Reports of Cases

JUDGMENT OF THE GENERAL COURT (Ninth Chamber)

14 December 2017*

(Civil service — Officials — Recruitment — Competition notice EPSO/AD/309/15 (AD 11) — Doctors for the Luxembourg site — Refusal of admission to the assessment centre tests — Limitation of the choice of second language to a restricted number of official languages of the European Union — Plea of unlawfulness — Manifest error of assessment — Liability — Non-material damage)

In Case T-609/16,

PB, represented by M. Velardo, lawyer,

applicant,

v

European Commission, represented by G. Gattinara and L. Radu Bouyon, acting as Agents,

defendant,

ACTION brought under Article 270 TFEU seeking, first, annulment of selection board decision EPSO/AD/309/15 (AD 11) — Doctors for the Luxembourg and Ispra sites (Field: Doctors Luxembourg) of 28 September 2015, not to admit the applicant to the selection tests held at the European Personnel Selection Office (EPSO) assessment centre, and secondly, compensation for the damage which the applicant claims to have suffered,

THE GENERAL COURT (Ninth Chamber),

composed of S. Gervasoni (Rapporteur), President, L. Madise and R. da Silva Passos, Judges,

Registrar: E. Coulon,

gives the following

* Language of the case: French.

Judgment

Background to the dispute

1 On 7 July 2015, the applicant applied to take part in competition EPSO/AD/309/15 (AD 11) ('the competition'), a competition based on qualifications and tests which was organised in order to draw up a reserve list with a view to the recruitment of medical officers for the European Commission in Luxembourg (Luxembourg).

2 In the competition notice, published in the *Official Journal of the European Union* of 4 June 2015 (OJ 2015 C 183 A, p. 1, ('the competition notice'), the following requirements were, amongst others, laid down as preconditions for admission to the competition:

'– completed university studies of at least four years attested by a diploma in medicine recognised in one of the Member States of the European Union;

and

– a diploma in a medical specialisation obtained after the abovementioned diploma;

…

– at least 12 years' professional experience (acquired after the diploma in medicine) in one or more of the following related fields: … occupational medicine, general medicine, internal medicine, tropical medicine, ergonomics, medical control of absences due to illness, public health, psychiatry, emergency medicine (for Ispra only) or radiation protection'.

3 Annex I to the competition notice indicated that the administrators recruited would be responsible for carrying out the tasks required of a medical officer of the institution, namely:

– medical check-ups of staff members and applicants;

– occupational health related examinations and consultations;

– administrative medical opinions;

– medical control of absences due to illness;

– health promotion campaigns;

– radiation protection;

– participating in the work of various fora (health and safety at work, invalidity, board of senior medical advisers of the European Union institutions);

– team management;

– maintaining contacts with outside doctors and/or hospitals in their specialist fields;

– handling administrative cases and procedures.

4 Annex III of the competition notice, entitled ‘Selection Criteria’ provided, in relation to the Luxembourg site, that for the selection based on qualifications, which was the first stage of the competition, the selection board would consider, amongst others, the following criteria:

– at least 5 years’ ongoing professional experience in occupational medicine;

– at least 3 years’ professional experience in the medical control of absences due to illness;

– at least 3 years’ professional experience in general medicine;

– at least 3 years’ professional experience in radiation protection;

– at least 3 years’ professional experience in internal medicine;

– at least 2 years’ professional experience in ergonomics;

– at least 2 years’ professional experience in public health;

– at least 2 years’ professional experience in psychiatry;

– at least 2 years’ professional experience in tropical medicine;

– professional experience of handling administrative cases and procedures in a medical environment;

– professional experience of managing a medical team;

– at least 3 years’ professional experience in an international/multicultural environment in one of the following areas: occupational medicine, general medicine, internal medicine, tropical medicine, ergonomics, medical control of absences due to illness, public health, psychiatry, or radiation protection;

– proven knowledge of English and/or French (minimum level required: B2 of the Common European Framework of Reference for Languages (CEFR));

– proven knowledge of one or more of the following languages: Dutch and/or German (minimum level required: B2 of the CEFR).

5 The competition notice stated that the selection based on qualifications would be carried out using the information provided by the candidates in the application form’s Talent Screener tab, and that the selection board would assign each selection criterion a weighting (1 to 3) and award each of the candidate’s responses between 0 and 4 points, with the total of the weighted points being used to identify the candidates whose profiles best matched the duties to be performed.

6 The section of the competition notice entitled ‘Am I eligible to apply?’ contained, under the heading ‘Specific conditions: Languages’ an eligibility requirement for a minimum level of C1 in the main language (language 1), being one of the 24 official EU languages, and a minimum level of B2 in a second language (language 2), being English, French or German, language 2 to be different from language 1. Also in that section, it was stated that the second language chosen had to be English, French, or German, that those were the main working languages of the EU institutions and that, in the interests of the service, new recruits had to be immediately able to work and communicate effectively in their daily work in at least one of them.

