Reports of Cases

ORDER OF THE COURT (Chamber determining whether appeals may proceed)

29 April 2025*

(Appeal – Arbitration clause – Determination as to whether appeals should be allowed to proceed – Article 170b of the Rules of Procedure of the Court of Justice – Request demonstrating than an issue is significant with respect to the unity, consistency or development of EU law – Appeal allowed to proceed in part)

In Case C-881/24 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 19 December 2024,

SC, represented by A. Kunst, Rechtsanwältin,

appellant,

the other party to the proceedings being:

Eulex Kosovo, established in Pristina (Kosovo),

defendant at first instance,

THE COURT (Chamber determining whether appeals may proceed)

composed of T. von Danwitz, Vice-President of the Court, N. Jääskinen and M. Condinanzi (Judge-Rapporteur), Judges,

Registrar: A. Calot Escobar,

having regard to the proposal from the Judge-Rapporteur and after hearing the Advocate General, J. Kokott,

makes the following

* Language of the case: English.

Order

1 By her appeal, SC asks the Court of Justice to set aside the judgment of the General Court of the European Union of 6 November 2024, *SC* v *Eulex Kosovo* (T-242/17 RENV-OP, EU:T:2024:772; 'the judgment under appeal'), by which the General Court set aside the judgment by default of 19 October 2022, *SC* v *Eulex Kosovo* (T-242/17 RENV, EU:T:2022:637), and dismissed SC's claims.

The request that the appeal be allowed to proceed

2 Under point (b) of the second paragraph of Article 58a of the Statute of the Court of Justice of the European Union, an appeal brought against a decision of the General Court relating to the performance of a contract containing an arbitration clause, within the meaning of Article 272 TFEU, is not to proceed unless the Court of Justice first decides that it should be allowed to do so.

3 In accordance with the third paragraph of Article 58a of that statute, an appeal is to be allowed to proceed, wholly or in part, in accordance with the detailed rules set out in the Rules of Procedure of the Court of Justice, where it raises an issue that is significant with respect to the unity, consistency or development of EU law.

4 Under Article 170a(1) of those rules, in the situations referred to in the second paragraph of Article 58a of that statute, the appellant is to annex to the appeal a request that the appeal be allowed to proceed, setting out the issue raised by the appeal that is significant with respect to the unity, consistency or development of EU law and containing all the information necessary to enable the Court of Justice to rule on that request.

5 In accordance with Article 170b(1) and (3) of those rules, the Court's decision on the request that the appeal be allowed to proceed is to be taken as soon as possible in the form of a reasoned order.

Arguments of the appellant

6 In support of her request that the appeal be allowed to proceed, the appellant submits that the first, second and fourth grounds of that appeal, alleging infringement of Article 41(1) of the Charter of Fundamental Rights of the European Union ('the Charter') and the third ground of that appeal, alleging breach of the rights of the defence, raise issues that are significant with respect to the unity, consistency or development of EU law.

7 As regards the first and second grounds of appeal, the appellant argues that the General Court failed to comply with the requirement of impartiality, both in objective and in subjective terms, stemming from Article 41(1) of the Charter.

8 In the first place, she claims, in essence, that the General Court erred in law, in paragraphs 56 and 57 of the judgment under appeal, by conducting a joint review, in the light of Article 41(1) of the Charter, of the second and third pleas in the action at first instance, concerning the alleged existence of a conflict of interest and an alleged failure to comply with the principle of impartiality respectively. In that regard, she submits that the General Court erred, in paragraphs 65 and 66 of the judgment under appeal, in requiring her to demonstrate the existence of 'objective, relevant and consistent evidence', whereas the relevant criteria, identified by the Court of Justice in the judgments of 21 October 2021, *Parliament* v *UZ* (C-894/19 P, EU:C:2021:863, paragraph 54), and

of 11 January 2024, *Hamers* v *Cedefop* (C-111/22 P, EU:C:2024:5, paragraphs 47 and 52), is that of 'legitimate doubt' as to a possible conflict of interest or lack of impartiality on the part of an official.

