Reports of Cases

ORDER OF THE GENERAL COURT (First Chamber)

9 November 2016*

(Arbitration clause — Staff of EU international missions — Consecutive fixed-term contracts — Compensation claim — Manifest lack of jurisdiction — Manifest inadmissibility)

In Case T-602/15,

**Liam Jenkinson**, residing in Killarney (Ireland), represented by N. de Montigny and J.-N. Louis, lawyers,

applicant,

v

**Council of the European Union**, represented by A. Vitro and M. Bishop, acting as Agents,

**European Commission**, represented by G. Gattinara and S. Bartelt, acting as Agents,

**European External Action Service (EEAS)**, represented by S. Marquardt, É. Chaboureau and G. Pasqualetti, acting as Agents,

and

**Eulex Kosovo**, established in Pristina (Kosovo), represented by D. Fouquet and E. Raoult, lawyers,

defendants,

APPLICATION principally based on Article 272 TFEU seeking, first, the recategorisation of the applicant's contractual relationship as an employment contract of an indeterminate duration and the award of compensation for the loss allegedly suffered by the applicant by the abusive use of consecutive fixed-term contracts and an unfair dismissal and, secondly, a declaration that the Council, the Commission and the EEAS treated the applicant in a discriminatory manner and should be ordered to pay him compensation therefor; in the alternative, an application based on the non-contractual liability of European institutions.

THE GENERAL COURT (First Chamber)

composed, at the time of the deliberation, of H. Kanninen, President, I. Pelikánová (Rapporteur) and E. Buttigieg, Judges,

Registrar: E. Coulon,

makes the following

* Language of the case: French.

## Order

### Background to the dispute

1 The applicant, Mr Liam Jenkinson, an Irish national, was first employed from 20 August 1994 to 5 June 2002, under a series of fixed-term contracts (FTCs), by the European Union Monitoring Mission, which was created by the Council Joint Action 2000/811/CFSP of 22 December 2000 on the European Union Monitoring Mission (OJ 2000 L 328, p. 53).

2 He was then employed from 17 June 2002 to 31 December 2009, under a series of FTCs, by the European Union Police Mission, which was created by the Council Joint Action 2002/210/CFSP of 11 March 2002 on the European Union Police Mission (OJ 2002 L 70, p. 1).

3 Finally, the applicant was employed by the Eulex Kosovo Mission, from 5 April 2010 to 14 November 2014, by way of eleven consecutive FTCs. The Eulex Kosovo Mission was created by the 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). The Joint Action 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.

4 Most recently, the Joint Action was extended until 14 June 2018 by Council Decision (CSFP) 2016/947 of 14 June 2016, amending Joint Action 2008/124 (OJ 2016 L 157, p. 26).

5 During the course of his employment contract covering the period 15 June to 14 October 2014, the applicant was informed by letter of 26 June 2014 from the Head of the Eulex Kosovo Mission that his assignment would end and his contract not be renewed after 14 November 2014.

6 A final FTC was entered into between Eulex Kosovo and the applicant for the period from 15 October to 14 November 2014 (‘the final FTC’) and was not renewed. Article 21 of the final FTC provides for the Court of Justice of the European Union to have jurisdiction over any dispute relating to the contract, on the basis of Article 272 TFEU.

### Procedure

7 By application lodged at the Court Registry on 23 October 2015, the applicant brought the present action.

8 By separate documents lodged at the Court Registry, on 28 April 2016 in the case of the European Commission, on 3 May 2016 in the case of Eulex Kosovo, and on 4 May 2016 in the case of the European External Action Service (EEAS) and the Council of the European Union, the defendants raised objections of inadmissibility under Article 130 of the Rules of Procedure of the General Court.

9 The applicant lodged his observations on those objections of inadmissibility on 27 July 2016.

**Forms of order sought**

10 In the application, the applicant claims that the Court should:

— primarily:

— with regard to the rights derived from the private law contract:

— recategorise his contractual relationship as an employment contract of an indeterminate duration;

— hold that there has been an infringement by the defendants of their contractual obligations and, in particular, of giving notice of termination of a contract of an indeterminate duration and, in consequence, in compensation for the loss suffered by the abusive use of consecutive fixed-term contracts causing the applicant prolonged uncertainty and the infringement of the obligation to give notice of termination of the contract:

— order the defendants to pay the applicant compensation in lieu of notice of EUR 176601.55 calculated on the basis of his seniority in post in missions created by the European Union;