7 It is apparent from the application form that the applicant, a Greek national, chose her mother tongue of Greek as her main language and German as her second language. She completed the form in German and declared the same level for that language as for Greek, namely 'C2 Proficient User'.

8 By letter of 23 September 2015, EPSO informed the applicant that she met the conditions for admission and that she was admitted to the next stage of the competition (the 'Talent Screener'), at which selection was on the basis of qualifications.

9 By decision of 28 September 2015 ('the contested decision') the applicant was informed that the selection board had closely considered the answers she had given to the questions in the 'Talent Screener' and had awarded her 15 points, which was not sufficient for her to be invited to the assessment centre, as the threshold for admission to the assessment centre tests had been set at a minimum of 18 points.

10 By email of 2 October 2015, the applicant made a request for the selection board's decision to be reconsidered.

11 By email of 23 December 2015, the applicant lodged a complaint under Article 90(2) of the Staff Regulations of Officials of the European Union ('the Staff Regulations'). In the complaint, she contested the number of points which the selection board had awarded her for her answers to four of the questions in the 'Talent Screener', relating to the criteria of professional experience in internal medicine, handling administrative cases and procedures in a medical environment, and managing a medical team, and of experience in an international or multicultural environment. She was also critical of the fact that she had not been able to complete her application form in her mother tongue, Greek.

12 By letter of 1 February 2016, EPSO rejected the request for reconsideration, informing the applicant that the selection board had confirmed its decision not to place her on the list of candidates invited to the assessment centre.

13 By letter of 25 April 2016, the appointing authority informed the applicant that her complaint had been rejected ('the decision rejecting the complaint'). In that letter, the applicant was informed that it was not open to her, once the three-month period for bringing an action had expired, to challenge the language arrangements for her application which had been laid down in the competition notice, and that the selection board had not made any manifest error in assessing the answers given to the questions in the 'Talent Screener'.

Procedure and forms of order sought

14 By application lodged at the Registry of the Civil Service Tribunal of the European Union on 4 August 2016, the applicant brought the present action, initially registered under number F-39/16. Pursuant to Article 3 of Regulation (EU, Euratom) 2016/1192 of the European Parliament and of the Council of 6 July 2016 on the transfer of jurisdiction at first instance in disputes between the European Union and its servants (OJ 2016 L 200, p. 137), the present case was transferred to the General Court in the state in which it was found as at 31 August 2016. It was registered under number T-609/16 and assigned to the Ninth Chamber.

15 The applicant claims that the Court should:

– annul the contested decision;

– order the Commission to pay the sum of EUR 10 000 in respect of non-material damage suffered;

– order the Commission to pay the costs.

16 The Commission contends that the Court should:

– dismiss the action;

– order the applicant to pay the costs.

Law

The claim for annulment

17 In support of her claims directed against the contested decision, the applicant puts forward two pleas in law.

18 By the first plea, she relies on Article 277 TFEU in arguing that the competition notice was unlawful having regard to Article 2 of Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ, English Special Edition 1952-1958, p. 59), as amended, and to the principles of equal treatment and non-discrimination, as they result from Article 21 of the Charter of Fundamental Rights of the European Union and Article 1d of the Staff Regulations. She relies in particular on judgments of the General Court concerning the lawfulness of competition notices which, as in the present dispute, limited the languages to be used in communication between candidates and EPSO to English, French and German (judgments of 24 September 2015, *Italy and Spain* v *Commission*, T-124/13 and T-191/13, EU:T:2015:690, paragraph 60; of 17 December 2015, *Italy* v *Commission*, T-295/13, not published, EU:T:2015:997, paragraph 100; of 17 December 2015, *Italy* v *Commission*, T-275/13, not published, EU:T:2015:1000, paragraph 44, and of 17 December 2015, *Italy* v *Commission*, T-510/13, unpublished, EU:T:2015:1001, paragraph 50).

19 By the second plea, she argues that the selection board made manifest errors of assessment in evaluating the answers she gave to questions 5a-5b, 10a-10b, 11a-11b and 12a-12b in the 'Talent Screener' tab of her competition application form.

The first plea, based on an objection of illegality raised in respect of the competition notice

20 The applicant disputes the argument, advanced in the decision rejecting the complaint, that her challenge to the language arrangements for the competition must be declared to be inadmissible on the ground that it relates directly to the competition notice, and that the three-month period for bringing an action against the competition notice had expired by the time the complaint was lodged, namely on 23 December 2015.

21 She argues that in the present case the contention that the competition notice was unlawful is put forward by way of objection, in support of her action against the contested decision. She maintains that she has an interest in raising a plea of unlawfulness against the language arrangements provided for by the competition notice in so far as the likelihood of getting better marks in the tests is higher if the tests are conducted in the candidate's mother tongue or a language of which the candidate has an equal command. She adds that she did not have a definite interest in challenging the competition notice until the adoption of the contested decision, which produced binding legal effects such as to affect her interests by bringing about a change in her legal position.

