



## Reports of Cases

JUDGMENT OF THE GENERAL COURT (Sixth Chamber)

11 April 2018\*

(Common foreign and security policy — National staff member seconded to EUPM in Bosnia and Herzegovina — Redeployment decision — Power of the Head of the EUPM to decide on the redeployment of a seconded national staff member — Obligation to state reasons — Misuse of powers — Manifest error of assessment — Psychological harassment)

In Case T-271/10 RENV,

**H**, represented by M. Velardo, lawyer,

applicant,

v

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

defendant,

in the first place, APPLICATION based on Article 263 TFEU for annulment of (i) the decision of 7 April 2010, signed by the Chief of Personnel of the European Union Police Mission (EUPM) in Bosnia and Herzegovina, by which the applicant was redeployed to the post of Criminal Justice Advisor at the regional office in Banja Luka (Bosnia and Herzegovina) and (ii) of the decision of 30 April 2010, signed by the Head of EUPM referred to in Article 6 of Council Decision 2009/906/CFSP of 8 December 2009 on the EUPM in Bosnia and Herzegovina (OJ 2009 L 322, p. 22), confirming the decision of 7 April 2010, and in the second place, ACTION on the basis of Article 268 TFEU seeking compensation for the harm allegedly suffered by the applicant,

THE GENERAL COURT (Sixth Chamber),

composed of G. Berardis, President, S. Papasavvas and O. Spineanu-Matei (Rapporteur), Judges,

Registrar: C. Heeren, Administrator,

having regard to the written part of the procedure and further to the hearing on 13 September 2017,

gives the following

\* Language of the case: English.

## Judgment<sup>1</sup>

### I. Background to the dispute

- 1 By Council Joint Action 2002/210/CFSP of 11 March 2002 on the European Union Police Mission (OJ 2002 L 70, p. 1), the European Union Police Mission (EUPM) was established to follow on from the United Nations International Police Task Force in Bosnia and Herzegovina.
- 2 The EUPM, which started on 1 January 2003, was extended a number of times, in particular by Council Decision 2009/906/CFSP of 8 December 2009 on the EUPM in Bosnia and Herzegovina (OJ 2009 L 322, p. 22), and ended on 30 June 2012.
- 3 The applicant is an Italian judge who was seconded to the EUPM in Sarajevo (Bosnia and Herzegovina) by order of the Italian Minister for Justice of 16 October 2008, in order to perform the duties of ‘Criminal Justice Unit Advisor’ from 14 November 2008.
- 4 By orders of the Italian Minister of Justice of 7 April 2009 and 9 December 2009, the applicant had her secondment extended in order to perform the duties of Chief Legal Officer, respectively until 31 December 2009 and then until 31 December 2010.

[...]

- 6 By decision of 7 April 2010, signed by the Chief of Personnel of the EUPM, the appellant was redeployed for ‘operational reasons’ to the post of Criminal Justice Advisor — Prosecutor in the regional office in Banja Luka (Bosnia and Herzegovina) from 19 April 2010 (‘the decision of 7 April 2010’).

[...]

- 8 By decision of 30 April 2010, signed by the Head of the EUPM and referred to in Article 6 of Decision 2009/906, the Head of Mission confirmed the decision of 7 April 2010. He stated in the decision that he himself had taken the decision of 7 April 2010 and that the operational reason for the applicant’s redeployment was based on the need for prosecution advice in the Banja Luka office (‘the decision of 30 April 2010’).

[...]

### II. Procedure before the General Court and the Court of Justice prior to referral

- 10 By application lodged at the Court Registry on 16 June 2010, the applicant brought the present action against the Council of the European Union, the European Commission and the EUPM seeking annulment of the decisions of 7 and 30 April 2010 (together, ‘the contested decisions’).

[...]

