



Reports of Cases

JUDGMENT OF THE GENERAL COURT (Appeal Chamber)

16 January 2015*

(Appeal — Civil service — Members of the temporary staff — Recruitment — Rejection of the appellant's application and appointment of another candidate — Plea in law raised for the first time at the hearing — Distortion of the clear sense of the evidence — Duty to state reasons — Order as to costs disputed)

In Case T-107/13 P,

APPEAL brought against the judgment of the Civil Service Tribunal of the European Union (First Chamber) of 11 December 2012 in *Trentea v FRA* (F-112/10, ECR-SC, EU:F:2012:179) and seeking to have that judgment set aside,

Cornelia Trentea, former member of the contract staff of the European Union Agency for Fundamental Rights, residing in Barcelona (Spain), represented by L. Levi and M. Vandebussche, lawyers,

appellant,

the other party to the proceedings being

The European Union Agency for Fundamental Rights (FRA), represented by M. Kjærum, acting as Agent, and B. Wägenbaur, lawyer,

defendant at first instance,

THE GENERAL COURT (Appeal Chamber),

composed of M. Jaeger, President, M.E. Martins Ribeiro (Rapporteur) and M. van der Woude, Judges,

Registrar: E. Coulon,

gives the following

Judgment

- 1 By her appeal brought pursuant to Article 9 of Annex I to the Statute of the Court of Justice of the European Union, the appellant, Ms Trentea, seeks the setting aside of the judgment of the European Union Civil Service Tribunal (First Chamber) of 11 December 2012 in *Trentea v FRA* (F-112/10, ECR-SC, EU:F:2012:179) ('the judgment under appeal') by which that court dismissed the appellant's

* Language of the case: English.

action seeking, first, annulment of the decisions of the European Union Agency for Fundamental Rights (FRA) rejecting her application for a post as an administrative assistant and recruiting another candidate to that post and, secondly, an order that the FRA pay damages to her.

Legal context

- 2 Pursuant to the first paragraph of Article 27 of the Staff Regulations of Officials of the European Union ('the Staff Regulations'):

'Recruitment shall be directed to securing for the institution the services of officials of the highest standard of ability, efficiency and integrity, recruited on the broadest possible geographical basis from among nationals of Member States [of the European Union].'

- 3 Article 2 of the Conditions of Employment of Other Servants of the European Union ('the CEOS') provides as follows:

'For the purposes of these Conditions of Employment, "temporary staff" means:

- (a) staff engaged to fill a post which is included in the list of posts appended to the section of the budget relating to each institution and which the budgetary authorities have classified as temporary;

...'

- 4 Article 12(5) of the CEOS provides:

'Each institution shall adopt general provisions on the procedures for recruitment of temporary staff in accordance with Article 110 of the Staff Regulations, as necessary.'

- 5 The second sentence of Article 110(1) of the Staff Regulations provides that '[a]gencies shall adopt the appropriate implementing rules for giving effect to these Staff Regulations, after consultation of the relevant Staff Committee and in agreement with the [European] Commission'.

- 6 Article 24(1) of Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights (OJ 2007 L 53, p. 1), provides as follows:

'The Staff Regulations ..., the [CEOS] and the rules adopted jointly by the [European Union] institutions for the purpose of applying these Staff Regulations and Conditions of Employment shall apply to the staff of the Agency and its Director.'

- 7 On 18 November 2009, on the basis of Article 110 of the Staff Regulations and of Article 12(5) of the CEOS, the Executive Board of the FRA adopted Decision 2009/3 on general implementing provisions on the procedure governing the engagement and the use of temporary agents at the FRA.

- 8 Article 1 of Decision 2009/3 states that that decision applies to temporary staff as referred to in Article 2a of the CEOS.

- 9 The first sentence of the second paragraph of Article 2 of Decision 2009/3 provides that:

'Long-term employment posts may be filled through an internal engagement procedure or via the Interagency Job Market and then through an external engagement procedure.'

10 The third paragraph of Article 2 of Decision 2009/3 is worded as follows:

‘The publication of a long-term employment post may be done simultaneously internally in the Agency and in the Interagency Job Market, before making an external publication of the vacant post. However, in the case of simultaneous publication internally and in the Interagency Job Market, the applications of the internal candidates shall be considered first.’

11 Article 3 of Decision 2009/3, relating to the selection procedure for long-term employment, provides that the FRA may use a selection procedure organised either by the European Personnel Selection Office (EPSO) or by the FRA itself. In the event that the FRA itself organises the selection procedure, Article 3(2) of Decision 2009/3 provides that:

‘(a) [T]he agency may organise a selection procedure, in which it must apply similar standards to those applied in general officials’ competitions organised by EPSO.

(b) [T]he agency shall launch the recruitment procedure by advertising vacancy notices specifying the criteria concerning general and specific competencies and key qualifications required and the possible duration of employment, the function group and grade and the main steps of the selection procedure.

...

(c) A Selection Committee as referred to in Article 3(1)(b) shall evaluate applications and select those candidates meeting the eligibility criteria and matching best the selection criteria required as per vacancy notice.

(d) The Selection Committee shall invite the selected applicants to written tests whose content shall be defined in accordance with the level and profile of the position advertised.

...