22 Finally, relying in particular on the judgment of 16 September 2013, *Glantenay and Others* v *Commission* (F-23/12 and F-30/12, EU:F:2013:127, paragraph 65), she argues that her action seeks to challenge the competition arrangements for the 'Talent Screener' stage, as described in the competition notice, and that in that regard it was the decision of the selection board which affected her legal position individually and enabled her to ascertain with certainty how and to what extent her personal interests had been affected. The applicant thus submits that in the present case there is a close link between the contested decision and the unlawfulness of the competition arrangements relating to the 'Talent Screener'.

23 The Commission contends that the plea is inadmissible in its entirety. It submits that the objection of unlawfulness raised by the applicant should be regarded as a direct challenge to Annex II to the competition notice, a challenge which is independent of any decision taken by the selection board in relation to the applicant during the competition procedure. It contends that the applicant did not challenge the competition notice or make a complaint in relation to it within the period prescribed by the Staff Regulations.

24 Furthermore, it submits that in any event, in order for an objection of unlawfulness relating to a competition notice to be admissible, the candidate must demonstrate that there is a close link between the alleged unlawfulness of the competition notice and the decision not to admit the candidate. It argues that in the present case there is no such link, since the basis for the competition language arrangements which the applicant is challenging is not found in the contested decision, but in the competition notice. It submits that the action should be regarded as relating to the competition notice and, having been reclassified in that way, should be declared inadmissible by reason of the expiry of the period for bringing an action against that notice.

25 In that regard, it is necessary to consider whether the applicant has correctly challenged the provisions concerning the competition notice language arrangements.

26 It is settled case-law that, in the context of a recruitment procedure, which is a complex administrative operation composed of a series of decisions, a candidate in a competition may, in an action brought against a subsequent step taken in that process, challenge the legality of earlier steps that are closely linked to it (see, to that effect, judgment of 11 August 1995, *Commission* v *Noonan*, C-448/93 P, EU:C:1995:264, paragraph 17 and the case-law cited) and, in particular, challenge the legality of the competition notice pursuant to which the step in question was taken (see, to that effect, judgment of 5 December 2012, *BA* v *Commission*, F-29/11, EU:F:2012:172, paragraph 39 and the case-law cited).

27 Failure to challenge a competition notice within the time limit laid down does not prevent an applicant from relying on irregularities occurring in the course of the competition, even if the origin of those irregularities may be found in the wording of the competition notice (see judgment of 31 January 2006, *Giulietti* v *Commission*, T-293/03, EU:T:2006:37, paragraph 40 and the case-law cited). As the applicant rightly argues, relying on the judgments of 13 December 2012, *Honnefelder* v *Commission* (F-42/11, EU:F:2012:196, paragraph 36), and of 16 September 2013, *Glantenay and Others* v *Commission* (F-23/12 and F-30/12, EU:F:2013:127, paragraph 65), an applicant is entitled to rely on irregularities relating to the competition arrangements in an action brought against the individual decision rejecting his application, and cannot be criticised for not having lodged a complaint or brought an action, within the prescribed time limits, against the decision laying down the competition arrangements (see, to that effect, judgment of 11 August 1995, *Commission* v *Noonan*, C-448/93 P, EU:C:1995:264, paragraphs 17 to 19).

28 In particular, where the plea alleging irregularities in the notice of competition, which has not been challenged in good time, concerns the statement of reasons for the contested individual decision, the action is accepted as admissible. A candidate in a competition must not be deprived of the right to challenge all the elements, including those defined in the competition notice, comprising the justification for the individual decision concerning him taken on the basis of the conditions laid down

in the notice, in so far as only that specific decision applying them affects his legal position individually and enables him to ascertain with certainty how and to what extent his personal interests are affected (see judgment of 31 January 2006, *Giulietti* v *Commission*, T-293/03, EU:T:2006:37, paragraph 41 and the case-law cited).

29 On the other hand, where there is no close connection between the reasoning of the contested decision and the plea of unlawfulness in relation to the competition notice, which has not been challenged in good time, the plea must be declared to be inadmissible in accordance with the mandatory rules governing time limits for bringing actions, which cannot be derogated from in such a case without offending against the principle of legal certainty (judgment of 31 January 2006, *Giulietti* v *Commission*, T-293/03, EU:T:2006:37, paragraph 42; see also, to that effect, judgment of 26 October 2004, *Falcone* v *Commission*, T-207/02, EU:T:2004:315, paragraph 22).

30 Regard must be had to those considerations in determining whether, in the present case, there is a close link between the reasoning of the contested decision and the plea of unlawfulness advanced in relation to the language arrangements provided for by the competition notice.

