



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

18 January 2024*

[Text rectified by order of 13 March 2024]

(Appeal – Judgment which is the object of an application before the General Court to have it set aside – Inadmissibility)

In Case C-785/22 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 27 December 2022,

Eulex Kosovo, established in Pristina (Kosovo), represented by L.-G. Wigemark, acting as Agent, and by E. Raoult, avocate,

appellant,

the other party to the proceedings being:

SC, represented by A. Kunst, Rechtsanwältin,

applicant at first instance,

THE COURT (Fourth Chamber),

composed of C. Lycourgos, President of the Chamber, O. Spineanu-Matei, J.-C. Bonichot (Rapporteur), S. Rodin and L.S. Rossi, Judges,

Advocate General: L. Medina,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: English.

Judgment

- 1 By its appeal, Eulex Kosovo seeks annulment of the judgment of the General Court of the European Union of 19 October 2022, *SC v Eulex Kosovo* (T-242/17 RENV, EU:T:2022:637; ‘the judgment under appeal’), by which the General Court, ruling by default, ordered Eulex Kosovo to pay compensation for the material and non-material damage caused to SC.

Legal context

The Statute of the Court of Justice of the European Union

- 2 Article 56 of the Statute of the Court of Justice of the European Union provides as follows:

‘An appeal may be brought before the Court of Justice, within two months of the notification of the decision appealed against, against final decisions of the General Court and decisions of that Court disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility.

...’

The Rules of Procedure of the General Court

- 3 Article 60 of the Rules of Procedure of the General Court, entitled ‘Extension on account of distance’, states as follows:

‘The procedural time limits shall be extended on account of distance by a single period of 10 days.’

- 4 Pursuant to Article 123 of the Rules of Procedure of the General Court, entitled ‘Judgments by default’:

‘1. Where the General Court finds that a defendant on whom an application initiating proceedings has been duly served has failed to respond to the application in the proper form or within the time limit prescribed in Article 81, without prejudice to the application of the provisions of the second paragraph of Article 45 of the Statute [of the Court of Justice of the European Union], the applicant may, within a time limit prescribed by the President, apply to the General Court for judgment by default.

2. A defendant in default shall not intervene in the default procedure and, with the exception of the decision which closes the proceedings, no procedural document shall be served on him.

3. The General Court shall give judgment in favour of the applicant in the judgment by default, unless it is clear that the General Court has no jurisdiction to hear and determine the action or that the action is manifestly inadmissible or manifestly lacking any foundation in law.

4. A judgment by default shall be enforceable. The General Court may, however, grant a stay of execution until it has given its decision on any application under Article 166 to set aside the judgment, or it may make execution subject to the provision of security of an amount and nature to be fixed in the light of the circumstances. This security shall be released if no such application is made or if the application fails.’

- 5 Article 166 of those Rules of Procedure, entitled ‘Application to set aside a judgment by default’, provides as follows:
- ‘1. Application may be made pursuant to Article 41 of the Statute [of the Court of Justice of the European Union] to set aside a judgment given by default.
 2. The application to set aside the judgment must be made by the defendant in default within one month from the date of service of the judgment given by default. It must be submitted in the form prescribed by Articles 76 and 78.
 3. After the application has been served, the President shall prescribe a time limit within which the other party may submit his written observations.
 4. The proceedings shall be conducted in accordance with the provisions of Title III or of Title IV, as the case may be.
 5. The General Court shall decide by way of a judgment which may not be set aside.
 6. The original of this judgment shall be annexed to the original of the judgment by default. A note of the judgment on the application to set aside shall be made in the margin of the original of the judgment by default.’

Background to the dispute and the judgment under appeal

- 6 The background to the dispute is set out in paragraphs 2 to 17 of the judgment under appeal. It may be summarised as follows.
- 7 SC was employed in a position as a prosecutor with the European Union Rule of Law Mission in Kosovo, Eulex Kosovo, as a member of the international contract staff on the basis of successive fixed-term contracts, during the period from 4 January 2014 to 14 November 2016.
- 8 [As rectified by order of 13 March 2024] In April 2014, SC was the subject of an unfavourable evaluation report by her line-manager, against which she brought a complaint, disputing the assessments contained therein and raising irregularities committed in the evaluation procedure.
- 9 [As rectified by order of 13 March 2024] On 12 August 2014, the head of the Eulex Kosovo Mission adopted a decision annulling that report on account of the failure by SC’s line-manager to comply with various procedural requirements.
- 10 [As rectified by order of 13 March 2024] In the summer of 2014, SC participated in an internal competition organised by Eulex Kosovo for the recruitment of prosecutors, in which, as she was informed by her line-manager on 19 August 2014, she was unsuccessful. SC challenged that result, arguing that the composition of the selection board was irregular on the grounds that not only were two of its members of the same nationality, but also the presence of her line-manager was such as to raise doubts as to the impartiality of the procedure.
- 11 Taking the view that the composition of the selection board had been irregular, the head of the Eulex Kosovo Mission decided to annul the results of that competition.

