applicant a new contract did not result from the contractual terms between the applicant and Eulex Kosovo, but was based on an administrative decision of the Human Resources department of Eulex Kosovo drawing the consequences of the 2016 internal competition and the applicant's failure to pass that competition. In taking that decision, Eulex Kosovo did not act within the framework of the rights and obligations arising from the contract. The decision not to renew her contract of employment therefore constitutes a decision of an administrative nature, which cannot be disputed on the basis of Article 272 TFEU.

46 Given those circumstances, although the applicant expressly set out the claim for annulment on the basis of 'Article 272 TFEU', it must be held that the third head of claim in the present action, by which the applicant seeks the annulment of the contested decisions, must be regarded as an action for annulment brought on the basis of Article 263 TFEU.

47 In that regard, it is important to recall that the European Union judicature must, when adjudicating on an action for annulment on the basis of the provisions of Article 263 TFEU, assess the lawfulness of the contested act in the light of the FEU Treaty or of any rule of law relating to its application, and, thus, of EU law. By contrast, in the context of an action brought on the basis of Article 272 TFEU, the applicant can only complain that the institution party to the contract infringed the terms of the contract or of the law applicable to it (judgment of 27 September 2012, *Applied Microengineering* v *Commission*, T-387/09, EU:C:2012:501, paragraph 40).

48 Even if an action for annulment can be brought against Eulex Kosovo under the first paragraph of Article 263 TFEU, and even assuming that the Court has jurisdiction to reclassify the basis of the third head of claim for annulment based on Article 263 TFEU, it should be noted that an action for annulment must, under the sixth paragraph of Article 263 TFEU, be instituted within two months of the publication of the contested measure, or of its notification to the applicant, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be. Under Article 60 of the Rules of Procedure, that time limit is, in addition, to be extended on account of distance by a single period of 10 days.

49 First of all, the decision on the 2016 internal competition was notified to the applicant on 30 September 2016. The decision of the Head of Mission on the applicant's complaint was notified to the applicant on 31 October 2016. In such circumstances, it is the date of 31 October 2016 which constitutes the starting point of the period for bringing an action against the decision on the competition.

50 Secondly, as regards the decision not to renew her contract of employment, the applicant received notification thereof on 30 September 2016. Since the applicant received notification of the rejection of the request for arbitration on 14 November 2016, it is that date which marks the starting point of the period for bringing proceedings.

51 Accordingly, since the applicant brought the present action on 25 April 2017, it is clear that the applicant brought the present action out of time in order to challenge the lawfulness of the contested decisions.

52 It follows that the third head of claim must be rejected as manifestly inadmissible.

On the first and second heads of claim, seeking that the Court finds that Eulex Kosovo infringed its contractual and non-contractual obligations

53 By the first and second heads of claim, the applicant asks the Court to record infringements of contractual and non-contractual obligations allegedly committed by Eulex Kosovo, in order for her to obtain compensation for the damage she allegedly suffered.

54 In that regard, first, in so far as the applicant seeks compensation for the damage she suffered as a result of her failure to pass the 2016 competition and the non-renewal of her contract from 14 November 2016, the appellant is seeking, in reality, to obtain the same result she would have obtained from an action for annulment against the contested decisions.

55 It should be recalled that, according to settled case-law, where a claim for compensation is closely related to a claim for annulment which is itself inadmissible, the claim for compensation is also inadmissible (see, to that effect and by analogy, orders of 24 March 1993 in *Benzler* v *Commission*, T-72/92, EU:T:1993:27, paragraph 21, and of 9 June 2004, *Camós Grau* v *Commission*, T-96/03, EU:T:2004:172, paragraph 44).

56 Moreover, in so far as the applicant relies on the infringement of the 'principles of fairness and of good faith' and the right to fair and just working conditions, she seems to refer to the claims set out in the fourth and fifth pleas, raised in support of the third head of claim and described in paragraph 32 above.