31 In that regard, it must be recalled that the section of the competition notice entitled 'Am I eligible to apply?' contained, under the heading 'Specific conditions: Languages' an eligibility requirement for a minimum level of C1 in the main language (language 1), being one of the 24 official EU languages, and a minimum level of B2 in a second language (language 2), being English, French or German, language 2 to be different from language 1. Furthermore, in the same section, it was stated that 'the second language chosen must be English, French, or German'. In Annex II to the competition notice it was stated that these were the main working languages of the EU institutions and that, in the interests of the service, new recruits had to be immediately able to work and communicate effectively in their daily work in at least one of those languages. The competition notice referred, in that annex, to the judgment of 27 November 2012, *Italy* v *Commission*, (C-566/10 P, EU:C:2012:752), and stipulated that the application form was required to be completed in one of those languages. It was also stipulated, again in Annex II, that the language of communication between candidates and the institution, including the language in which applications were to be drafted, was limited to English, French or German.

32 In the present case, it must be observed that the basis for the contested decision is not linked in any way to the language arrangements for the competition, but is based purely on the insufficient number of points awarded for the answers given by the applicant in the 'Talent Screener' tab, concerning her professional experience in the field relevant to the competition.

33 In that regard, the reference to paragraph 38 of the judgment of 2 July 2014, *Da Cunha Almeida* v *Commission* (F-5/13, EU:F:2014:176) is not relevant. In the case which gave rise to that judgment, the applicant had an interest in raising a plea of unlawfulness in respect of the language regime provided for by the competition notice in so far as the likelihood of getting better marks in the tests would have been higher if they had been conducted in the candidate's mother tongue, or a language of which he had an equal command. In particular, the applicant was challenging an insufficient mark in the verbal reasoning test which he had taken in his second language. The General Court consequently held that the competition language regime gave rise to discrimination, in that the Commission had favoured candidates who had greater ease in one of three languages that could be chosen as a second language than the other candidates who had, certainly, the knowledge of languages required by the Staff Regulations, but whose knowledge of the languages of the competition was less good than that of the first category of candidates.

34 In the present case, however, unlike the case cited in paragraph 33 above, the documents before the court do not indicate that the rejection of the applicant's application resulted, even in part, from any lack of command of German, the language which she chose from the three referred to above for completing her application form.

35 First, the applicant does not claim that she had any difficulty in completing her application form in German, or that the fact that she only obtained a mark of 15 points was due to constraints in drafting the form in that language. She goes no further than to argue that, as a general rule, a candidate who is unable to choose the language in which his application form is drafted and is constrained, as she was, to use a language other than his mother tongue, is necessarily discriminated against by comparison with candidates for whom the requirement to choose one of the three languages referred to in the competition notice did not represent a constraint. She does not state how, in the present dispute, she was penalised by completing her application form in German, observing only that the possibility cannot be ruled out that the manifestly erroneous assessments of the selection board were brought about by the requirement for her application notice to be completed in German. On this point the Commission submits, correctly, that at no stage does the applicant demonstrate, with concrete evidence in support, that if she had drafted her application form in Greek, it would have been possible for her to be invited to the assessment centre tests.

36 Secondly, it is apparent from the applicant's application form, more specifically from the 'knowledge of languages' tab, that the level of German given was very high, namely level C2, corresponding to a 'proficient user'. The applicant herself thus acknowledged that she had a perfect command of German. The Commission also observes, and has not been challenged in this regard, that the applicant studied at university in Germany and worked in that country for over 14 years. The applicant's argument that the rejection of her application form could have resulted from the fact that, pursuant to Annex II to the competition notice, application forms were drafted in English, French and German, must therefore be rejected.

37 It must therefore be held, in accordance with the principles set out in the case-law referred to in paragraphs 26 to 29 above, that there is no close link between the plea of unlawfulness raised in relation to the competition notice and the reasoning of the contested decision.

38 It follows from the foregoing that the first plea must be declared inadmissible.

The second plea, alleging manifest errors of assessment by the selection board

39 The applicant maintains, essentially, that the points awarded to her by the selection board in relation to the 'Talent Screener' are manifestly erroneous and that, if the board had taken proper account of her experience and qualifications, she would easily have been able to obtain the 18 points necessary to be permitted to take part in the assessment centre tests.

40 More specifically, it is apparent from the applicant's pleadings that the second plea comprises four complaints, alleging (i) that her experience in the field of internal medicine was not taken into account; (ii) that her experience of handling administrative cases and procedures in a medical environment was not taken into account; (iii) that her experience of managing a medical team was not taken into account, and (iv) that her experience in an international or multicultural environment was not taken into account.

41 The Commission argues, essentially, that having regard to the broad discretion enjoyed by competition selection boards, their assessments cannot be regarded as being vitiated by a manifest error unless the applicant produces material making them entirely implausible. It maintains however that the applicant has gone no further than to state her personal convictions as to how her qualifications ought to have been assessed, which cannot constitute sufficient evidence.

42 As a preliminary observation, it should be noted that, in accordance with settled case-law, the competition selection board is required to ascertain whether the candidates possess the knowledge and the professional experience necessary to perform the duties of the post advertised in the relevant

competition notice. It is also required to make a comparative examination of the candidates' knowledge and abilities so as to retain those most suited to the duties to be carried out (see judgment of 24 April 2013, *BX* v *Commission*, F-88/11, EU:F:2013:51, paragraph 39 and the case-law cited).