- 12 By order of 10 July 2014, *H v Council and Others* (T-271/10 R, not published, ‘the initial order’, EU:T:2014:702), the General Court dismissed the action as inadmissible, taking the view that it did not have jurisdiction to hear and determine the claim.

[...]

<sup>1</sup> Only the paragraphs of the present judgment which the Court considers it appropriate to publish are reproduced here.

- 14 By judgment of 19 July 2016, *H v Council and Commission* (C-455/14 P, ‘the appeal judgment’, EU:C:2016:569), the Court of Justice set aside the initial order, dismissed the action as inadmissible in so far as it was directed against the Commission and the EUPM, referred the case back to the General Court to rule on the merits of the action in so far as it was directed against the Council and reserved costs.
- 15 The Court of Justice held, in essence, at paragraphs 58 and 59 of the appeal judgment that the contested decisions, in so far as they had redeployed the applicant within the EUPM in Bosnia and Herzegovina, constituted acts of staff management intended to redeploy members of the mission at theatre level. It considered that those decisions, although adopted in the context of the Common Foreign and Security Policy (CFSP), did not constitute acts referred to in the second subparagraph of Article 24(1) TEU and the first paragraph of Article 275 TFEU. It considered that, as a consequence, they came under the jurisdiction of the EU judiciary and stated that that jurisdiction stemmed, respectively, as regards the review of the legality of those acts, from Article 263 TFEU and, as regards actions for non-contractual liability, from Article 268 TFEU, read in conjunction with the second paragraph of Article 340 TFEU, taking into account Article 19(1) TEU and Article 47 of the Charter of Fundamental Rights of the European Union.

## V. Law

[...]

### B. The claim for annulment

[...]

#### 2. Substance

[...]

##### *(a) First plea in law: infringement of the provisions of Decision 2009/906*

[...]

*(1) The first part, alleging that the Head of the EUPM lacked the power to adopt decisions relating to the redeployment of staff*

[...]

- 46 In the first place, it must be stated at the outset that Decision 2009/906 does not contain any specific provisions relating to the power to redeploy EUPM staff.
- 47 In the second place, it must be pointed out that Decision 2009/906 does not define either the expressions ‘operational control’, ‘strategic level’, or ‘theatre level’, or the terms ‘command’ or ‘control’, even though it uses them.
- 48 In that regard, the general scheme of Decision 2009/906 shows only that the Head of the EUPM exercised, as the person responsible for the EUPM ‘at theatre level’, ‘command’ and ‘control’ over that mission, in particular over personnel, teams and units ‘from contributing States’ which had been ‘assigned’ by the Civilian Operation Commander. Furthermore, the Head of the EUPM was entrusted

with ensuring the coordination and day-to-day management of the EUPM in Bosnia and Herzegovina by giving all necessary instructions to 'all' staff for the effective conduct of the mission in that theatre of operations (see, to that effect, appeal judgment, paragraph 52).