(e) The Selection Committee shall either invite selected candidates to the interview, on the basis of the results of the written tests, or interview [all] selected ... candidates. The interview may be organised for the same day as the written tests.

...

(g) The Selection Committee shall draw up a short list, in alphabetical order, of suitable candidates to the Contracting Authority...

(h) Candidates shall be informed of the outcome of the written tests and the interview and of whether they have been placed on the reserve list or not.’

Background to the dispute

12 The facts giving rise to the dispute are set out as follows in paragraphs 12 to 27 of the judgment under appeal:

‘12 On 1 September 2007, the applicant was recruited by the FRA as a contract agent on the basis of a two-year employment contract. She was assigned to the Procurement and Finance team within the Administration department. That contract was renewed for a period of five years, that is to say, until 31 August 2014, with a possibility of extension.

- 13 On 16 November 2009, the FRA published a vacancy notice on its website for the recruitment, for an indefinite period, of a temporary agent within the meaning of Article 2(a) of the CEOS, for the post of administrative assistant in the assistants' function group (AST) at Grade AST 4 in the Procurement and Finance team ("the vacancy notice").
- 14 In the section entitled "Functions and Duties", the vacancy notice provided that the holder of the post would — under the supervision of the Finance and Procurement team leader — be responsible for, inter alia, assistance in procurement and purchasing procedures, preparation and follow-up of calls for tender, contacts with suppliers, preparation of procurement contracts, processing of financial transactions in accordance with the FRA's financial rules, and assisting in the preparation and execution of the FRA's budget.
- 15 The section of the vacancy notice entitled "Job Requirements" made a distinction between, on the one hand, the "Eligibility criteria", relating, in essence, to the level of education required and the minimum linguistic knowledge, and, on the other, the "Selection criteria", which were themselves subdivided into those which were "Essential" and those which were "Advantageous". One of the "Essential" requirements was "Professional experience and knowledge in the area mentioned under 'Functions and duties' of a minimum of 3 years". One of the "Advantageous" characteristics was "Knowledge of ABAC Workflow, ABAC Contracts applications and Business Objects reporting tool".
- 16 The selection procedure set out in the vacancy notice was to be carried out in several steps. Accordingly, it was provided that:
 - the eligibility of candidates would be assessed on the basis of compliance with all the eligibility requirements by the closing date for the submission of applications;
 - the applications of eligible candidates would be examined in accordance with the selection criteria as specified in the vacancy notice and a Selection Committee would select the candidates who had obtained "at least 60% of the total points available";
 - the candidates who had obtained at least 60% would be invited to attend a written test and an oral test;
 - the candidates who passed those tests would be placed on a reserve list drawn up by the Selection Committee and proposed to the authority empowered to conclude contracts of employment of the FRA ("the AECCE"), which would decide on the establishment of the reserve list;
 - on the basis of the reserve list, the AECCE could offer a contract of employment.
- 17 The applicant applied for the post referred to in the vacancy notice.
- 18 By note of 27 April 2010, the applicant was invited to take the written and oral tests. Those tests took place on 18 May 2010.
- 19 By letter of 11 June 2010 from the Head of the Human Resources and Planning Department, the applicant was informed that she had been placed on the reserve list of candidates for the post referred to in the vacancy notice.
- 20 By letter of the same day, the applicant was invited to an interview with the Director of the FRA. That interview took place on 16 June 2010.

- 21 By letter of 5 July 2010 from the Head of the Human Resources and Planning Department, the applicant was informed of the AECCE's decision to recruit another candidate, "whose profile better suited the required qualifications" ("the recruitment decision") and, consequently, to reject the applicant's own application ("the decision to reject the application").
- 22 By note of 6 July 2010, the applicant wrote to the Head of the Human Resources and Planning Department, asking him to send her all the information concerning the reasons for the rejection of her application and the reasons for which the qualifications presented by the successful candidate — who was not a member of the FRA's staff — were preferred to her own. She also requested that the marks she had received in the written and oral tests be communicated to her, as well as those of the successful candidate.
- 23 By email of the same day, the Head of the Human Resources and Planning Department notified the applicant that, as "the deliberations of the [Selection Committee] are confidential, [he could not] tell [her] the marks [she had] received", while informing her that "she had achieved points above the threshold". That email did not reply to the applicant's question concerning the reasons for which the qualifications presented by the successful candidate had been preferred to her own.
- 24 By note of 13 July 2010, the applicant lodged a complaint under Article 90(2) of the Staff Regulations against the decision to reject the application and against the recruitment decision.
- 25 That complaint was rejected by a decision of the Director of the FRA of 22 July 2010, acting as the AECCE ("the decision rejecting the complaint"). That decision stated that 13 candidates had been invited to take the written and oral tests; that the applicant — who had passed the written test and obtained 37.1 points in the oral test, that is to say, more than the minimum number of points required (31.8 points) — had been placed on the reserve list together with four other candidates, and that she had been invited to an interview with the Director of the FRA.
- 26 On 6 September 2010, the applicant, after indicating that she had read the decision rejecting her complaint, asked that the answers she had given in the written and oral tests be re-examined by individuals who — unlike some members of the Selection Committee, in her opinion — had real knowledge of the areas examined in the tests. By another note, dated 13 September 2010, intended to "complete" the complaint of 13 July 2010 on the basis of supposedly new facts, the applicant claimed that the successful candidate had not fulfilled one of the selection criteria set out in the vacancy notice, namely knowledge, in the field of financial transaction processing, of the ABAC Workflow and ABAC Contracts applications.
- 27 By letter of 27 September 2010, the AECCE rejected the requests made in the notes of 6 and 13 September 2010 for review of the decision rejecting the complaint, and maintained the position expressed in the decision of 22 July 2010 rejecting the complaint.'