43 In that context, the selection board must ensure that its assessments of all the candidates examined are made under conditions of equality and objectivity and it is important that the marking criteria should be uniform and applied in a consistent manner to all candidates (judgment of 22 September 2015, *Gioria* v *Commission*, F-82/14, EU:F:2015:108, paragraph 50).

44 In that regard, the competition selection board enjoys a discretion, in assessing candidates' previous professional experience, both as to the nature and duration of such experience and as to how closely they relate to the requirements of the post to be filled (judgments of 21 November 2000, *Carrasco Benítez* v *Commission*, T-214/99, EU:T:2000:272, paragraph 70; of 28 November 2002, *Pujals Gomis* v *Commission*, T-332/01, EU:T:2002:289, paragraph 40, and of 31 January 2006, *Giulietti* v *Commission*, T-293/03, EU:T:2006:37, paragraph 65).

45 It should be emphasised, moreover, that in reviewing the lawfulness of the assessment of candidates' previous professional experience, the General Court must confine itself to examining whether the exercise of the selection board's discretion is vitiated by a manifest error (see, to that effect, judgments of 13 December 1990, *Gonzalez Holguera* v *Parliament*, T-115/89, EU:T:1990:84, paragraph 54, and of 11 February 1999, *Mertens* v *Commission*, T-244/97, EU:T:1999:27, paragraph 44), which renders the decision of the selection board implausible (judgment of 24 April 2013, *Demeneix* v *Commission*, F-96/12, EU:F:2013:52, paragraph 45).

46 It should also be emphasised that, in accordance with the case-law (see, to that effect, judgments of 20 June 1990, *Burban* v *Parliament*, T-133/89, EU:T:1990:36, paragraphs 31 and 34, and of 28 November 2002, *Pujals Gomis* v *Commission*, T-332/01, EU:T:2002:289, paragraphs 41 to 44), it is for the applicant to provide the selection board with all the information and documents which he considers relevant to the selection board's consideration of his application.

47 Thus, in the present case, candidates had their attention drawn, in paragraph 1.3 of the General Rules governing Open Competitions (OJ 2015 C 70 A, p. 1) ('the general rules'), to the fact that, in order to demonstrate that they possessed the requisite professional experience, they were required to provide the necessary supporting documents specifying, amongst other things, the starting and ending dates and the nature of the duties performed. Furthermore, again under paragraph 1.3 of the general rules, in relation to specific conditions for specialised competitions, it was stipulated that studies, periods of practice, research tasks and professional experience were required to be described in detail in the application form and accompanied by the corresponding supporting documents. Under paragraphs 2.1.4 and 2.1.7 of the general rules, candidates were required, in order to enable the competition selection board to ascertain that their qualifications corresponded to the conditions laid down in the competition notice, to include relevant information about their diplomas, professional experience, reasons for applying and knowledge of EU languages, and to attach supporting documents to their application forms.

48 In accordance with settled case-law, the selection board is obliged to take into account only the information provided and documents submitted by candidates, in support of their applications, when assessing their professional experience in the light of the requirements laid down for the competition. It is under no obligation to ask a candidate to produce additional documents (judgments of 16 September 1998, *Jouhki* v *Commission*, T-215/97, EU:T:1998:219, paragraph 58, and of 28 November 2002, *Pujals Gomis* v *Commission*, T-332/01, EU:T:2002:289, paragraph 43) or to undertake research itself in order to ascertain whether the candidate meets all the conditions of the competition notice (judgment of 28 November 2002, *Pujals Gomis* v *Commission*, T-332/01, EU:T:2002:289, paragraph 43).

49 The merits of the applicant's complaints must be considered in the light of those principles.

– The first complaint, alleging that the applicant's professional experience in the field of internal medicine was not taken into account

50 In relation to her professional experience in the field of internal medicine, the applicant maintains that it is apparent from section 5 of her application form, entitled 'Talent Screener', under the heading 'Professional Experience', that she had almost 14 years of professional experience in the field of internal medicine.

51 As a preliminary observation, it should be noted that paragraph 6 of Annex III to the competition notice provided for points to be awarded to candidates providing evidence of at least three years' professional experience in internal medicine.

52 The selection board decided not to award any points to the applicant in this respect on the ground, inter alia, that the professional experience referred to in section 5 of the application notice was identical to that referred to in section 3 of that document, concerning professional experience in general medicine, in respect of which four points (that being the maximum) had been awarded to the applicant. Furthermore, the selection board observed that there was not enough supplementary information to enable it to conclude that a distinct professional activity had been carried out during the period in question.

53 It should be noted at the outset that it is apparent from the application form that the applicant does not have 14 years' experience in internal medicine.

54 The applicant states that from September 1998 to April 2005 she worked in various medical institutions as a 'doctor preparing to specialise in internal medicine'. That statement did not, by itself, enable the selection board to conclude that the applicant had provided evidence of at least three years' professional experience in internal medicine. Thus, that information does not show that, during that period, the applicant had fully exercised the functions of a doctor in internal medicine, corresponding to those mentioned in the competition notice. The selection board was accordingly entitled to take the view that that period of activity could not be regarded as a relevant period of professional experience.

