Reports of Cases

JUDGMENT OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL (First Chamber)

11 December 2012*

(Civil service — FRA staff — Members of the temporary staff — Recruitment — Vacancy notice — Rejection of an application)

In Case F-112/10,

ACTION brought under Article 270 TFEU, applicable to the EAEC Treaty pursuant to Article 106a thereof,

Cornelia Trentea, a member of the contract staff of the European Union Agency for Fundamental Rights, residing in Vienna (Austria), represented by L. Levi and M. Vandenbussche, lawyers,

applicant,

v

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

defendant,

THE CIVIL SERVICE TRIBUNAL (First Chamber)

composed of H. Kreppel (Rapporteur), President, E. Perillo and R. Barents, Judges,

Registrar: J. Tomac, Administrator,

having regard to the written procedure and further to the hearing on 26 October 2011,

gives the following

Judgment

1 By application received at the Registry of the Tribunal on 2 November 2010, Ms Trentea claims that the Tribunal should, first, annul the decisions of the European Union Agency for Fundamental Rights ('the FRA' or 'the Agency') rejecting her application for the post of administrative assistant within the Administration department and appointing another candidate to that post and, secondly, order the FRA to pay her damages.

* Language of the case: English.

Legal context

2 Under the terms of the first paragraph of Article 27 of the Staff Regulations of Officials of the European Union ('the Staff Regulations'):

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

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

'For the purposes of these conditions of employment, "temporary staff" means:

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

…'

4 Article 12(5) of the CEOS provides:

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

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

6 Article 24(1) of Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights provides:

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

7 On the basis of Article 110 of the Staff Regulations and of Article 12(5) of the CEOS, the Executive Board of the FRA adopted Decision No 2009/3 of 18 November 2009 on general implementing provisions on the procedure governing the engagement and the use of temporary agents at the FRA ('Decision 2009/3').

8 Article 1 of Decision No 2009/3 states that that decision applies to temporary staff as referred to in Article 2a of the CEOS.

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

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

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

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

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

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

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

…

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

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

…

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

…

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

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

Background to the dispute

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

13 On 16 November 2009, the FRA published a vacancy notice on its website for the recruitment, for an indefinite period, of a temporary agent within the meaning of Article 2(a) of the CEOS, for the post of administrative assistant in the assistants' function group (AST) at Grade AST4 in the Procurement and Finance team ('the vacancy notice').

14 In the section entitled 'Functions and Duties', the vacancy notice provided that the holder of the post would – under the supervision of the Finance and Procurement team leader – be responsible for, inter alia, assistance in procurement and purchasing procedures, preparation and follow-up of calls for tender, contacts with suppliers, preparation of procurement contracts, processing of financial transactions in accordance with the FRA's financial rules, and assisting in the preparation and execution of the FRA's budget.

15 The section of the vacancy notice entitled 'Job Requirements' made a distinction between, on the one hand, the 'Eligibility criteria', relating, in essence, to the level of education required and the minimum linguistic knowledge, and, on the other, the 'Selection criteria', which were themselves subdivided into those which were 'Essential' and those which were 'Advantageous'. One of the 'Essential' requirements was 'Professional experience and knowledge in the area mentioned under "Functions and duties" of a minimum of 3 years'. One of the 'Advantageous' characteristics was 'Knowledge of ABAC Workflow, ABAC Contracts applications and Business Objects reporting tool'.

16 The selection procedure set out in the vacancy notice was to be carried out in several steps. Accordingly, it was provided that:

— the eligibility of candidates would be assessed on the basis of compliance with all the eligibility requirements by the closing date for the submission of applications;

— the applications of eligible candidates would be examined in accordance with the selection criteria as specified in the vacancy notice and a Selection Committee would select the candidates who had obtained 'at least 60% of the total points available';

— the candidates who had obtained at least 60% would be invited to attend a written test and an oral test;

— the candidates who passed those tests would be placed on a reserve list drawn up by the Selection Committee and proposed to the appointing authority of the FRA ('the appointing authority'), which would decide on the establishment of the reserve list;

— on the basis of the reserve list, the appointing authority could offer a contract of employment.

17 The applicant applied for the post referred to in the vacancy notice.

18 By note of 27 April 2010, the applicant was invited to take the written and oral tests. Those tests took place on 18 May 2010.

19 By letter of 11 June 2010 from the Head of the Human Resources and Planning Department, the applicant was informed that she had been placed on the reserve list of candidates for the post referred to in the vacancy notice.

20 By letter of the same day, the applicant was invited to an interview with the Director of the FRA. That interview took place on 16 June 2010.

21 By letter of 5 July 2010 from the Head of the Human Resources and Planning Department, the applicant was informed of the appointing authority's decision to recruit another candidate, 'whose profile better suited the required qualifications' ('the recruitment decision') and, consequently, to reject the applicant's own application ('the decision to reject the application').

22 By note of 6 July 2010, the applicant wrote to the Head of the Human Resources and Planning Department, asking him to send her all the information concerning the reasons for the rejection of her application and the reasons for which the qualifications presented by the successful candidate – who was not a member of the FRA's staff – were preferred to her own. She also requested that the marks she had received in the written and oral tests be communicated to her, as well as those of the successful candidate.