9 In the second place, the appellant submits that the General Court erred in law, in that it failed to apply the case-law in the judgment of 21 October 2021, *Parliament* v *UZ* (C-894/19 P, EU:C:2021:863, paragraphs 59 and 63), in relation to a lack of objective impartiality, from which it is apparent that a line manager's prior knowledge of the facts of the case and his or her prior participation in administrative procedures can create legitimate doubt as to the latter's impartiality. In the present case, the General Court thus failed to take into consideration both the prior knowledge of the facts of the case by the appellant's line manager and the contention that, because of that knowledge, that line manager might have a preconceived negative opinion about the appellant.

10 According to the appellant, the first and second grounds raise, first, the issue of the appropriate standard of proof to assess a conflict of interest as a 'variant' of the lack of impartiality of an official. That issue is significant with respect to the unity, consistency or development of EU law in that it also arises in other areas of EU law.

11 Secondly, those grounds concern the issue, which is also significant with respect to the unity, consistency and development of EU law, of whether the Court of Justice's case-law in the judgments of 21 October 2021, *Parliament* v *UZ* (C-894/19 P, EU:C:2021:863), and of 11 January 2024, *Hamers* v *Cedefop* (C-111/22 P, EU:C:2024:5), applies not only to administrative investigations in the context of disciplinary proceedings, but also to any other type of administrative procedure, including that which forms the subject matter of the present case.

12 By the third ground of appeal, which concerns the interview in relation to the 2016 internal competition, the appellant claims that the General Court breached the rights of the defence in holding, in paragraph 79 of the judgment under appeal, that there was no need to order the communication of legible interview notes, on account of the purportedly illegible handwritten annotations of her line manager, as well as explanations as to the way in which the marks were established.

13 By the fourth ground of appeal, the appellant submits that providing advance notification of a competition selection board's composition, at least upon the request of a candidate, is part of the impartiality requirement provided for in Article 41(1) of the Charter. Such advance notification enables candidates to challenge the composition of a competition selection board if they suspect bias or a conflict of interest and to submit a complaint at an early stage. According to the appellant, the issue thus raised exceeds the scope of the fourth ground of appeal, inasmuch as the Court of Justice's assessment could provide important guidance for other cases.

Findings of the Court

14 As a preliminary point, it must be recalled that it is for the appellant to demonstrate that the issues raised by her appeal are significant with respect to the unity, consistency or development of EU law (order of 10 December 2021, *EUIPO* v *The KaiKai Company Jaeger Wichmann*, C-382/21 P, EU:C:2021:1050, paragraph 20 and the case-law cited).

15 Furthermore, as is apparent from the third paragraph of Article 58a of the Statute of the Court of Justice of the European Union, read together with Article 170a(1) and Article 170b(4) of the Rules of Procedure, the request that an appeal be allowed to proceed must contain all the information necessary to enable the Court to give a ruling on whether the appeal should be allowed to proceed and to specify, where the appeal is allowed to proceed in part, the pleas in law or parts of the appeal to which the response must relate. Given that the objective of the mechanism provided for in Article 58a of that statute whereby the Court determines whether an appeal should be allowed to proceed is to restrict review by the Court to issues that are significant with respect to the unity, consistency and development of EU law, only grounds of appeal that raise such issues and that are established by the appellant are to be examined by the Court in an appeal (orders of 10 December 2021, *EUIPO* v *The KaiKai Company Jaeger Wichmann*, C-382/21 P, EU:C:2021:1050, paragraph 21, and of 30 January 2023, *bonnanwalt* v *EUIPO*, C-580/22 P, EU:C:2023:126, paragraph 11).