Proceedings at first instance and judgment under appeal

- 13 By application lodged at the Tribunal Registry on 2 November 2010, the appellant brought an action seeking annulment of the decisions of the authority empowered to conclude contracts of employment ('the AECCE') to reject her application ('the decision to reject the application') and to recruit another candidate ('the recruitment decision') and, if necessary, the annulment of the decision of 22 July 2010 of the Director of the FRA, acting as the AECCE, rejecting the complaint submitted on 13 July 2010 ('the decision rejecting the complaint') and the decision of the AECCE of 27 September 2010 rejecting the requests for review of that decision. The appellant also claimed that the FRA should be ordered to pay compensation to her for, first, the material damage which she had sustained, corresponding to the difference between her current remuneration and that of the post advertised in the vacancy notice published by the FRA on 16 November 2009 ('the vacancy notice'), until retirement age, including all

allowances and pension rights, and, secondly, the non-material damage, evaluated on equitable principles at EUR 10 000. Lastly, the appellant claimed that the FRA should be ordered to pay the costs.

- 14 The FRA contended, at first instance, that the Tribunal should dismiss the action and order the appellant to pay the costs.
- 15 The appellant put forward six pleas in law in support of her action and a seventh plea in law which she raised at the hearing.
- 16 In the first place, at paragraph 46 of the judgment under appeal, the Tribunal rejected the appellant's first plea alleging breach of Article 2 of Decision 2009/3, finding, essentially, that those provisions did not compel the FRA, where it sought to fill a long-term employment post, to open or exhaust an internal recruitment procedure or a recruitment procedure in the Interagency Job Market before opening an external procedure.
- 17 In the second place, the Tribunal rejected the appellant's plea alleging irregularity of the vacancy notice, breach of Decision 2009/3, substantive irregularities in the conduct of the selection procedure, breach of the principle of equality as between candidates, and breach of the principles of objectivity, transparency and legal certainty. First of all, the Tribunal held, in essence, at paragraphs 57 and 58 of the judgment under appeal, that the vacancy notice was sufficiently specific, inasmuch as it ensured the objectivity and transparency of the selection procedure. Next, the Tribunal held, at paragraph 61 of the judgment under appeal, that the method for the assessment of candidates had enabled them to be selected in an appropriate manner. Lastly, the Tribunal considered, at paragraphs 62 and 63 of the judgment under appeal, that neither the vacancy notice nor Decision 2009/3 had prevented the Director of the FRA from obtaining further information or forming further assessments.
- 18 In the third place, the Tribunal rejected the plea in law alleging breach of Article 3(2)(a) of Decision 2009/3. It held, in this connection, at paragraph 69 of the judgment under appeal, that the use of the adjective 'similar' in that provision showed that the FRA did not intend to make it a strict rule that the selection procedures which it organised had to comply with the standards laid down by EPSO for competitions for the recruitment of officials. The Tribunal added, at paragraph 71 of the judgment under appeal, that, although it was true that the written test had not taken place at the same time for all the candidates, it was not established or even alleged that the questions asked in that test were identical for all the candidates and that, moreover, the FRA had stated, without being contradicted, that the written test had been marked anonymously, as the names of the candidates were hidden from the members of the Selection Committee when they were correcting the tests.
- 19 In the fourth place, the Tribunal rejected the plea alleging irregular composition of the Selection Committee, breach of the principles of good administration, objectivity and impartiality of the selection, and misuse of power, holding, *inter alia*, at paragraph 79 of the judgment under appeal, that it was apparent from the documents in the file that two of the four members of which the Selection Committee was composed had in-depth knowledge and experience in the area of procurement, whereas the appellant claimed that no member of the Committee had such knowledge. The Tribunal also rejected, at paragraph 81 of the judgment under appeal, the argument as to the alleged lack of objectivity and impartiality of several members of the Selection Committee.
- 20 In the fifth place, the Tribunal rejected the plea alleging breach of the duty to state reasons, holding, at paragraphs 91 to 95 of the judgment under appeal, that, having regard to the first items of information contained in the decision to reject the application, to the additional items of information contained in the decision rejecting the complaint and the document communicated by the FRA at the hearing, the FRA had not failed to fulfil its duty to state reasons.

- 21 In the sixth place, the Tribunal rejected the plea alleging a manifest error of assessment, finding, in essence, at paragraph 104 of the judgment under appeal, that, notwithstanding the appellant's merits, other candidates may have had greater merits.
- 22 In the seventh place, the Tribunal rejected as inadmissible, at paragraph 114 of the judgment under appeal, the plea alleging that there was no Staff Committee representative on the Selection Committee, on the ground that that plea should have been raised in the application and it was not closely linked with any of the pleas in law or submissions put forward by the appellant.
- 23 The Tribunal added, at paragraph 115 of the judgment under appeal, that the appellant could not claim that the plea in law raised at the hearing was based on matters which came to light at the hearing, since she was aware prior to this that the Staff Committee member present had acted as an observer of the fairness of the procedure.
- 24 In the light of the dismissal of the claims for annulment submitted by the appellant, the Tribunal dismissed the claims for damages and ordered the appellant to pay all the costs.