- 12 In 2014, Eulex Kosovo requested SC on several occasions to take a driving test, which she failed three times. Over that period, SC provided the mission with documents attesting that she had a disability affecting her right hand.
- 13 [As rectified by order of 13 March 2024] In 2016, SC participated in a new internal competition for the recruitment of prosecutors, organised following the adoption of a decision to reduce the mission's posts, in which competition only the persons who obtained sufficient results would have their contract renewed. On 30 September 2016, SC was informed that she had not been successful in that internal competition and that her contract would therefore not be renewed. SC brought a complaint against that decision, submitting that the chairperson of the selection board, in the present case her line-manager, had a 'conflict of interests', which rendered the competition procedure irregular. The Head of Mission rejected that complaint and the request for arbitration subsequently made by SC.
- 14 On 25 April 2017, SC brought an action before the General Court on the basis of Articles 272 and 340 TFEU by which she sought, in essence, annulment of the results of the internal competition of 2016 and of the decision not to renew her contract, and compensation in respect of the material and non-material damage which she considered herself to have suffered on account of Eulex Kosovo's failures to fulfil its contractual obligations.
- 15 By separate document lodged on 24 August 2017, Eulex Kosovo raised a plea of lack of jurisdiction and inadmissibility against that action on the basis of Article 130(1) of the Rules of Procedure of the General Court.
- 16 By order of 19 September 2018, *SC v Eulex Kosovo* (T-242/17, EU:T:2018:586), the General Court, without examining the plea of lack of jurisdiction and inadmissibility raised by Eulex Kosovo, dismissed, pursuant to Article 126 of its Rules of Procedure, the action brought by the applicant on the ground that that action was, in part, manifestly inadmissible and, in part, manifestly lacking any foundation in law.
- 17 By its judgment of 25 June 2020, *SC v Eulex Kosovo* (C-730/18 P, EU:C:2020:505), the Court of Justice set aside the order of 19 September 2018 referred to in the previous paragraph on the ground that the General Court had described incompletely the legal framework governing the adoption of the decision in relation to the internal competition of 2016, which had led it not to take into account the rules governing the arrangements for organising that competition, and referred the case back to the General Court.
- 18 Following that referral back, Eulex Kosovo, by separate document lodged on 30 October 2020, reiterated the plea of inadmissibility which it had raised initially. On the other hand, it did not lodge a defence within the time limit which it had been set for doing so. On 24 September 2021, the General Court invited SC to submit her observations on the next step to be taken in the proceedings. On 12 November 2021, SC applied to the General Court for judgment by default, in accordance with Article 123 of its Rules of Procedure.
- 19 By the judgment under appeal, the General Court, having, in accordance with Article 123(3) of its Rules of Procedure, examined whether it manifestly had no jurisdiction to hear and determine the action or whether that action was manifestly inadmissible or manifestly lacking any foundation in law, held that SC's pleas were not manifestly lacking any foundation in law and ordered Eulex Kosovo to pay compensation in respect of the material and non-material damage claimed by SC.

- 20 On 28 November 2022, Eulex Kosovo applied to have that judgment by default set aside on the basis of Article 166 of the Rules of Procedure of the General Court.
- 21 Subsequently, on 27 December 2022, Eulex Kosovo brought the present appeal.