— in the alternative, order the defendants to pay the applicant compensation in lieu of notice of EUR 45985.15 calculated taking account of the length of his service for Eulex Kosovo;

— hold that the dismissal of the applicant is unfair and, in consequence, order the defendants to pay him compensation assessed *ex aequo et bono* at EUR 50 000;

— hold that the defendants did not prepare the legal end-of-employment documents;

— order them to pay the applicant the sum of EUR 100 per day of non-payment with effect from the bringing of the present action;

— order them to send the applicant the end-of-employment documents;

— order the defendants to pay interest on the abovementioned sums, calculated at the Belgian legal rate;

— with regard to the abuse of power and actual discrimination:

— declare that the EEAS, the Council and the Commission treated the applicant in a discriminatory manner, without objective justification, during his employment on the missions which they instituted, as regards his remuneration, pension rights and related benefits and as regards a guarantee of future employment;

— hold that the applicant ought to have been recruited as a member of the temporary staff of one of the EEAS, the Council or the Commission;

— order the EEAS, the Council and the Commission to compensate him for the loss of remuneration, pension, allowances and benefits caused by the abovementioned breaches of EU law and order them to pay him interest on those sums, calculated at the Belgian legal rate;

— prescribe a period within which the parties are to determine that compensation, having regard to the grade and step in which the applicant ought to have been employed, the average progression of the remuneration, the progress of his career, the allowances which he thus ought to have received under that temporary contract, and compare the results obtained with the remuneration actually received by the applicant;

— in the alternative:

— find that the defendants failed to fulfil their obligations;

— order them to compensate the applicant for the harm resulting from that failure, which is estimated *ex aequo et bono* at EUR 150 000;

— in any event, order the defendants to pay the costs.

11 The Council contends that the Court should:

— decline jurisdiction in so far as the application relates to the effects of the whole series of contracts signed by the applicant;

— in the alternative, find the application inadmissible in so far as it is directed against the Council;

— order the applicant to pay the costs.

12 The Commission contends that the Court should:

— dismiss the application as inadmissible in so far as it is directed against the Commission;

— order the applicant to pay the costs.

13 The EEAS contends that the Court should:

— decline jurisdiction;

— in any event, dismiss the application as inadmissible in so far as it is directed against the EEAS;

— order the applicant to pay the costs.

14 Eulex Kosovo contends that the Court should:

— dismiss the application as inadmissible in so far it is directed against Eulex Kosovo;

— order the applicant to pay the costs.

**Law**

15 Under Article 126 of the Rules of Procedure, where it is clear that the General Court has no jurisdiction to hear and determine an action or where the action is manifestly inadmissible or manifestly lacking any foundation in law, the General 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.

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

*The principal heads of claim*

17 In the first part of his principal heads of claim, the applicant is asking the Court to recategorise his contractual relationship as an employment contract of an indeterminate duration, to hold that there was an infringement by the defendants of their contractual obligations and, in particular, the obligation to give notice of termination of a contract of an indeterminate duration, to hold that the dismissal of the applicant was unfair and, as a consequence, to order them to pay him compensation for the loss suffered as a result of the abusive use of consecutive FTCs, the infringement of the obligation to give notice of termination of the contract and an unfair dismissal.

18 In the second part of his principal heads of claim, the applicant is asking the Court to declare that the Council, the Commission and the EEAS treated the applicant in a discriminatory manner during his employment on the missions as regards his remuneration, pension rights and other benefits, to hold that the applicant ought to have been recruited as a member of the temporary staff of one of them and, as a consequence, to order them to pay him compensation.

19 In their objections of inadmissibility, first, the defendants submit that the applicant's previous employment contracts contain a choice of forum clause nominating the courts of Brussels (Belgium) for disputes connected with those contracts and that the Court therefore has no jurisdiction to deal with the effects of those contracts. Secondly, each of the defendants maintains that the application is inadmissible in so far as it is directed against that defendant.

20 The jurisdiction of the General Court is set out in Article 256 TFEU, as specified in Article 51 of the Statute of the Court of Justice of the European Union. Under those provisions, the General Court may adjudicate at first instance on contractual disputes only where these are brought before it on the basis of an arbitration clause. In the absence of such a clause, to do so would be to extend its jurisdiction beyond the limits placed by Article 274 TFEU on the disputes of which it may take cognizance, since that article specifically gives national courts or tribunals ordinary jurisdiction over disputes to which the EU is a party (orders of 3 October 1997, *Mutual Aid Administration Services* v *Commission*, T-186/96, EU:T:1997:149, paragraph 47, and of 30 September 2014, *Bitiqi and Others* v *Commission and Others*, T-410/13, not published, EU:T:2014:871, paragraph 26).