57 In that regard, as regards the fourth plea, the applicant alleges infringements in the assessment of her ability to drive a motor vehicle and in the treatment she received as a result of her disability, suggesting that she was the victim of harassment. She takes the view that the fact that she was required to pass a driving test was contrary to the 2014 call for applications and to the note of the decision of the Head of Mission of 26 January 2011 concerning a 'proposal for introduction of assessment driving skills', that Eulex Kosovo did not take account of her disability, and that it harassed her in respect of that test. It follows that Eulex Kosovo infringed the applicant's right to working conditions which respect her health, safety and dignity and the right to sound administration.

58 However, it is apparent from settled case-law that, in order for the European Union to incur non-contractual liability under the second paragraph of Article 340 TFEU for unlawful conduct of the institutions, a number of conditions must be satisfied: that the institutions' conduct must be unlawful, actual damage must have been suffered and there must be a causal link between the conduct and the damage pleaded. Those three conditions being cumulative, failure to satisfy one of them is sufficient for an action for damages to be dismissed (see, to that effect, judgment of 15 January 2015, *Ziegler and Ziegler Relocation* v *Commission*, T-539/12 and T-150/13, not published, EU:T:2015:15, paragraphs 59 and 60, and order of 1 February 2018, *Collins* v *Parliament*, T-919/16, not published, EU:T:2018:58, paragraph 43).

59 As regards the requirement relating to reality of the damage, it should be noted that the EU can incur liability only if the applicant has actually suffered a 'real and certain' loss. As such, it is for the applicant to provide the EU judicature with conclusive evidence in order to establish both the existence and the extent of such loss (see judgments of 16 July 2009, *SELEX Sistemi Integrati* v *Commission*, C-481/07 P, not published, EU:C:2009:461, paragraph 36 and the case-law cited, and of 8 November 2011, *Idromacchine and Others* v *Commission*, T-88/09, EU:T:2011:641, paragraph 25 and the case-law cited).

60 In the present case, it should be noted that the application does not contain any information enabling the Court to identify the nature and scope of the harm which the applicant claims to have suffered as a result of having undergone the driving tests. The applicant fails to identify clearly and unequivocally, coherently and intelligibly the constituent elements of the damage alleged.

61 It is also settled case-law that the condition under the second paragraph of Article 340 TFEU relating to a causal link concerns a sufficiently direct causal nexus between the conduct of the institutions and the damage (judgments of 18 March 2010, *Trubowest Handel and Makarov* v *Council and Commission*, C-419/08 P, EU:C:2010:147, paragraph 53, and of 14 December 2005, *Beamglow* v *Parliament and Others*, T-383/00, EU:T:2005:453, paragraph 193; see also, to that effect, judgment of 4 October 1979, *Dumortier and Others* v *Council*, 64/76, 113/76, 167/78, 239/78, 27/79, 28/79 and 45/79, EU:C:1979:223, paragraph 21). It is for the applicant to prove that there is a causal link between the conduct complained of and the damage alleged (see judgment of 30 September 1998, *Coldiretti and Others* v *Council and Commission*, T-149/96, EU:T:1998:228, paragraph 101 and the case-law cited).

62 It must be held that the application, and in particular section VIII, D, comprising the fourth plea, does not set out any evidence in that respect. With regard to the section relating to the conditions for non-contractual liability to be incurred, the applicant states merely that '[t]here is a direct and certain causal link between the wrongful decisions/acts and the unlawful acts and the damage sustained', without, however, explaining what that link is and without providing the slightest evidence.

63 In those circumstances, it must be held that the causal link between the conduct complained of and the damage claimed is manifestly lacking. Therefore, the fourth plea is not substantiated in so far as it relates to the non-contractual liability of Eulex Kosovo.

64 With respect to the contractual liability of Eulex Kosovo, as regards the fourth plea, concerning the applicant's obligation to pass a driving test and the resulting alleged harassment, even assuming that the Court is competent to assess the facts which occurred during the first contractual period, it should be noted that the call for applications for the post of prosecutor to which the applicant submitted her application stated that candidates selected were required to hold a valid driving licence and to be able to drive four-wheel drive vehicles. Therefore, those conditions were part of the applicant's employment contract; she cannot claim an infringement by Eulex Kosovo as regards the requirement to pass a vehicle driving test.