The appeal

Procedure and forms of order sought

- 25 By a document lodged at the Registry of the General Court on 21 February 2013, the appellant brought the present appeal. On 15 May 2013, the FRA lodged a response. On 29 July 2013, the appellant lodged a reply.
- 26 The appellant claims that the Court should:
- set aside the judgment under appeal;
 - consequently:
 - annul the decision to reject the application, and the recruitment decision;
 - order the FRA to pay compensation in respect of the material damage sustained by the appellant, corresponding to the difference between her current salary and the salary for the AST 4 post, until retirement age, including all allowances and pension rights;
 - order the FRA to pay compensation in respect of the non-material damage sustained by the appellant, assessed on equitable principles at EUR 10 000;
 - order the FRA to pay the costs of both sets of proceedings.
- 27 The FRA contends that the Court should:
- dismiss the appeal;
 - in the alternative, declare the claims of the FRA at first instance to be well-founded;
 - order the appellant to pay all the costs of the present proceedings, including those incurred by the FRA.

Law

28 The appellant relies on five grounds of appeal. The first ground alleges infringement of the rules on admissibility of pleas in law, the second ground alleges a factual inaccuracy concerning the written test leading to infringement by the Tribunal of the principle of equal treatment and to distortion of the evidence, the third ground alleges irregular composition of the Selection Committee, distortion of the evidence and an infringement by the Tribunal of the duty to state reasons, the fourth ground alleges infringement of the duty to state reasons and that the time taken to deliver the judgment under appeal was unreasonable and the fifth ground alleges infringement of Article 87(2) and Article 88 of the Tribunal's Rules of Procedure concerning costs and infringement of the duty to state reasons.

The first ground of appeal, alleging infringement of the rules on admissibility of pleas in law

29 The appellant claims that the Tribunal infringed the rules on the admissibility of pleas in law by ruling, at paragraph 115 of the judgment under appeal, that the seventh plea which she relied upon at the hearing was inadmissible.

30 As a preliminary point it must be stated that, although the plea in law put forward at the hearing before the Tribunal, as demonstrated by its title, by paragraph 108 of the judgment under appeal and by the title of the first ground of this appeal, concerned 'the absence from the Selection Committee of a Staff Committee representative', the line of argument developed by the appellant in the appeal is confined to that representative's role on the Selection Committee.

31 Paragraph 115 of the judgment under appeal reads as follows:

'Moreover, the applicant cannot validly claim that the plea in law that she raised at the hearing is based on matters which came to light in the course of the proceedings before the Tribunal. First, the Staff Committee had, on several occasions prior to the introduction of the present application, informed the staff that the representatives which it designates in recruitment procedures have no vote in the Selection Committees and that they act only as observers. Secondly, in the decision rejecting the complaint, the AECCE indicated to the applicant that the "[t]he Selection Committee was composed of staff members from different departments" and that the Staff Committee representative had acted only as an "observer of the fairness of the procedure".'

32 First, the appellant submits that, contrary to the finding of the Tribunal in that paragraph, the information which was allegedly given to staff by the Staff Committee concerning the role of a Staff Committee representative was distorted, since it did not prove that she should have been aware that that representative was only in attendance as an observer. Furthermore, in the decision rejecting the complaint, it was merely stated that the Staff Committee representative was in attendance as an observer of the fairness of the procedure, and the adjective 'only', as reported by the Tribunal, was not included in that decision.

33 In this connection, it is sufficient to state that the fact that, as the applicant moreover concedes, the decision rejecting the complaint informed her that the Staff Committee representative was in attendance as an observer of the fairness of the procedure clearly implied that, by acting in this capacity, that representative did not have voting powers. The use by the Tribunal of the adjective 'only', which indeed it did not include within the quotation from that decision, was intended solely to highlight the information which was sufficiently clear for the appellant to have been able to raise, in her application before the Tribunal, the plea which she did not put forward until the hearing.

34 That finding cannot be called into question by the appellant's argument that the statement contained in the decision rejecting the complaint was at the very least confusing, relying on a hypothetical distinction between two roles of the Staff Committee stemming from the task assigned to it under

Article 9(3) of the Staff Regulations to represent the interests of staff: to ensure the fairness of the procedure, whether taking part in the vote or not, and to ensure the parity of the procedure by taking part in the vote.