- 49 In those circumstances, in order to determine who was authorised to redeploy the staff of the EUPM, it is necessary to consider not only the wording of Decision 2009/906, but also the context in which it occurs and the objectives pursued by the rules of which it is part.
- 50 With regard to the context, it is common ground that the EUPM, established by Joint Action 2002/210, was the EU's first civil mission organised as part of its European Security and Defence Policy (ESDP), now the Common Security and Defence Policy (CSDP), as a non-executive mission, using the military operations as its model for planning and command.
- 51 It is clear from Joint Action 2002/210 that the activities of the EUPM were not due to start until 1 January 2003. The Council therefore made provision for a planning team to be deployed by 1 April 2002 at the latest and that the head of that team would become the Head of the EUPM as of 1 January 2003. In the meantime, the head was to help the General Secretariat of the Council to develop the Mission's Concept of Operations (CONOPS). Next, the Planning Team was to draw up the Operation Plan (OPLAN) and develop all technical instruments necessary to deploy the EUPM. The Council then adopted the CONOPS and the OPLAN in order to enable the mission to start its activities on the planned date.
- 52 It is also clear from Joint Action 2002/210 that, for the period of its first mandate, that is to say, 2003 to 2005, the EUPM was composed of a main headquarters in Sarajevo (Bosnia and Herzegovina) where, in particular, the Head of the EUPM worked along with a variable number of liaison officers responsible for contacts with other international organisations on the ground. Moreover, monitoring units were also deployed within the Bosnia and Herzegovina Police 'at medium-high level'. Apart from police officers seconded by the Member States, the EUPM could recruit, on a contractual basis, international civilian staff and local staff. Member States or the institutions of the European Union could also participate in the mission by seconding international civilian staff.
- 53 Thereafter, the EUPM pursued its mission with a regularly adjusted mandate and size.
- 54 The EUPM was redefined in 2009 on the basis of Article 28 and Article 43(2) TEU as an operational action of the European Union, decided and carried out under the CSDP, which is an integral part of CFSP, with the objective, in essence, of supporting the law enforcement agencies in Bosnia and Herzegovina in their fight against organised crime and corruption, as is apparent from the first paragraph of Article 2 of Decision 2009/906.
- 55 On the basis of the second sentence of Article 4(2) of Decision 2009/906, the Council approved the new OPLAN of the EUPM which was subsequently updated and amended by the Political and Security Committee (PSC) in accordance with the third paragraph of Article 38 TEU on the basis of the second sentence of Article 10(1) of that decision.
- 56 As part of its new mandate, the EUPM was to focus in particular on State level law enforcement agencies, on enhancement of the interaction between police and prosecutor and on regional and international cooperation. Furthermore, the structure of the mission had been modified so as to add, in Bosnia and Herzegovina, four regional offices in Sarajevo, Banja Luka, Mostar and Tuzla in addition to the headquarters and the units deployed within the police.
- 57 It is in that overall context, in which the decision of the Head of the EUPM was taken, that it is necessary to examine the power of the Head of the EUPM to redeploy the applicant from the headquarters in Sarajevo to the regional office in Banja Luka.

- 58 It should be stated at the outset that, in accordance with the second paragraph of Article 24(1) TEU ‘the [CFSP] is subject to specific rules and procedures [and it is] defined and implemented by the European Council and the Council acting unanimously’.
- 59 In that regard, in the first place, it is common ground that, at the time of the creation of the EUPM, neither the Civilian Planning and Conduct Capability (CPCC), as an entity in charge of the planning, deployment, conduct and review of civilian CSDP crisis-management missions, nor its Civilian Operation Commander existed in the institutional set-up of the EU.
- 60 On 18 June 2007, the Council approved the Guidelines for Command and Control Structure for EU Civilian Operations in Crisis Management (‘the Guidelines for Command and Control Structure’) which provided, inter alia, that the Civilian Operation Commander would exercise command and control at strategic level for the planning and conduct of all civilian crisis management operations under the political control and strategic direction of the PSC and the overall authority of the High Representative (HR), and that the Director of the CPCC established within the Council Secretariat would, for each civilian crisis management operation, be the Civilian Operation Commander.
- 61 Therefore, for all civilian operations, the Commander is the Director of the CPCC and is supported at theatre level by the Head of the EUPM who has all the standard powers of control and command over staff under his direction. The chain of command is connected to the PSC which provides the strategic direction and political control of the operation under the authority of the Council.
- 62 In that context, the Director of the CPCC was designated as the Civilian Operation Commander of the EUPM in Article 5 of Council Joint Action 2007/749/CFSP of 19 November 2007 on the EUPM in Bosnia and Herzegovina (OJ 2007 L 303, p. 40) by which the EUPM was continued as from 1 January 2008.
- 63 It is clear from a combined reading of Articles 5(1) and (4) of Joint Action 2007/749 and of Articles 5(1) and (4) of Decision 2009/906 that the national authorities transferred to the Civilian Operation Commander of the EUPM ‘Operational Control’ of their personnel, teams and units as their contribution.
- 64 Furthermore, it is clear from a combined reading of Articles 5 and 6 of Decision 2009/906 that the Civilian Operation Commander exercised command and control of the EUPM ‘at the strategic level’, while the Head of the EUPM did so ‘at theatre level’.
- 65 In the second place, it is also common ground that, in the case of standard CSDP missions and operations conducted under Article 43 TEU, planning and execution are carried out within the European External Action Service (EEAS), in accordance with the crisis management procedures. By virtue of those procedures, it falls, inter alia, to the EEAS to draw up the planning documents, such as the CONOPS and the OPLAN, and to define the conditions for the implementation and accountability of the force generation process. Thereafter, it falls to the Council to approve them.
- 66 That being so, it should be considered that, to the extent that Decision 2009/906 does not contain any express provisions relating to the person who is responsible for the redeployment of EUPM personnel within that mission, it is complemented by the OPLAN and the Guidelines for Command and Control Structure.
- 67 According to paragraph 5.3, second subparagraph, of the 2009 OPLAN, as produced by the Council following a measure of organisation of procedure, in the partially declassified version, ‘the [Head of Mission] retains the final authority to appoint personnel and the overall responsibility to deploy them’. The third subparagraph of paragraph 5.3 of the 2009 OPLAN sets out the criteria for filling posts in the EUPM, which include the needs of that mission. Similarly, the power of the Head of the EUPM to deploy his personnel is also apparent from a reading of Annex M to the OPLAN, entitled