55 As to the period from June 2004 to June 2012, the applicant states that she occupied the posts of 'emergency doctor/duty doctor' 'cardiology department doctor' and 'acting head doctor'. Those statements do not provide a basis for concluding that the activities exercised by the applicant during that period related to the experience in internal medicine that was required by the competition notice.

56 Thus, the statements made by the applicant do not enable that period to be taken into account in determining how much professional experience she possessed for the purposes of the section concerning internal medicine. The applicant has done no more than to summarise the entirety of her experience during those 14 years of medical practice, without explaining in detail which of her activities related to internal medicine, as opposed to general medicine.

57 The only conclusion that can be drawn, therefore, is that the selection board was correct to take the view that the applicant had not provided enough supplementary information to enable it to conclude that the professional experience referred to in section 5 of the application form was not identical to that referred to in section 3 of that document.

58 It should be noted in that regard that the selection board correctly decided that it could not, in the particular circumstances of the present case, give credit for a single professional activity relating to a single period under two different headings.

59 It must be held that the selection board was entitled, without committing a manifest error, to take the view that the applicant's professional experience did not justify awarding, over and above the maximum number of points in respect of professional experience in general medicine, additional points in respect of her professional experience in internal medicine.

60 The first complaint made under the second plea must, therefore, be rejected.

– The second submission, alleging that the applicant's professional experience of handling administrative cases and procedures in a medical environment was not taken into account

61 In relation to section 10 of the application form and more specifically the 'Talent Screener', the applicant asserts that the selection board failed to take account of her professional experience of handling administrative cases and procedures in the medical field.

62 As a preliminary observation, it should be noted that the last indent of Annex I and paragraph 11 of Annex III to the competition notice provided for points to be awarded to candidates providing evidence of professional experience of handling administrative cases and procedures in a medical environment.

63 In support of her argument, the applicant maintains that it is apparent from section 10b of her application form that she has over four years' experience in the field of handling administrative cases and procedures in a medical environment.

64 Nevertheless, the applicant's application file does not show that, at the time the form was submitted, she had the appropriate professional experience.

65 The experience referred to in the applicant's application form, acquired between June 2001 and September 2006 in connection with her training in internal medicine and her experience in emergency medicine and cardiology, cannot be regarded as having given her the experience required.

66 It must, moreover, be noted that the applicant states in her pleadings that it is apparent from the application form that she has been established as an independent doctor since 2014 and, accordingly, that she handles her administrative cases and procedures herself, particularly in relation to annual medical examinations for employers. Nevertheless, the details provided by the applicant reflect no more, in that respect, than simple tasks which are an integral part of her main activity in the field of medicine. Even supposing that such activity could have fallen within the field referred to in the competition notice, it has not, in any case, provided the applicant with the requisite professional experience in that field.

67 Furthermore, the Commission rightly observes that the professional experience referred to in section 10 of the application form was the same as that referred to in sections 3 and 5 of that document, in that it related to the same period and had been acquired with the same employers. Accordingly, credit could not be given for that experience under different headings.

68 Having regard to the foregoing, it must be held that the selection board was entitled, without committing a manifest error, to take the view that the applicant's professional experience did not amount to relevant professional experience in the field of handling administrative cases and procedures in a medical environment.

69 The second complaint made under the second plea must, therefore, be rejected.

– The third complaint, alleging that the applicant's professional experience of managing a medical team was not taken into account

70 In relation to section 11 of the application form, and more specifically the 'Talent Screener', the applicant states that at the time she submitted her application form she had four years' professional experience of managing a medical team.

71 As a preliminary observation, it should be noted that the ninth indent of Annex I and paragraph 12 of Annex III to the competition notice provided for points to be awarded to candidates providing evidence of professional experience of managing a medical team.

72 The selection board decided not to award any points to the applicant on the ground that the application form was not sufficiently detailed and, in particular, that the applicant had not provided information as to her role, her responsibilities, or the people under her management.

73 Nevertheless, it is clear from the applicant's application form that the answer she gave in the relevant section did include the detail necessary to show that she had professional experience of managing a medical team. Contrary to the Commission's assertion, the applicant did indicate her role, her responsibilities and the people under her management.

74 First, the applicant stated that she had occupied the post of *Funktionsoberärztin* from March 2008 to June 2012, in the Klinikum Mutterhaus der Borromäerinnen (Clinic of the Sisters of Mercy of St. Borromeo) in Trier (Germany), a post carrying particular responsibility within that hospital establishment. Secondly, she set out her responsibilities, indicating that she headed the pacemaker department in that hospital and spent six months in its oncology department. Thirdly, her answer specified the category of people under her management, namely 'doctors in the process of specialising'.