- 35 The Tribunal in no way distorted the evidence when it held that being in attendance as an observer of the fairness of the procedure, by the very meaning of the word 'observer' could be distinguished from being in attendance and taking part in the vote.
- 36 Accordingly, it cannot be held, as the appellant claims, that she was not unequivocally informed that the Staff Committee representative present on the Selection Committee had no voting powers and that he was merely acting as an observer of the fairness of the procedure, in so far as the straightforward communication by the administration of the information that that representative was in attendance as an observer clearly and necessarily implied that, in that respect, he did not have voting powers.
- 37 It follows from the foregoing that, since the appellant was apprised in the decision rejecting the complaint of the fact that the staff representative was acting as an observer of the fairness of the procedure, it is not necessary to ascertain whether she also obtained that information from another source before she brought proceedings.
- 38 Secondly, the appellant claims that the plea concerning the role, on the Selection Committee, of the Staff Committee representative should have been declared admissible since it was related to the plea alleging the irregular composition of the Selection Committee and the lack of objective assessment and to the plea alleging infringement of the principle of equal treatment.
- 39 In this connection, according to case-law, a submission which may be regarded as amplifying a submission made previously, directly or by implication, in the original application and which is closely connected with it, must be declared admissible (see, by analogy, judgments of 19 May 1983 in *Verros v Parliament*, 306/81, ECR, EU:C:1983:143, paragraph 9, and of 9 March 1999 in *Hubert v Commission*, T-212/97, ECR-SC, EU:T:1999:39, paragraph 87).
- 40 However, it must be stated that, as is apparent from paragraphs 74 and 75 of the judgment under appeal, the plea alleging irregular composition of the Selection Committee and the lack of objective assessment, in which the appellant alleged that there was no specialist in public procurement on that Committee, has no close connection with the plea in which the appellant alleges that there was no Staff Committee representative on the Selection Committee.
- 41 Moreover, in so far as the appellant claims that that plea is connected with the plea relating to the principle of equal treatment in which the appellant challenged the composition of the Selection Committee on the ground that there was no specialist in public procurement on it, it must be stated that that complaint has no connection with the plea consisting in criticism of the FRA on the ground that the Staff Committee member on the Selection Committee did not have voting powers. Likewise, the fact that the Staff Committee member did not have voting powers is not connected with the plea in which the appellant criticises the FRA on the ground that there was a significant discrepancy between the marks awarded to the various candidates.
- 42 Therefore the Tribunal did not commit any error in holding that the plea raised at the hearing was in no way connected with any of the pleas put forward in the application.
- 43 Thirdly, the appellant claims that the Tribunal should have raised of its own motion the plea alleging that there was no Staff Committee representative on the Selection Committee.

44 The Tribunal held, at paragraph 116 of the judgment under appeal:

‘It follows that the plea in law alleging the absence from the Selection Committee of a Staff Committee representative — a plea which is not among the pleas which the Tribunal may raise of its own motion — must be rejected as inadmissible.’

45 As regards the line of argument that the Tribunal should have ruled of its own motion on the fact that there was no Staff Committee representative on the Selection Committee or an alleged infringement of his role on it, it is sufficient to state that the appellant has not proved that such a plea raises a matter of public policy (see, to that effect, order of 3 October 2013 in *Marcuccio v Commission*, C-617/11 P, EU:C:2013:657, paragraph 22).

46 The appellant’s complaint that the Tribunal did not give reasons for its finding that the plea raised at the hearing was not among the pleas which the court must raise of its own motion cannot be upheld. It must be stated that, given that no factual evidence on this issue was produced before the Tribunal, inter alia at the hearing, the Tribunal gave reasons to the requisite legal standard for its judgment by merely observing that such a plea was not among the pleas that the court had to raise of its own motion.

47 It follows from all the foregoing that the first ground of appeal must be rejected.

The second ground of appeal, alleging factual inaccuracy concerning the written test leading to an infringement by the Tribunal of the principle of equal treatment and to distortion of the evidence

48 In the first part of this ground, the appellant points out that before the Tribunal she raised a plea alleging infringement of Article 3(2)(a) of Decision 2009/3 on the ground that the written test had not been organised to take place simultaneously for all the candidates.

49 The Tribunal responded to the appellant’s complaint as follows, at paragraph 71 of the judgment under appeal:

‘In any event, although it is true that the written test did not take place at the same time for all the candidates, it has not been established or even alleged that the questions asked in that test were identical for all the candidates. Moreover, the FRA has stated, without being contradicted, that the written test was marked anonymously, as the names of the candidates were hidden from the members of the Selection Committee when they were correcting the tests.’

50 According to the appellant, the FRA stated, at points 82 and 83 of the defence submitted at first instance:

‘82 ... The mere respect of the equality principle, which undoubtedly constitutes an important EPSO standard applied to competitions, will ensure it. This principle requires the test to be the same for everyone, and to take place in the same conditions for all candidates, in order to adequately compare each [candidate’s] work.

83 The defendant stresses that this condition was fully respected in the contested selection procedure, and that this was enough to ensure impartiality and objectivity.’

51 The appellant infers from this that it was established, on the contrary, that the questions in the written test were identical for all the candidates, so that the Tribunal’s finding was clearly inaccurate.