‘Personnel Administration’, which details the conditions for engaging staff and the powers of the Head of Mission in that regard, by stating that ‘the [Head of Mission] retains the final authority to appoint personnel and the overall responsibility to deploy them, both [at] international and local [level]’. Finally, in Annex D to the OPLAN, entitled ‘Standard Operating Procedures’, it states in paragraph 2, third subparagraph, relating to deployments, that ‘deployment and/or redeployment decisions are the responsibility of the Head of Mission’.

68 In addition, under paragraph 6(1)(c) of the Guidelines for Command and Control Structure, operational control (OPCON) was defined as being ‘the authority assigned to an ESDP official to direct individuals, teams and units assigned so that he/she may accomplish specific missions or tasks which are usually limited by function, time, or location; to deploy them, and to retain or delegate operational control or tactical command or control as may be deemed necessary’.

69 It follows that the operational control exercised at ‘theatre level’ by the Head of Mission necessarily implies that it is possible for the Head to take decisions, including the redeployment of staff, as soon as possible, and to make staff seconded by the Member States subject to those decisions for the purposes of fulfilling the mission.

70 In view of the provisions referred to in paragraphs 64 and 67 to 69 above, it should be considered that the Civilian Operation Commander, who exercises, under the political control and strategic direction of the PSC and under the general authority of the High Representative (HR), command and control at strategic level for the planning and conduct of all the civilian CSDP missions and who is the General Commander of all the civilian Heads of Mission, has the power to deploy staff to each EU civilian mission, for the purposes of Article 6(2) of Decision 2009/906. On the other hand, within each mission, the power to deploy and redeploy staff comes within the remit of the Head of the EUPM alone.

[...]

*(2) The second part, alleging that the Member State of Origin was not consulted before the redeployment decision was taken*

[...]

75 In the first place, with regard to the applicant’s argument that the Head of the EUPM committed a procedural error by taking the redeployment decision without consulting her Member State of Origin, it must be noted at the outset that the applicant does not identify any provision under which such a consultation was necessary.

76 Next, it must be stated that neither the terms nor the spirit of Decision 2009/906 or the OPLAN require the Head of the EUPM to conduct a prior consultation with the Member State of origin before taking a decision to redeploy staff seconded by Member States.