65 As regards the fifth plea, the applicant alleges infringement of her right to fair and just working conditions as enshrined in Article 31 of the Charter of Fundamental Rights of the European Union. In that regard, she claims as follows:

'[Throughout her period of employment with Eulex Kosovo,]

(1) [her professional] experience was being discussed by her supervisors with other prosecutors and openly questioned repeatedly in the presence of other prosecutors who were sometimes not qualified;

(2) the type of cases ... assigned to [her] were not reflecting her experience;

(3) any plaudits she received from others were minimised by [her direct supervisor];

(4) the work she performed was not adequately recognised;

(5) the PERs did not reflect objectively her performance;

(6) [she] was excluded from being acting manager when her managers were out of the Mission ...;

(7) [she] was excluded from being a member of any interview panels, despite being nominated by her peers on every occasion when volunteers were sought.'

66 The applicant claims that this conduct 'offended and humiliated' her and 'constitute[d] unfair treatment violating her right to fair and just working conditions'.

67 It must be stated that the applicant adduces no evidence in support of her claims.

68 Thus, even assuming that the Court is competent to assess the facts which occurred during the first contractual period, the fourth and fifth pleas in law are not substantiated.

69 Therefore, the first and second heads of claim must be rejected as being, in part, manifestly inadmissible and, in part, manifestly lacking any foundation in law.

The fourth head of claim, seeking an order that Eulex Kosovo pay compensation to the applicant for damage suffered

70 First of all, the applicant submits that the unlawful measures taken by Eulex Kosovo in the context of the 2016 competition resulted in damage to her as a result of the decision not to renew her contract of employment. She asks the Court to order Eulex Kosovo, in accordance with Article 340 TFEU, to pay

her compensation for the material harm suffered. Furthermore, the applicant claims that the decision on the 2016 competition also constitutes non-material damage on account of the statement of reasons relating to the inadequate performance raised during the interview.

71 In that regard, as was pointed out in paragraph 55 above, where a claim for compensation is closely related to a claim for annulment which has itself been rejected as inadmissible, the claim for compensation is also inadmissible.

72 In the present case, first, in so far as the applicant seeks compensation for the damage suffered as a result of her failure in the 2016 competition and the non-renewal of the contract from 14 November 2016, the applicant is seeking to obtain the same result as she would have obtained from an action for annulment against the contested decisions. Therefore, the claim for compensation is closely connected with the claim for annulment. However, as is apparent from paragraphs 35 to 51 above, the third head of claim, in so far as it seeks the annulment of the contested decisions, is manifestly inadmissible.

73 Accordingly, the claim for damages, which seeks compensation for the material and non-material harm resulting from the failure in the 2016 competitions and the non-renewal of the contract from 14 November 2016, is inadmissible.

74 Secondly, in the section of her application relating to non-contractual liability based on the second paragraph of Article 340 TFEU, the applicant claims that she suffered non-material damage as a result of the 'wrongful decisions/acts' of Eulex Kosovo. In particular, she claims that 'the unlawful decisions/acts by [Eulex Kosovo], in particular those which are objectively offensive and humiliating the applicant, had a damaging effect on her dignity, for which she is entitled to compensation', that 'they also had a serious impact on the applicant's professional integrity, reputation and her future career prospects' and that 'the non-material harm also results from the effects of the decision not to select her for a prosecutorial position, based on alleged mal-performance in the interview'.

75 However, as was noted in paragraph 67 above, it must be stated that the applicant adduces no evidence in support of her claims. She relies on mere assertions, lacking both exact references to the rules allegedly infringed and factual references in support of her claims.

76 Consequently, the fourth head of claim must be rejected as manifestly lacking any foundation in law.

77 It follows from all of the foregoing, without there being any need to examine the objection of inadmissibility relied on by Eulex Kosovo, that the action must be dismissed as, in part, manifestly inadmissible and, in part, manifestly lacking any foundation in law.

Costs

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

79 Since the applicant has been unsuccessful, it must be ordered to pay the costs in accordance with the form of order sought by the Council.

On those grounds,

THE GENERAL COURT (Ninth Chamber)

hereby orders:

1. The action is dismissed.

2. SC is ordered to pay the costs.

Luxembourg, 19 September 2018.

E. Coulon
Registrar

S. Gervasoni
President