75 In relation to the post of *Funktionsoberärztin*, which the applicant occupied from March 2008 to June 2012 and which she describes as a post of 'acting head doctor', the Commission argues in the rejoinder, citing an article in German legal literature, that *Funktionsoberärztin* does not mean 'acting head doctor', and that there is no well-defined description of the tasks carried out by a *Funktionsoberärztin* in German hospitals. However, it is apparent from the article produced by the Commission that such a post can be defined in two ways. On the one hand, the role of a *Funktionsoberärztin* may be that of a consultant under the supervision of more experienced doctors. On the other hand, in some German hospitals, the role of a *Funktionsoberärztin* corresponds to that of a 'senior doctor', with all of the responsibilities that go with that title. It is apparent from the applicant's answers that, in the situation at issue in the present case, she was in the second category, that of a doctor having the responsibilities, if not of a 'head', at least of a team manager or doctor with particular responsibilities.

76 The professional activity carried out by the applicant during that period thus corresponded to the type of professional experience sought in the competition. It is apparent from the information referred to above that, during the period in question, the applicant exercised management functions in relation to a medical team, of the kind described in the competition notice. Moreover, the Commission does not dispute that the applicant supervised doctors in the process of specialising, or that she managed the pacemaker department, merely challenging the meaning of the title of the applicant's post. Furthermore, neither the selection board, nor EPSO, nor the Commission had, in the response to the request for review, in the decision rejecting the complaint or in the defence, challenged the definition of *Funktionsoberärztin* itself.

77 Consequently, it must be held that the selection board's assessment of the applicant's answers to question 11 in the 'Talent Screener' is vitiated by a manifest error.

78 It follows from the foregoing that the third submission made under the second plea must be accepted.

– The fourth complaint, alleging that the applicant's professional experience in an international or multicultural environment was not taken into account

79 In relation to section 12 of the application form, and more specifically the 'Talent Screener', the applicant states that at the time she submitted her application form she had at least three years' professional experience in an international or multicultural environment.

80 As a preliminary observation, it should be noted that paragraph 13 of Annex III to the competition notice provided for points to be awarded to candidates providing evidence of at least three years' professional experience in an international or multicultural environment in one of the following areas: occupational medicine, general medicine, internal medicine, tropical medicine, ergonomics, medical control of absences due to illness, public health, psychiatry, or radiation protection.

81 The selection board decided not to award any points to the applicant on the ground that it was apparent from the application form that the applicant had worked in a unilingual (German) environment, which could not be regarded as relevant experience.

82 It is apparent from the applicant's application form that she occupied posts as duty doctor, emergency doctor and doctor preparing to specialise in internal medicine in several German medical institutions, in particular as part of the on-call staff in Trier, in the university hospital of Mannheim (Germany) and in the German Red Cross. Furthermore, she states that 'during [her] training in internal medicine, which took place in the hospitals in Germany, [she] worked in an international and multicultural environment'.

83 Those statements do not provide a basis for concluding that the activity carried out by the applicant during that period was such as to enable her to claim professional experience in a multicultural and international environment.

84 While the applicant states, in paragraph 52 of the application, that her years in hospital establishments in Germany were spent in international and multicultural medical teams, that information does not appear in her application form. Furthermore, even supposing that the applicant's university training and professional experience in Germany constitute multicultural experience by virtue of the fact that she is Greek, taking that experience into account would not enable her to claim sufficient international professional experience for the purposes of the competition. As the Commission states, the experience acquired by candidates within national hospital establishments cannot be taken into account, because a hospital is not an international and multicultural working environment. In any event, if the applicant had worked in an international environment during that period, she ought to have invoked this in her application form.

85 In relation to the applicant's period of work in the Centre Hospitalier de Luxembourg, the selection board did not commit a manifest error in not taking account of that experience, given that it had not been mentioned in the response to question 12 of the 'Talent Screener'. In that regard, it should be recalled that, in accordance with the case-law (see, to that effect, judgments of 20 June 1990, *Burban* v *Parliament*, T-133/89, EU:T:1990:36, paragraphs 31 and 34, and of 28 November 2002, *Pujals Gomis* v *Commission*, T-332/01, EU:T:2002:289, paragraphs 41 to 44), it is for the candidate in a competition to provide the selection board with all the information and documents which he considers relevant to the consideration of his application. Furthermore, as the Commission rightly observes, candidates had their attention drawn, in paragraph 2.4 of the general rules, to the fact that '[the] selection [was] made solely on the basis of responses to specific questions in the "Talent Screener" tab of the online application form'. Accordingly, having regard to those matters, the applicant cannot rely on her experience in Luxembourg as a period of international or multicultural professional experience so as to challenge the selection board's assessment.

86 It must be held that the selection board was entitled, without committing a manifest effort, to take the view that the applicant had not acquired professional experience in a multicultural or international environment of the kind referred to in the competition notice.

87 The fourth complaint made under the second plea must, therefore, be rejected.

88 It follows from the foregoing that, as was concluded following examination of the third complaint, the selection board's assessment of the applicant's answers to question 11 of the 'Talent Screener' was manifestly erroneous. An error of that kind, relating to a section in respect of which candidates could be awarded up to 8 points, was such as to distort the selection board's overall assessment of the applicant's experience, which is reflected in the final score which she obtained for the questions asked in that area. The possibility cannot be ruled out that, had it not been for that error, the applicant might have been able to reach the threshold of 18 points which would have led to her being invited to take part in the other competition tests.