- 52 In this connection, it must be stated, as in the line of argument developed by the FRA, that, at points 82 and 83 of its defence before the Tribunal, the FRA did not claim that the questions set in the written tests were identical, but emphasised, in point 82 of the defence, that that observance of the principle of equality required that the tests, but not the questions, be the same for all the candidates and that they take place under the same conditions and, in point 83 of that defence, that that had been the case in the contested selection procedure.
- 53 Accordingly, the Tribunal cannot be accused of factual inaccuracy.
- 54 In the second part of that ground, the appellant criticises the Tribunal for having examined the issue of whether the written test was conducted at the same time for all candidates not in the light of the principle of equal treatment underlying Article 3(2)(a) of Decision 2009/3, but only in the light of that decision.
- 55 It must be stated in this connection that, as the FRA correctly observes, by that part of the ground of appeal the appellant is seeking to extend the subject-matter of the dispute brought before the Tribunal.
- 56 It is apparent from paragraph 66 of the judgment under appeal that the appellant's second plea in that case, and the appellant has in no way claimed before the General Court that the Tribunal distorted or incorrectly summarised that plea, alleged only the infringement of Article 3(2)(a) of Decision 2009/3, and not the infringement of the principle of equal treatment.
- 57 It is settled case law that a plea raised for the first time in an appeal before the General Court must be rejected as inadmissible. To allow a party to put forward a plea in this context which it did not raise before the Tribunal would be to authorise it to bring before the General Court, whose jurisdiction in appeals is limited, a case of wider ambit than that which came before the Tribunal (judgment of 6 December 2012 in *Strobl v Commission*, T-630/11 P, ECR-SC, EU:T:2012:653, paragraph 57). In an appeal the jurisdiction of the General Court is confined to review of the findings of law on the pleas argued before the Tribunal (see, by analogy, judgments of 1 June 1994 in *Commission v Brazzelli Lualdi and Others*, C-136/92 P, ECR, EU:C:1994:211, paragraph 59, and 1 February 2007 in *Sison v Council*, C-266/05 P, ECR, EU:C:2007:75, paragraph 95).
- 58 It follows that the second part of the ground of appeal must be declared inadmissible.
- 59 In the third part of that ground of appeal, the appellant criticises the Tribunal for having rejected her plea concerning the lack of anonymity in the written test by relying solely on the FRA's contention, in paragraph 71 of the judgment under appeal, that 'the written test was marked anonymously, as the names of the candidates were hidden from the members of the Selection Committee when they were correcting the tests'.
- 60 The appellant submits that, while she did not have the means to check the conditions under which the test had been marked, it was for the Tribunal, having regard to her claim that each candidate had to write his or her name on the test itself and sign it, to ascertain whether there had been an infringement of the principle of equal treatment, since the anonymity of the tests had to be based on evidence rather than on the FRA's contentions. Furthermore, she states that she remembers having requested, at the hearing, evidence demonstrating that the test was rendered anonymous for marking purposes.
- 61 In this connection, it is settled case-law of the Court of Justice, as an appeal court, that the court at first instance has exclusive jurisdiction, first, to establish the facts except where the substantive inaccuracy of its findings is apparent from the documents submitted to it and, second, to assess those facts (order of 12 July 2007 in *Beau v Commission*, T-252/06 P, ECR-SC, EU:T:2007:230, paragraph 45).

- 62 The assessment of the facts does not therefore constitute, save where the clear sense of that evidence produced before that court has been distorted, a point of law which is subject, as such, to review by the General Court (order in *Beau v Commission*, paragraph 61 above, EU:T:2007:230, paragraph 46).
- 63 Such distortion must be obvious from the documents on the Court's file, without there being any need to carry out a new assessment of the facts and the evidence (order in *Beau v Commission*, paragraph 61 above, EU:T:2007:230, paragraph 47 and the case-law cited).
- 64 Since it has not been proven that there was a distortion of the clear sense of the evidence in the present case, the appeal court does not have jurisdiction to check whether the tests were rendered anonymous.
- 65 Moreover, it must be stated that it is not apparent that, following the hearing before the Tribunal, the appellant maintained her complaint relating to the failure to render the tests anonymous in so far as, in her observations of 5 January 2012 lodged at the Tribunal Registry after the hearing, she disputes both the written and the oral conduct of the selection procedure in very detailed terms (see, in particular, points 10 to 12), without making any observation concerning compliance with the anonymity requirement.
- 66 It follows from all the foregoing that the second ground of appeal must be rejected.

The third ground of appeal, alleging irregular composition of the Selection Committee, distortion of the evidence and infringement by the Tribunal of the duty to state reasons

- 67 By this ground of appeal, the appellant challenges paragraphs 78 and 79 of the judgment under appeal, which state as follows:
- '78 As regards the submission that members of the Selection Committee had insufficient expertise to assess the candidates' merits in the key area of the post to be filled, namely the field of finance and procurement, it should be recalled, first, that the vacancy notice provided, in the section "Functions and Duties", that the holder of the post would be responsible for, inter alia, assistance in procurement and purchasing procedure, preparation and follow-up of calls for tenders, contacts with suppliers, preparation of procurement contracts, processing of financial transactions in accordance with the FRA's financial rules and assisting in the preparation and execution of the FRA's budget. It follows that the members of the Selection Committee — or, at the very least, one of them — had demonstrably to have expertise in the above areas in order to undertake an objective assessment of the candidates' knowledge and their suitability for the post.
- 79 In the present case, contrary to the assertions made by the applicant, it is clear from the documents before the Tribunal that two of the four members of the Selection Committee — namely, the Head of the "Administration" department of the FRA and the Financial Director of the FRA — had in-depth knowledge and experience in the area of procurement.'
- 68 The appellant disputes the validity of the statement that only one of the members of the Selection Committee had to have expertise in the areas required for the post, in a body where decisions must be taken collectively. She states, in addition, that she is not able to identify any document, other than the mere allegations of the FRA, proving that the Head of the Administration department of the FRA and the Financial Director of the FRA had in-depth knowledge and experience in the area of procurement. On the contrary, she submits, the Head of the Administration department of the FRA and the Financial Director of the FRA did not have such expertise.