16 Accordingly, a request that an appeal be allowed to proceed must, in any event, set out clearly and in detail the grounds on which the appeal is based, identify with equal clarity and detail the issue of law raised by each ground of appeal, specify whether that issue is significant with respect to the unity, consistency or development of EU law and set out the specific reasons why that issue is significant according to that criterion. As regards, in particular, the grounds of appeal, the request that an appeal be allowed to proceed must specify the provision of EU law or the case-law that has been infringed by the judgment or order under appeal, explain succinctly the nature of the error of law allegedly committed by the General Court, and indicate to what extent that error had an effect on the outcome of the judgment or order under appeal. Where the error of law relied on results from an infringement of the case-law, the request that the appeal be allowed to proceed must explain, in a succinct but clear and precise manner, first, where the alleged contradiction lies, by identifying the paragraphs of the judgment or order under appeal which the appellant is calling into question as well as those of the ruling of the Court of Justice or the General Court alleged to have been infringed, and, second, the concrete reasons why such a contradiction raises an issue that is significant with respect to the unity, consistency or development of EU law (orders of 10 December 2021, *EUIPO* v *The KaiKai Company Jaeger Wichmann*, C-382/21 P, EU:C:2021:1050, paragraph 22, and of 30 January 2023, *bonnanwalt* v *EUIPO*, C-580/22 P, EU:C:2023:126, paragraph 12).

17 In accordance with the principle that the burden of proof lies with the appellant requesting that an appeal be allowed to proceed, the appellant must demonstrate that his or her appeal raises one or more issues that are significant with respect to the unity, consistency or development of EU law, the scope of those criteria going beyond the judgment under appeal and, ultimately, his or her appeal (see, to that effect, orders of 16 November 2022, *EUIPO* v *Nowhere*, C-337/22 P, EU:C:2022:908, paragraph 32, and of 30 January 2023, *bonnanwalt* v *EUIPO*, C-580/22 P, EU:C:2023:126, paragraph 15).

18 In order to demonstrate that that is the case, it is necessary to establish both the existence and the significance of such issues by means of concrete evidence specific to the particular case, and not simply an analysis of a general nature (see, to that effect, orders of 16 November 2022, *EUIPO* v *Nowhere*, C-337/22 P, EU:C:2022:908, paragraph 33, and of 30 January 2023, *bonnanwalt* v *EUIPO*, C-580/22 P, EU:C:2023:126, paragraph 16).

19 In the present case, it should be noted, in the first place, that the request that the appeal be allowed to proceed states clearly and in detail the four grounds relied on in the appeal, alleging, as regards the first, second and fourth grounds, infringement of Article 41(1) of the Charter, and, as regards the third ground, breach of the rights of the defence.

20 In the second place, so far as concerns the first and second grounds of appeal relating to the alleged infringement by the General Court of the requirement of impartiality stemming from Article 41(1) of the Charter, it must be held that the request that the appeal be allowed to proceed sets out, to the requisite standard, the nature of the alleged errors of law the General Court is to have committed, which are claimed to result from infringement of the Court of Justice's case-law, the extent to which those alleged errors affected the outcome of the judgment under appeal and the specific reasons why such errors, if established, each raise an issue that is significant with respect to the unity, consistency or development of EU law.

21 First, as it was observed in paragraph 8 above, it is apparent from that request that the first error of law alleged is that, in paragraphs 65 and 66 of the judgment under appeal, the General Court required, in infringement of the Court of Justice's case-law, that the appellant demonstrate the existence of 'objective, relevant and consistent evidence' of a conflict of interest or bias, whereas the relevant criterion, as it results from that case-law, is that of 'legitimate doubt' as to a possible conflict of interest or lack of impartiality on the part of an official, which cannot be dispelled. According to that request, had such an error not been committed, the form of order sought by the appellant would have been granted.