Procedure before the Court of Justice and forms of order sought

- 22 By its appeal, Eulex Kosovo claims that the Court should:
- set aside the judgment under appeal;
 - dismiss in its entirety the claim brought before the General Court;
 - order SC to pay the costs in relation to the proceedings registered under case numbers T-242/17, C-730/18 P and T-242/17 RENV, including those in relation to the present appeal.
- 23 SC contends that the Court should:
- uphold the judgment under appeal;
 - uphold the application before the General Court; and as a result, dismiss the appeal; and
 - order Eulex Kosovo to pay the costs of the appeal proceedings in Case C-785/22 P and of all the other proceedings before the General Court and the Court of Justice, including in Cases C-785/22 P-R, T-242/17, C-730/18 P, T-242/17 RENV and T-242/17 RENV-OP.
- 24 By decision of 23 January 2023, the President of the Court of Justice decided that it was not appropriate to grant the application for suspension of the appeal proceedings pending judgment on the application brought before the General Court to set aside the judgment by default.
- 25 By order of 28 March 2023 (C-785/22 P-R, EU:C:2023:262), the Vice-President of the Court of Justice dismissed the application for interim measures brought by Eulex Kosovo, seeking the suspension of operation of the judgment under appeal until the Court of Justice had ruled on the present appeal, on the ground that the condition relating to urgency was not satisfied.
- 26 By decision of 21 April 2023, the President of the Court of Justice decided that the request that the case be dealt with under the expedited procedure submitted by Eulex Kosovo should be rejected on the ground that, since it had not been submitted in due time, it failed to comply with the requirements of Article 133(2) of the Rules of Procedure of the Court of Justice, and observed that the automatic application of the expedited procedure was of no consequence at that stage since a first exchange of pleadings had already taken place. He nevertheless decided that the case would be given priority under Article 53(3) of the Rules of Procedure of the Court of Justice.

Admissibility of the appeal

- 27 SC submits primarily that the appeal is inadmissible, on account of the application to have the judgment by default set aside lodged by Eulex Kosovo against the judgment under appeal and currently pending before the General Court. Moreover, she submits, in its appeal Eulex Kosovo merely reproduces the pleas and arguments submitted in its application to set aside the judgment by default.
- 28 Under the first paragraph of Article 56 of the Statute of the Court of Justice of the European Union, an appeal may be brought before the Court of Justice only against final decisions of the General Court and decisions of that Court disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility. The appeal must be brought within two months of the notification of the decision appealed against.
- 29 It follows from that provision that an appeal is admissible only against a final decision, with respect to which no other legal remedies remain open.
- 30 Under Article 166 of the Rules of Procedure of the General Court, it is open to the defendant in default to bring an application to set aside the judgment by default. That application must be made within one month from the date of service of the judgment given by default, and the judgment given on the application to set aside a judgment by default may not itself subsequently be the subject of an application to set it aside.
- 31 Since the exercise of such a remedy has the effect of re-opening the proceedings before the General Court, a judgment by default which has been the subject of an application to set it aside cannot be regarded as a final decision, within the meaning of Article 56 of the Statute of the Court of Justice of the European Union.
- 32 It follows that an appeal brought against a judgment given by default which is the subject of an application to set it aside is inadmissible.
- 33 It must furthermore be stated that if the appeal brought before the expiry of the period provided for by Article 166 of the Rules of Procedure of the General Court for the purposes of bringing proceedings to set aside a judgment by default is inadmissible, given that it was not directed, at the date when it was brought, against a final decision before that court, that appeal may be regularised by the expiry of that period if that legal remedy has not be exercised. On the other hand, that is not the case where an application has been brought to set aside the judgment given by default.
- 34 In the present case, by the judgment under appeal the General Court considered that Eulex Kosovo, the defendant at first instance, should be regarded as in default since it had failed to produce a defence. Ruling on the basis of Article 123 of its Rules of Procedure, it held that SC's pleas were not manifestly lacking any foundation in law and ordered Eulex Kosovo, by default, to pay compensation in respect of the material and non-material damage claimed by SC. It is apparent from the file that, prior to the expiry of the period provided for in Article 166 of the Rules of Procedure of the General Court, Eulex Kosovo brought, before that court, an application to set aside the judgment under appeal.

- 35 Since the exercise by Eulex Kosovo of the remedy of an application to set aside a judgment by default triggered the re-opening of the proceedings before the General Court, the present appeal is inadmissible, given that it is not directed against a final decision within the meaning of Article 56 of the Statute of the Court of Justice of the European Union.
- 36 It is for the parties to the proceedings before the General Court, if they consider it justified, to lodge an appeal against the judgment on the application to set aside within two months of the notification of that judgment.
- 37 It follows from the foregoing that the appeal must be dismissed, without there being any need to examine the grounds of appeal raised by Eulex Kosovo.

Costs

- 38 Under Article 138(1) of the Rules of Procedure of the Court of Justice, which applies to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since SC has applied for Eulex Kosovo to pay the costs and the latter has been unsuccessful, Eulex Kosovo must be ordered to pay the costs, so far as concerns the appeal proceedings only.

On those grounds, the Court (Fourth Chamber) hereby:

- 1. Dismisses the appeal;**
- 2. Orders Eulex Kosovo to pay the costs relating to the present appeal proceedings.**

Lycourgos

Spineanu-Matei

Bonichot

Rodin

Rossi

Delivered in open court in Luxembourg on 18 January 2024.

A. Calot Escobar
Registrar

C. Lycourgos
President of the Chamber