- 69 It must be recalled in this connection that the assessment of the facts by the court at first instance does not constitute, save where the clear sense of the evidence produced before that court has been distorted, a point of law which is subject, as such, to review by the General Court and that such distortion must be obvious from the documents on the Court's file, without there being any need to carry out a new assessment of the facts and the evidence (order in *Beau v Commission*, paragraph 61 above, EU:T:2007:230, paragraphs 46 and 47).
- 70 It is not apparent from the documents in the file that the Tribunal distorted the evidence since, contrary to what the appellant claims, it is clear from that file that Mr X.C., the Financial Director, was Head of the Finance/ Procurement team, so that it could not be claimed, as it was by the applicant, that he had no expertise in the field of procurement. Moreover, even if the curriculum vitae of the Head of the Administration department, attached by the appellant as an annex to her appeal, may be taken into consideration, this does not show that he has no expertise in the procurement field, and the applicant herself moreover accepts that he has expertise at management level in this field.
- 71 Having regard to the fact that the appellant derives from that alleged distortion of the facts a complaint relating to the discrepancy which she claims to have noted in the marks awarded, it follows that, since the Tribunal did not find any distortion of the facts, the complaint relating to the discrepancy in the marks awarded to the various candidates cannot, on any view, be upheld.
- 72 In respect of the complaint alleging infringement of the duty to state reasons, it must be stated that the appellant has provided no evidence supporting her arguments in this regard. Accordingly, that complaint is inadmissible.
- 73 It follows from all the foregoing that the third ground of appeal must be rejected.

The fourth ground of appeal, alleging infringement of the duty to state reasons and that the time taken to deliver the judgment under appeal was unreasonable

- 74 By this ground of appeal, the appellant takes issue with paragraph 91 of the judgment under appeal, which provides as follows:
- '91 In the present case, after indicating to the applicant, in the decision to reject the application, that the "profile [of the successful applicant] better suited the required qualifications" and then specifying, in the email of 6 July 2010, that the applicant "achieved points above the threshold", the AECCE subsequently provided the applicant with additional information, in particular in the decision of 22 July 2010 rejecting the complaint. Thus, in the latter decision, the AECCE indicated that 13 candidates had been invited to take the written and oral tests; that the applicant had passed the written test, obtaining the average mark in two of the three questions; that she had obtained 37.1 points in the oral test, that is to say, more than minimum number of points required (31.8 points); and that, subsequently, she had been placed on the reserve list together with four other candidates. Lastly, at the hearing, the FRA submitted a document from which it is clear that, in the context of the oral test, the applicant had been placed fourth, behind candidates who had obtained, respectively, 42.8, 39.3 and 38.1 points, and that the candidate placed first was the candidate who was chosen for the post at issue.'
- 75 The appellant claims that she did not receive an adequate statement of reasons during the administrative stage, so that she was forced to bring legal action in order to obtain a document which the FRA finally communicated at the hearing at the request of the Tribunal. She submits that, by taking that document into consideration in order to reach the conclusion that the FRA had fulfilled its duty to state reasons, without requiring the existence of exceptional circumstances, the Tribunal erred in law, since she did not know in due time the reasons for her non-acceptance or for the

allocation of the marks. Furthermore, the applicant adds that no exceptional circumstance which would have allowed a statement of reasons to be supplemented during the proceedings before the Tribunal was claimed and points out that there were only four participants in the selection procedure.