22 Furthermore, in pointing out that the issue of the appropriate standard of proof for the purposes of assessing the existence of a conflict of interest, as a variation on the lack of impartiality of an official, also arises in other areas of EU law and that the uniform application of that standard contributes to the consistency of EU law, the appellant argues that the issue of law thus raised exceeds the scope of her appeal, since the response to that issue may have consequences which go beyond the present case. In so doing, the appellant sets out the specific reasons why that issue is significant with respect to the unity and the consistency of EU law.

23 Secondly, as it was observed in paragraph 9 of the present order, it is apparent from the request that the appeal be allowed to proceed that the second error of law alleged is derived, in essence, from the fact that the General Court, in paragraphs 81 and 82 of the judgment under appeal, in infringement of the Court of Justice's case-law, failed to find that a line manager's prior knowledge of the facts of the case and his or her prior participation in administrative procedures may give rise to a legitimate doubt as to that line manager's impartiality.

24 Moreover, the appellant observes that by that issue, the question is also raised of whether the Court's case-law in the judgments of 21 October 2021, *Parliament* v *UZ* (C-894/19 P, EU:C:2021:863), and of 11 January 2024, *Hamers* v *Cedefop* (C-111/22 P, EU:C:2024:5), applies not only to administrative investigations in the context of disciplinary proceedings, but also to any other type of administrative procedure. It must be stated that the scope of that question exceeds that of litigation on the civil service or employment contracts.

25 By contrast and in the third place, as regard the third ground of appeal, alleging breach of the rights of the defence and relating to the General Court's refusal to order the communication of legible interview notes and explanations as to the manner in which the marks were established, while, admittedly, the appellant invokes an error of law allegedly committed by the General Court, the fact remains that she restricts herself to setting out that error in a general manner and

submitting arguments of a general nature, without stating the specific reasons why such an error, if established, would raise an issue that was significant with respect to the unity, the consistency or development of EU law, which would justify the appeal being allowed to proceed. Therefore, it must be held that, in that regard, the appellant did not comply with all the requirements referred to in paragraph 16 above.

26 Likewise and in the fourth place, as regards the fourth ground of appeal, concerning the advance notification of the composition of a competition selection board, at least where a candidate so requests, as falling within the requirement of impartiality provided for in Article 41(1) of the Charter, it must be pointed out that the appellant, first, does not identify the error of law that the General Court is to have committed and which allegedly led it to infringe that provision and, secondly, does not set out the reasons why such an error, if established, would raise an issue which is significant with respect to the unity, consistency or the development of EU law. Therefore, it must be held that, in that regard, the appellant did not comply with all the requirements referred to in paragraphs 14 to 16 above.

27 In the light of the matters set out by the appellant, it must be held that the present request that the appeal be allowed to proceed demonstrates to the requisite legal standard that the first and second grounds of appeal raise issues that are significant with respect to the unity, consistency or development of EU law.

28 Having regard to the foregoing considerations, it is appropriate to allow the appeal to proceed in part, restricting the examination of that appeal to the first and second grounds, to which the response must relate, and not to allow it to proceed as to the remainder.

Costs

29 Under Article 170b(4) of the Rules of Procedure of the Court of Justice, where an appeal is allowed to proceed, wholly or in part, having regard to the criteria set out in the third paragraph of Article 58a of the Statute of the Court of Justice of the European Union, the proceedings are to continue in accordance with Articles 171 to 190a of those rules.

30 Under Article 137 of the Rules of Procedure, applicable to proceedings on appeal pursuant to Article 184(1) of those rules, a decision as to costs is to be given in the judgment or order which closes the proceedings.

31 Accordingly, since the request that the appeal be allowed to proceed must be granted, the costs must be reserved.

On those grounds, the Court (Chamber determining whether appeals may proceed) hereby orders:

1. **The appeal is allowed to proceed so far as concerns the first and second grounds, to which the response must exclusively relate.**

2. **The appeal is not allowed to proceed as to the remainder.**

3. **The costs are reserved.**

Luxembourg, 29 April 2025.

A. Calot Escobar
Registrar

T. von Danwitz
President of the Chamber determining whether appeals may proceed