89 To that extent, therefore, the second plea must be upheld, and the contested decision must accordingly be annulled.

The claim for damages

90 The applicant asks the Court to order the Commission to pay the sum of EUR 10 000 by way of compensation for the non-material damage which she claims to have suffered. The Commission responds, in the absence of any unlawfulness in relation to the contested decision, that that claim must be dismissed. In any event, it argues, even supposing the decision to be unlawful, its annulment would suffice to compensate the applicant for the alleged non-material damage.

91 It should be observed that, according to settled case-law, the annulment of an act vitiated by unlawfulness may itself constitute adequate and, in principle, sufficient compensation for any non-material damage which that act may have caused (judgment of 9 November 2004, *Montalto* v Council, T-116/03, EU:T:2004:325, paragraph 127; see also, to that effect, judgment of 9 July 1987, *Hochbaum and Rawes* v *Commission*, 44/85, 77/85, 294/85 and 295/85, EU:C:1987:348, paragraph 22).

92 Nonetheless, the annulment of an act vitiated by unlawfulness cannot itself constitute adequate compensation where, first, the contested act involves an explicitly negative and potentially damaging assessment of the applicant's abilities (see, to that effect, judgments of 7 February 1990, *Culin* v *Commission*, C-343/87, EU:C:1990:49, paragraphs 27 to 29; of 23 March 2000, *Rudolph* v *Commission*, T-197/98, EU:T:2000:86, paragraph 98, and of 13 December 2005, *Cwik* v *Commission*, T-155/03, T-157/03 and T-331/03, EU:T:2005:447, paragraphs 205 and 206) and, secondly, the applicant demonstrates that he has suffered non-material damage which is separable from the unlawfulness giving rise to the annulment and which cannot be fully compensated for by the annulment (judgments of 6 June 2006, *Girardot* v *Commission*, T-10/02, EU:T:2006:148, paragraph 131, and of 19 November 2009, *Michail* v *Commission*, T-49/08 P, EU:T:2009:456, paragraph 88).

93 It is therefore necessary, in the first place, to examine whether, in the present case, the contested decision involves a negative and potentially damaging assessment of the applicant.

94 First, in that regard, in relation to section 5 of the application form, concerning the applicant's experience in internal medicine, the selection board stated that 'the same professional experience [could not] be taken into account twice'. Secondly, in relation to section 10 of the form, relating to the applicant's experience of handling administrative cases and procedures in a medical environment, the selection board stated that 'there was not enough information to enable us … to conclude that this was a distinct professional activity carried out during the period concerned'. Thirdly, in relation to

section 11 of the form, the selection board observed that 'the information was not sufficiently detailed'. Fourthly, in relation to section 12 of the form, it stated that 'working in a unilingual (German) environment was not regarded as relevant experience'.

95 Thus, while the score awarded by the selection board may have given rise to feelings of injustice on the part of the applicant, its decision does not contain any negative assessment which might be damaging to her or might harm her reputation.

96 Consequently, those assessments cannot be regarded as explicitly negative for the purposes of the case-law cited in paragraph 92 above.

97 Turning, secondly, to whether there was non-material damage which is separable from the act on which the annulment is based, it must be observed that the non-material damage suffered by the applicant was a direct result of her unlawful elimination from the competition. It was a direct consequence of the manifest error committed by the selection board, and does not constitute damage which is separable from the unlawfulness on which the annulment is based. In any case, the applicant has not put forward any specific evidence capable of showing that the damage was separable from the unlawfulness.

98 Accordingly, the Court holds that any non-material damage that the applicant might have suffered due to the unlawfulness of those decisions is adequately and sufficiently remedied by their annulment.

99 It follows from the foregoing that the claim for damages must be dismissed.

100 It follows from all the foregoing that the action must succeed in so far as it seeks annulment of the contested decision, and must be dismissed as to the remainder.

Costs

101 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Under Article 134(2) of those Rules, where there is more than one unsuccessful party, the Court is to decide how the costs are to be shared.

102 Since the Commission has, in essence, failed in its submissions, it must be ordered to pay the costs, in accordance with the form of order sought by the applicant.

On those grounds,

THE GENERAL COURT (Ninth Chamber)

hereby:

1. **Annuls the decision by which the selection board of Open Competition EPSO/AD/309/15 (AD 11) — Doctors for the sites of Luxembourg and Ispra (Field: Doctors Luxembourg) refused to admit the applicant to the selection tests organised at the assessment centre of the European Personnel Selection Office (EPSO) assessment centre;**

2. **Dismisses the action as to the remainder;**

3. **Orders the Commission to pay the costs.**

Gervasoni Madise da Silva Passos

Delivered in open court in Luxembourg on 14 December 2017.

[Signatures]