

**Appeal brought on 23 November 2018 by SC against the order of the General Court (Ninth Chamber)
delivered on 19 September 2018 in Case T-242/17: SC v Eulex Kosovo**

(Case C-730/18 P)

(2019/C 112/16)

Language of the case: English

Parties

Appellant: SC (represented by: A. Kunst, Rechtsanwältin, L. Moro, avvocato)

Other party to the proceedings: Eulex Kosovo

Form of order sought

The appellant claims that the Court should:

- set aside the order under appeal;
- hold the application except for the fifth plea in law,

and consequently:

- hold that there has been an infringement by EULEX of its contractual obligations in the performance of the contract and in the application of the OPLAN and the Concept of Operations (Conops), the Standard Operating Procedures (SOPs), i. e. the SOP on reconfiguration and the SOP on selection of staff, and the principles of fairness and of good faith, entitling her to compensation;
- hold that there here has been an infringement by EULEX of its non-contractual obligations vis-à-vis the appellant, including her right to fair and just working conditions (Art. 31 of the EU Charter), her right to sound administration, as well as the principle of impartiality (Art. 41 of the EU Charter) entitling her to compensation;
- declare the decision on the 2016 internal competition and the non-renewal of the appellant's contract of employment unlawful;
- order EULEX to pay the appellant, 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 EULEX's unlawful decisions/ acts;

in the alternative:

- refer the case back to the General Court to rule on the substance;
- order the defendant to pay the costs of the proceedings at first instance and on appeal.

Pleas in law and main arguments

By means of her appeal the appellant contends that the General Court had jurisdiction to rule in her case. It erred in law by dismissing the application as, in part, manifestly inadmissible and, in part, manifestly lacking any foundation in law.

In support of the appeal, the appellant relies on five pleas in law.

First plea in law, alleging an infringement of Art. 272 TFEU in that the General Court erred in law by re-classifying the third head of claim it (i.e. the appellant's action based on Art. 272 TFEU to declare the decision on the internal competition of 2016 and the non-renewal of contract unlawful) into an action of annulment pursuant to Art. 263 TFEU and dismissing that action as inadmissible.

The Court had no jurisdiction for a re-classification, it is against the express intention of the appellant. The Court erred in law by denying her the opportunity to express her views on the reclassification.

Second plea in law, alleging an infringement of Art. 272 TFEU, the appellant's right to an effective remedy pursuant to Art. 47 of the EU Charter and the principle of equal treatment in that the General Court erred in law in failing to accept jurisdiction on the basis of Art. 272 TFEU regarding the third head of claim and consider the merits of the case.

The General Court erred in law by holding that the action for a declaration of unlawfulness pursuant to Art. 272 TFEU in relation to the decision on the 2016 internal competition and non-renewal of contract is in reality an annulment action pursuant to Art. 263 TFEU; that those decisions are not based on rules governing the contractual relationship but are administrative acts and cannot be challenged under Art. 272 TFEU.

Third plea in law, alleging (i) an infringement of the SOPS on reconfiguration and staff selection, the right to sound administration including the principle of impartiality and (b) defective statement of reasons in that the General Court made an error of law by holding that the non-renewal of the appellant's contract was justified by her failure to pass the 2016 internal competition.

The General Court failed to address the appellant's arguments set out in the first, second and third pleas in law of her application, i.e., that she failed to pass the 2016 internal competition because the Chairperson of the selection board did not recuse herself respectively was not removed because of a clear conflict of interest and bias on her part.

Fourth plea in law, alleging an infringement of Arts. 268 and 340.2 TFEU in that the General Court erred in law by holding that the action for compensation for non-contractual liability regarding the decision on the 2016 competition and the non-renewal of contract is inadmissible. The appellant submitted an action for declaration which is admissible, consequently the related action for compensation is admissible.

Fifth plea in law, alleging an infringement of (i) Arts. 268 and 340.2 TFEU, and the appellant's rights pursuant to Arts. 31 and 41 of the EU Charter (non-contractual liability) and (ii) Arts. 272 and 340.1 TFEU, and the requirements set out in the 2014 calls for contributions (contractual liability), in that the General Court erred in law by holding that the actions for compensation based on non-contractual and contractual liability regarding the repeated requests to undertake driving tests harassing the appellant are unfounded in law.

EULEX repeated requests forcing the appellant again and again to undertake a driving test notwithstanding that it knew of her disability in relation to her right hand were unlawful. As a consequence she suffered non-material harm entitling her to compensation.

**Appeal brought on 26 November 2018 by Gugler France against the judgment of the General Court
(Eighth Chamber) delivered on 25 September 2018 in Case T-238/17: Gugler v EUIPO**

(Case C-736/18 P)

(2019/C 112/17)

Language of the case: English

Parties

Appellant: Gugler France (represented by: S. Guerlain, avocat)

Other parties to the proceedings: European Union Intellectual Property Office, Alexander Gugler

Form of order sought

The applicant claims that the Court should:

- annul the September 25th, 2018 decision of the General Court (8th Chamber) in case T-238/17 for violation of article 8 (4) EUTMR regarding the assessment of the likelihood of confusion which correspond to the concepts of article 8 (1) (b) EUTMR;