77 In that regard, it must be recalled that, in accordance with Article 7(2) and (3) of Decision 2009/906, the EUPM has staff which is either recruited on a contractual basis, or is seconded from an EU institution, or is seconded from a Member State. Specifically with regard to staff seconded by the Member States, it is clear from the second sentence of Article 5(4) of Decision 2009/906 and from paragraph 5.2 of the OPLAN that the national authorities transferred operational control of their personnel, teams and units to the Civilian Operation Commander, and from Article 6(2) of that decision that that operational control was exercised ‘at theatre level’ by the Head of Mission.

- 78 As was pointed out in paragraph 69 above, it is clear from paragraph 6(1)(c) of the Guidelines for Command and Control Structure that operational control means that the Head of the EUPM may take decisions, including the redeployment of staff, as soon as possible, and make staff seconded by the Member States subject to those decisions for the purposes of fulfilling the mission. That operational nature is therefore incompatible with a procedure for prior consultation with the authority of origin, such as the one referred to by the applicant.
- 79 Moreover, in accordance with the rules governing CSDP missions, the applicant was asked for her express consent to serve the mission in a post other than the one she applied for, and consequently, the application form which she completed and signed on 10 November 2008 for the post from which she was redeployed contained that consent. Contrary to what the applicant maintained at the hearing, it is not apparent from that application form that her consent was limited solely to other functions exercised within the main headquarters in Sarajevo and excluded the other structures of the EUPM.
- 80 It must be noted that it is apparent from the provisions of Decision 2009/906 that staff members seconded by the Member States and those seconded by the EU institutions were subject to the same rules so far as concerns the performance of their duties ‘at theatre level’ (see, to that effect, appeal judgment, paragraph 50).
- 81 Consequently, there is no reason to conclude that treating staff seconded by the Member States differently from staff seconded by the EU institutions in the redeployment procedure ‘at theatre level’ would be compatible with the crisis management operations conducted by the EUPM.
- 82 In the second place, with regard to the argument that the applicant could not be redeployed by virtue of an express provision contained in the Italian Constitution intended to ensure the impartiality of judges in the performance of their duties, it must be made clear at the outset that the applicant did not identify the provision of the Italian Constitution on which she based that argument. If the applicant is referring to the guarantee of security of tenure of judges laid down in Article 107 of the Italian Constitution, under which a judge may not be redeployed without his/her agreement or without a special procedure being followed, it must be held that that guarantee cannot apply in the present case.
- 83 First, the applicant was not appointed to perform her role as a prosecutor within the EUPM, but a role as legal counsel for which her professional experience as a prosecutor had been considered relevant. Furthermore, the applicant retained the status of a judge under national law only with reference to national authorities. Once she was seconded to the EUPM, her status within that mission was not the status of a judge, but that of a seconded national staff member.
- 84 Secondly, when the applicant submitted her application for a position in an international body, whose organisation and operating rules are outside any control of her State of origin, she implicitly consented to being subject to the specific rules of that body.
- 85 It follows from all of the foregoing that the second part of the first plea in law must be rejected as must the first plea in law in its entirety.

[...]

On those grounds,

THE GENERAL COURT (Sixth Chamber)

hereby:

- 1. Dismisses the action;**
- 2. Orders H to pay the costs.**

Berardis

Papasavvas

Spineanu-Matei

Delivered in open court in Luxembourg on 11 April 2018.

E. Coulon  
Registrar

G. Berardis  
President



## Table of contents

I. Background to the dispute .....	2
II. Procedure before the General Court and the Court of Justice prior to referral .....	2
V. Law .....	3
B. The claim for annulment .....	3
2. Substance .....	3
(a) First plea in law: infringement of the provisions of Decision 2009/906 .....	3
(1) The first part, alleging that the Head of the EUPM lacked the power to adopt decisions relating to the redeployment of staff .....	3
(2) The second part, alleging that the Member State of Origin was not consulted before the redeployment decision was taken .....	6