- 76 In this connection, on the one hand, it must be recalled that the extent of the obligation to state the reasons is a question of law reviewable by the General Court on appeal (see the judgment of 2 March 2010 in *Doktor v Council*, T-248/08 P, ECR-SC, EU:T:2010:57, paragraph 92 and the case-law cited).
- 77 On the other hand, as is apparent from consistent case-law, it is possible, first, to remedy an inadequate statement of reasons — but not one which is totally absent — even during the proceedings if, before his action was brought, the member of staff concerned already had at his disposal information constituting the beginnings of a statement of reasons; second, to regard a decision as containing a sufficient statement of reasons if it is adopted in circumstances which are known to him and enable him to understand its scope; and third, as regards in particular decisions rejecting a promotion or a candidature, to supplement the statement of reasons in the decision rejecting a complaint, the reasons given for the latter decision being deemed to be the same as those for the decision which was the subject of the complaint (see judgment in *Doktor v Council*, paragraph 76 above, EU:T:2010:57, paragraph 93 and the case-law cited).
- 78 In the present case, the applicant does not claim that she did not receive any information during the pre-litigation procedure, but alleges that she did not receive, in due time, the document stating that she had been placed in fourth position.
- 79 Thus, clearly, in the course of the pre-litigation procedure, detailed information, which is referred to in paragraph 91 of the judgment under appeal, was communicated to her, so that the FRA could, as the Tribunal correctly held at paragraph 95 of the judgment under appeal, communicate a document which was not a substitute for a lack of a statement of reasons but which showed that the candidate accepted had obtained 42.8 points, the highest mark of the candidates admitted to sit the oral test.
- 80 It is therefore apparent from the findings of fact made by the Tribunal that the appellant, even without the document communicated to her at the hearing, was in a position to know why her application had not been accepted and the breakdown of the marks she had obtained.
- 81 Accordingly, having regard to the case-law cited at paragraph 77 above, the complaint alleging that the Tribunal unlawfully allowed the FRA to supplement the statement of reasons during the judicial proceedings is completely unfounded (see, to that effect, judgment in *Doktor v Council*, paragraph 76 above, EU:T:2010:57, paragraph 96).
- 82 As regards the argument that the time taken for the Tribunal to issue its judgment was unreasonable, it must be pointed out that the period which expired between 2 November 2010, when the appellant lodged her action at first instance, and 11 December 2012, when the judgment of the Tribunal was delivered — that is, approximately two years — cannot be regarded as unreasonable.
- 83 First of all, the application was lodged at the Tribunal Registry on 2 November 2010 and the FRA lodged the defence on 24 January 2011. On 22 June 2011, the Tribunal ordered a measure of organisation of procedure and the FRA replied by letter of 15 July 2011 to the requests for information and for the production of documents. The report for the hearing was communicated to the parties on 28 September 2011. The hearing took place on 26 October 2011. Following that hearing, as is apparent from paragraph 31 of the judgment under appeal, several measures of organisation of procedure were ordered by the Tribunal, with which the parties complied, the Registrar informing the parties on 24 April 2012 that their replies had been received. The judgment was delivered on 11 December 2012, a little less than eight months after the receipt by the Tribunal Registry of the reply to the measures of organisation of procedure.

- 84 It follows from the foregoing that it cannot be held that the Tribunal took an unreasonable time to deliver the judgment under appeal.
- 85 Moreover, in any event, the excessive length of proceedings cannot, according to case-law, entail a judgment being set aside in the absence of any evidence that that fact affected the outcome of the proceedings (see the order of 26 March 2009 in *EFKON v Parliament and Council*, C-146/08 P, EU:C:2009:201, paragraph 55 and the case-law cited).
- 86 There is no evidence and indeed the appellant has not argued that, even if the Tribunal were to have taken an unreasonable time to deliver the contested judgment, that fact would have had any effect on the outcome of the dispute.
- 87 It follows from all the foregoing that the second part of the fourth ground of appeal, and that ground of appeal in its entirety, must be rejected.

The fifth ground of appeal, alleging infringement of Article 87(2) and Article 88 of the Rules of Procedure of the Tribunal concerning costs and infringement of the duty to state reasons

- 88 The appellant criticises paragraph 124 of the judgment under appeal, which states as follows:

‘124 It follows from the grounds set out above that the applicant is the unsuccessful party. Furthermore, in its pleadings, the FRA has expressly applied for the applicant to be ordered to pay the costs. Since the circumstances of the present case do not warrant the application of Article 87(2) of the Rules of Procedure, the applicant must bear her own costs and she must be ordered to pay the costs incurred by the FRA.’

- 89 According to the appellant, the Tribunal should have stated reasons for that order as to costs and examined the possibility afforded it under Article 88 of its Rules of Procedure to order the FRA, even though it had been successful in all its claims, to pay the costs, since the applicant had expressly applied for the FRA to pay the costs and had stated reasons for seeking that form of order.
- 90 In that regard, it must be pointed out that, according to Article 11(2) of Annex I to the Statute of the Court of Justice, no appeal is to lie regarding only the amount of the costs or the party ordered to pay them. It follows that, in a situation where all the other grounds in an appeal have been rejected, claims concerning the alleged unlawfulness of the Tribunal’s decision on costs must be rejected as inadmissible (order of 29 October 2009 in *Nijs v Court of Auditors*, T-375/08 P, ECR-SC, EU:T:2009:423, paragraph 71; see, by analogy, judgment of 26 May 2005 in *Tralli v ECB*, C-301/02 P, ECR, EU:C:2005:306, paragraph 88 and the case-law cited).
- 91 In so far as all the other grounds of appeal raised by the appellant have been rejected, the last ground, directed against the Tribunal’s decision on the allocation of costs, must accordingly be declared inadmissible.
- 92 Therefore the fifth ground of appeal must be rejected and the appeal in its entirety dismissed.

Costs

- 93 Pursuant to the first paragraph of Article 148 of the Rules of Procedure of the General Court, where the appeal is unfounded, that court is to make a decision as to costs.
- 94 Under the first subparagraph of Article 87(2) of those Rules, which applies to appeal proceedings by virtue of Article 144 thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party’s pleadings.

⁹⁵ Since the appellant has been unsuccessful and the FRA has applied for costs, the appellant must bear her own costs and be ordered to pay those incurred by the FRA in the course of the present proceedings.

On those grounds,

THE GENERAL COURT (Appeal Chamber)

hereby:

1. **Dismisses the appeal;**
2. **Declares that Ms Cornelia Trentea is to bear her own costs and orders her to pay the costs incurred by the European Union Agency for Fundamental Rights in the present proceedings.**

Jaeger

Martins Ribeiro

Van der Woude

Delivered in open court in Luxembourg on 16 January 2015.

[Signatures]