21 The first point to note is that it is not disputed between the parties that all of the previous employment contracts entered into between the missions and the applicant contain a clause expressly providing that disputes arising from, or relating to, those contracts will be subject to the jurisdiction of the courts of Brussels.

22 Only the final FTC expressly provides, in Article 21, that disputes arising from, or relating, that contract will be subject to the jurisdiction of the Court of Justice of the European Union under Article 272 TFEU.

23 This means that, since the present action was brought on the basis of Article 272 TFEU, the Court has jurisdiction only in respect of the final FTC under the arbitration clause contained therein. The Court manifestly lacks jurisdiction to deal with disputes that may arise from the performance of the applicant's contracts of employment prior to the final FTC which expressly give jurisdiction to the Belgian courts and, therefore, to hear the present action in so far as it relates to the effects of those contracts.

24 In addition, in his observations on the objections of inadmissibility, the applicant cannot maintain that the clause giving jurisdiction to the Court of Justice of the European Union contained in the final FTC renders the clauses contained in the previous contracts giving jurisdiction to the Belgian courts inoperative.

25 It should be recalled that, since the jurisdiction of the Court under Article 272 TFEU derogates from the ordinary rules of law, it must be given a restrictive interpretation (judgment of 18 December 1986, *Commission* v *Zoubek*, 426/85, EU:T:1986:501, paragraph 11). Thus, the General Court can adjudicate on a contractual dispute only if the parties have expressed their will to confer that jurisdiction on the Court (judgment of 24 October 2014, *Technische Universität Dresden* v *Commission*, T-29/11, EU:T:2014:912, paragraph 50; see, to that effect, order of 3 October 1997, *Mutual Aid Administration Services* v *Commission*, T-186/96, EU:T:1997:149, paragraph 46).

26 The scope of the clause giving jurisdiction to the Court of Justice of the European Union is expressly limited to disputes relating to the final FTC and cannot be extended to previous contracts providing for other courts to have jurisdiction.

27 Moreover, it must be noted that the applicant voluntarily entered into the employment contracts with the missions on the terms proposed to him. Under Article 1 of those contracts, he expressly accepted the terms and conditions set out therein, including the remedies provided and the clauses expressly giving jurisdiction to the Belgian courts.

28 It is also necessary to reject Eulex Kosovo's argument that the choice of forum clause nominating the Court of Justice of the European Union in the final contract was the result of an administrative error and that the applicant, by acknowledging receipt of the letter of 26 June 2014 from the Head of the Eulex Kosovo Mission informing him that his contract would not be renewed after 14 November 2014, implicitly recognised the jurisdiction of the courts of Brussels.

29 First, it is sufficient to find that Eulex Kosovo is a party to the final FTC in the capacity of employer and that the arbitration clause may therefore be enforced against it by the applicant, even if that clause arose as the result of an administrative error. Secondly, the mere fact of acknowledging receipt of a letter informing the applicant that his contract would not be renewed after the 14 November 2014 cannot alter the content of the choice of forum clause contained in the final FTC, signed subsequently to that letter.

30 The second point to note is that only the parties to a contract containing an arbitration clause may be parties to an action brought on the basis of Article 272 TFEU (see judgment of 16 December 2010, *Commission* v *Arci Nuova associazione comitato di Cagliari and Gessa*, T-259/09, not published, EU:T:2010:536, paragraph 40 and the case-law cited).

31 With regard to the final FTC, as the applicant acknowledges, this was signed by the applicant and by Eulex Kosovo as employer.

32 Decision 2014/349 amended Joint Action 2008/124 by inserting the following Article 15a: 'Eulex Kosovo shall have the capacity to procure services and supplies, to enter into contracts and administrative arrangements, to employ staff, to hold bank accounts, to acquire and dispose of assets and to discharge its liabilities, and to be a party to legal proceedings, as required in order to implement this Joint Action'.

33 Decision 2014/349 also inserted Article 16(5) which provides as follows: 'Eulex Kosovo shall be responsible for any claims and obligations arising from the implementation of the mandate starting from 15 June 2014, with the exception of any claims relating to serious misconduct by the Head of Mission, for which the Head of Mission shall bear the responsibility'.

