Reports of Cases

DECISION OF THE COURT OF JUSTICE (Reviewing Chamber)

17 September 2018*

(Review)

In Case C-542/18 RX,

PROPOSAL for review made by the First Advocate General, pursuant to Article 62 of the Statute of the Court of Justice of the European Union, on 20 August 2018,

THE COURT (Reviewing Chamber),

composed of M. Ilešič (Rapporteur), President of the Chamber, A. Rosas, C. Toader, A. Prechal and E. Jarašiūnas, Judges,

makes the following

**Decision**

1 The proposal for review made by the First Advocate General concerns the judgment of the General Court of the European Union of 19 July 2018, *Simpson* v *Council* (T-646/16 P, not published, EU:T:2018:493). By that judgment, the General Court annulled the order of the European Union Civil Service Tribunal of 24 June 2016, *Simpson* v *Council* (F-142/11 RENV, EU:F:2016:136), by which the Tribunal dismissed the applicant's action seeking, first, the annulment of the Council's decision of 9 December 2010 rejecting his request for an upgrade to grade AD 9 after he had passed Open Competition EPSO/AD/113/07 organised for the recruitment of heads of unit at grade AD 9 in the field of translation, inter alia those with Estonian as their main language, and of the decision of 7 October 2011 rejecting his complaint and, secondly, an order that the Council of the European Union pay compensation for the harm suffered. That order was issued following the judgment of the General Court of 22 October 2015, *Council* v *Simpson* (T-130/14 P, EU:T:2015:796), setting aside the judgment of the Civil Service Tribunal of 12 December 2013, *Simpson* v *Council* (F-142/11, EU:F:2013:201) and referring the case back to the Civil Service Tribunal.

2 The General Court held that the composition of the panel of judges of the Civil Service Tribunal which had delivered the judgment at first instance had been irregular.

3 It follows from Article 256(2) TFEU that decisions given by the General Court on appeal against decisions of the Civil Service Tribunal may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute of the Court of Justice of the European Union, where there is a serious risk that the unity or consistency of EU law may be affected.

* Language of the case: English.

4 Pursuant to Article 62 of the Statute of the Court of Justice of the European Union, where the First Advocate General considers that there is a serious risk of the unity or consistency of European Union law being affected, he may propose that the Court review the decision of the General Court.

5 In that regard, it is clear from Article 193(4) of the Rules of Procedure of the Court that the Reviewing Chamber of the Court, where it has before it such a proposal to review, is to decide whether the decision of the General Court is to be reviewed and that, when that is the case, the decision to review the decision of the General Court is to indicate the questions which are to be reviewed.

6 In the present case, the Reviewing Chamber considers it necessary to review the judgment of 19 July 2018, *Simpson* v *Council*, (T-646/16 P, not published, EU:T:2018:493).

7 The question which is to be reviewed is set out in point 2 of the operative part of the present decision.

On those grounds, the Court (Reviewing Chamber) decides:

1. **There should be a review of the judgment of the General Court of the European Union of 19 July 2018, *Simpson* v *Council* (T-646/16 P, not published, EU:T:2018:493).**

2. **The review shall concern the question whether, having regard, in particular, to the general principle of legal certainty, the judgment of the General Court of the European Union of 19 July 2018, *Simpson* v *Council* (T-646/16 P, not published, EU:T:2018:493), affects the unity or consistency of EU law in that the General Court, as the court hearing the appeal, held that the composition of the panel of judges of the European Union Civil Service Tribunal which had delivered the order of 24 June 2016, *Simpson* v *Council* (F-142/11 RENV, EU:F:2016:136), had been irregular, on the basis of an irregularity affecting the procedure for the appointment of one of the members of that panel of judges, leading to infringement of the principle of the lawful judge, laid down in the first sentence of the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union.**

   **The review shall involve, in particular, the question whether, like the acts covered by Article 277 TFEU, the appointment of a judge may form the subject matter of a review of indirect legality or whether such a review of indirect legality is — by principle or after the passage of a certain period of time — excluded or limited to certain types of irregularity in order to ensure legal certainty and the force of *res judicata*.**

3. **The persons referred to in Article 23 of the Statute of the Court of Justice of the European Union and the parties to the proceedings before the General Court of the European Union are invited to lodge their written observations on that question at the Court of Justice of the European Union within one month of the service of the present decision.**

Luxembourg, 17 September 2018.

A. Calot Escobar
Registrar

M. Ilešič
President of the Reviewing Chamber