34 Article 15a of Joint Action 2008/124, applicable from 12 June 2014, being the date when it came into force, gave Eulex Kosovo the ability to enter into contracts and to bring or defend legal proceedings, thus granting it legal capacity.

35 It should be noted that, while the previous employment contracts were entered into between the applicant and the Head of the Eulex Kosovo Mission, the final FTC was entered into, on 15 October 2014, between the applicant and Eulex Kosovo in the capacity of employer. That final FTC makes express reference to Article 15a of Joint Action 2008/124.

36 Therefore, despite Eulex Kosovo's assertion to the contrary in its objection of inadmissibility, it has legal personality and can be a defendant to proceedings before the EU courts, in accordance with the amendments inserted by Decision 2014/349.

37 In that respect, Eulex Kosovo is wrong to rely, in its objection of inadmissibility, on orders of 4 June 2013, *Elitaliana* v *Eulex Kosovo* (T-213/12, EU:T:2013:292), and of 23 April 2015, *Chatzianagnostou* v *Council and Others* (T-383/13, not published, EU:T:2015:246), and on the judgment of 12 November 2015, *Elitaliana* v *Eulex Kosovo* (C-439/13 P, EU:C:2015:753), to maintain that it has no capacity to be a defendant to proceedings before the EU courts. Suffice it to say that those cases are irrelevant given that, first, they relate to facts prior to the change in status of Eulex Kosovo introduced by Decision 2014/349 and, secondly, they concern actions for annulment brought on the basis of Article 263 TFEU. In the present case, since the action was brought on the basis of Article 272 TFEU, it is sufficient that the contract containing the arbitration clause was signed by Eulex Kosovo 'on behalf of the European Union' and, despite its contention to the contrary, it is unnecessary for Eulex Kosovo to be a 'body, office or agency of the Union' within the meaning of 263 TFEU.

38 The Court has jurisdiction on the basis of Article 272 TFEU only in relation to the final FTC entered into between the applicant and Eulex Kosovo.

39 First, it is clear from the above that the Court manifestly lacks the jurisdiction to rule on the first part of the principal heads of claim. The first head of claim, seeking the recategorisation of the whole of the applicant's contractual relationship with the various missions who were his consecutive employers as a contract of indeterminate duration, assumes that the effects of the previous employment contracts entered into by those missions and the applicant, which expressly give jurisdiction to the Belgian courts, can be taken into account. As the Court's jurisdiction is limited to the final FTC, the Court is not permitted to rule on this head of claim. The Court also manifestly lacks jurisdiction in respect of the ancillary claims for a declaration that the defendants infringed the obligation to give notice of termination of a contract of an indeterminate duration and that the applicant's dismissal was unfair. Therefore, the Court also manifestly has no jurisdiction to rule on the compensation claims ancillary to those claims, seeking compensation for the loss arising from the abusive use of consecutive FTCs, from the infringement of the obligation to give notice of termination and from an unfair dismissal.

40 Secondly, the Court manifestly lacks jurisdiction to rule on the second part of the principal heads of claim, in that they seek a declaration that the EEAS, the Council and the Commission treated the applicant in a discriminatory manner during his employment on the missions as regards his remuneration, pension rights and other benefits, that the applicant ought to have been recruited as a member of the temporary staff of one of them and that compensation should be paid for the resulting loss. Those claims are directed against the Council, the Commission and the EEAS, which are not parties to the final FTC, and therefore relate to the earlier contractual relationship over which the Court has no jurisdiction.

41 As for the applicant's allegation of an infringement of his right to an effective remedy in the event that his action is declared inadmissible, it should be noted that, despite the applicant's assertion to the contrary, the fact that the Belgian courts have no jurisdiction over the final FTC does not mean that they have no jurisdiction over disputes connected with the earlier employment contracts entered into

between the applicant and the missions. The Court's lack of jurisdiction to rule on the principal heads of claim to the extent that they seek to assess the effects of the contracts prior to the final FTC does not mean that the applicant is deprived of the right to an effective judicial remedy, since he has the ability to apply to the national court, which is granted jurisdiction by the arbitration clauses contained in those contracts.

*The alternative heads of claim*

42 In the alternative, the applicant is claiming compensation based on the non-contractual liability of 'European institutions'. He submits that, within the context of the contractual relationship that they imposed upon him, the defendants infringed the principles of legal certainty, respect for vested rights and protection of legitimate expectations, the right to sound administration, the principle of administrative transparency and the duty to have regard for the welfare of officials, the principle of the protection of individuals, and the European Code of Good Administrative Behaviour. He maintains that dismissing the principal claim as inadmissible or unfounded would prove that the defendants had infringed those principles, since it would be impossible for him to determine which rights governed his contracts or within what timescales and to what extent those rights, or infringements thereof, could be relied upon. A decision by the Court dismissing his principal claim as inadmissible or unfounded would therefore cause him loss which he values at EUR 150 000.

43 As a preliminary point, it should be noted that the present action is based solely on Article 272 TFEU. However, the applicant expressly states that he is seeking to establish non-contractual liability on the part of the defendants in the event that his principal claim seeking to establish contractual liability on their part is dismissed.

44 In that regard, it should be borne in mind that an action for compensation is an independent form of action, with a purpose to fulfil within the framework of legal remedies. Its purpose is to seek compensation for damage resulting from a measure or from unlawful conduct attributable to an institution (see judgment of 18 December 2009, *Arizmendi and Others* v *Council and Commission*, T-440/03, T-121/04, T-171/04, T-208/04, T-365/04 and T-484/04, EU:T:2009:530, paragraph 64 and the case-law cited).

45 It cannot be ruled out that the contractual and the non-contractual liability of an EU institution may coexist in respect of one of the parties with which it has concluded a contract.

46 In the present case, in his claim for damages made in the alternative, the applicant is not relying on a breach of contractual obligations or on a breach of the rules governing contractual relations, but on infringements of the principles to which the institutions are subject when carrying out their administrative duties. That claim in the alternative seeks to establish the liability of the defendants in their role as administrative authorities and not that of co-contracting parties.

47 Therefore, it must be held that, even though the applicant does not expressly mention Article 268 TFEU or Article 340 TFEU as the basis of his claim for damages made in the alternative, that claim is seeking to establish non-contractual liability on the part of the defendants.

48 It should be recalled that, under the first paragraph of Article 21, in conjunction with the first paragraph of Article 53, of the Statute of the Court of Justice and Article 76(d) of the Rules of Procedure, every application must state the subject matter of the proceedings and contain a summary of the pleas in law on which it is based. That statement must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the action, if necessary, without any further information. In order to guarantee legal certainty and the sound administration of justice it is necessary, in order 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. More

specifically, in order to satisfy those requirements, an application seeking compensation for damage caused by an EU institution must state the evidence from which the conduct which the applicant alleges against the institution can be identified, the reasons why the applicant considers that there is a causal link between the conduct and the damage it claims to have suffered, and the nature and extent of that damage (see judgment of 2 March 2010, *Arcelor* v *Parliament and Council*, T-16/04, EU:T:2010:54, paragraph 132 and the case-law cited; order of 5 October 2015, *Grigoriadis and Others* v *Parliament and Others*, T-413/14, not published, EU:T:2015:786, paragraph 30).

49 In the present case, the application, even when considered as a whole, does not allow a sufficiently direct causal link to be identified with the required degree of clarity and precision between the infringements allegedly committed by the defendants and the loss that the applicant claims to have suffered as a result of the Court dismissing his principal heads of claim.

50 On the one hand, the applicant alleges that the defendants infringed certain principles required of them in their role as administrative authorities and, on the other hand, he confines himself to pleading the existence of loss suffered as a result of the Court dismissing his principal heads of claim. The Court cannot understand how its decision to dismiss the principal heads of claim on the grounds of a manifest lack of jurisdiction could stem from the conduct of the defendants.

51 It follows that the alternative heads of claim do not satisfy the requirements of Article 76(d) of the Rules of Procedure and are, therefore, manifestly inadmissible.

52 In the light of all the foregoing, the action must be dismissed, partly for a manifest lack of jurisdiction and partly for manifest inadmissibility.

## Costs

53 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. Since the applicant has been unsuccessful, he must be ordered to pay the costs, in accordance with the forms of order sought by the Council, the Commission, the EEAS and Eulex Kosovo.

On those grounds,

THE GENERAL COURT (First Chamber)

hereby orders:

**1. The action is dismissed.**

**2. Mr Liam Jenkinson is ordered to pay the costs.**

Luxembourg, 9 November 2016.

E. Coulon
Registrar

H. Kanninen
President