23 By email of the same day, the Head of the Human Resources and Planning Department notified the applicant that, as 'the deliberations of the [Selection Committee] are confidential, [he could not] tell [her] the marks [she had] received', while informing her that she had 'achieved points above the threshold'. That email did not reply to the applicant's question concerning the reasons for which the qualifications presented by the successful candidate had been preferred to her own.

24 By note of 13 July 2010, the applicant lodged a complaint under Article 90(2) of the Staff Regulations against the decision to reject the application and against the recruitment decision.

25 That complaint was rejected by a decision of the Director of the FRA of 22 July 2010, acting as the appointing authority ('the decision rejecting the complaint'). That decision stated that 13 candidates had been invited to take the written and oral tests; that the applicant – who had passed the written test and obtained 37.1 points in the oral test, that is to say, more than the minimum number of points required (31.8 points) – had been placed on the reserve list together with four other candidates, and that she had been invited to an interview with the Director of the FRA.

26 On 6 September 2010, the applicant, after indicating that she had read the decision rejecting her complaint, asked that the answers she had given in the written and oral tests be re-examined by individuals who – unlike some members of the Selection Committee, in her opinion – had real knowledge of the areas examined in the tests. By another note, dated 13 September 2010, intended to 'complete' the complaint of 13 July 2010 on the basis of supposedly new facts, the applicant claimed that the successful candidate had not fulfilled one of the selection criteria set out in the vacancy notice, namely knowledge, in the field of financial transaction processing, of the ABAC Workflow and ABAC Contracts applications.

27 By letter of 27 September 2010, the appointing authority rejected the requests made in the notes of 6 and 13 September 2010 for review of the decision rejecting the complaint, and maintained the position expressed in the decision of 22 July 2010 rejecting the complaint.

Procedure and forms of order sought

28 The present action was brought on 2 November 2010.

29 The applicant claims that the Tribunal should:

— annul the decision to reject the application, and the recruitment decision;

— if necessary, annul the decision rejecting the complaint and the decision of 27 September 2010 rejecting the requests for review of that decision;

— order the FRA to pay compensation in respect of the material damage sustained, corresponding to the difference between her current salary and the salary for the post to which the vacancy notice referred, until retirement age, including all allowances and pension rights;

— order the FRA to pay compensation in respect of non-material damage, assessed *ex aequo et bono* at EUR 10 000;

— order the FRA to pay the costs.

30 The FRA contends that the Tribunal should:

— dismiss the application;

— order the applicant to pay the costs.

31 Subsequent to the hearing, several measures of organisation of procedure were ordered by the Tribunal. The parties complied with those measures.

Law

Claims for annulment of the decision rejecting the complaint, and the decision of 27 September 2010

32 According to established case-law, claims for annulment formally brought against a decision to reject a complaint have the effect, where that decision lacks any independent content, of bringing before the Tribunal the act against which the complaint was submitted (see, to that effect, judgment of 17 January 1989 in Case 293/87 *Vainker* v *Parliament*, paragraph 8). In those circumstances, as both the decision rejecting the complaint and the decision of 27 September 2010 rejecting the requests set out in the notes of 6 and 13 September 2010 for review of the decision rejecting the complaint lack any independent content, the claims for annulment must be regarded as being brought solely against the decision to reject the application, and the recruitment decision.

Claims for annulment of the decision to reject the application, and the recruitment decision

33 The applicant raises six pleas in law, alleging, respectively:

— breach of Article 2 of Decision 2009/3;

— irregularity of the vacancy notice, breach of Decision 2009/3, substantive irregularities in the conduct of the selection procedure, breach of the principle of equality as between candidates, and breach of the principles of objectivity, transparency and legal certainty;

— breach of Article 3(2)(a) of Decision 2009/3;

— irregular composition of the Selection Committee, breach of the principles of good administration, objectivity and impartiality of the selection, and misuse of power;

— breach of the duty to state reasons;

— manifest error of assessment.

34 Furthermore, at the hearing, the applicant raised a seventh plea in law, alleging the absence from the Selection Committee of a Staff Committee representative.

Plea in law alleging breach of Article 2 of Decision 2009/3

– Arguments of the parties

35 The applicant submits that, as a member of the FRA's staff, her application should have been considered before those of external candidates. In the applicant's view, by failing to give her the benefit of that priority, the FRA breached Article 2 of Decision 2009/3. She submits that a comparison of her merits with those of external candidates could have been undertaken only if none of the internal candidates was considered to be suitable and qualified for the post.

36 The FRA contends that the applicant cannot rely on breach of Article 2 of Decision 2009/3, since – as is clear from Article 1 thereof – that Decision applies only to individuals who are already members of the temporary staff within the meaning of Article 2(a) of the CEOS.

37 In any event, the FRA submits that the obligation set out in Article 2 of Decision 2009/3, as regards recruitment for long-term employment posts, to consider internal candidates first, applies only where, before its external publication, the vacancy notice is published simultaneously internally in the FRA and in the interagency job market, and not where, as in the present case, the vacancy notice was only published externally.

38 The FRA adds that to interpret Article 2 of Decision 2009/3 as meaning that the FRA could consider external candidates only if none of the internal candidates met the criteria set out for the post in question would go against the very idea of a selection procedure. It submits that such an interpretation would amount to ignoring its need to increase its staff rapidly and significantly.

– Findings of the Tribunal

39 It is necessary, first of all, to determine whether, as the applicant claims and FRA contests, Decision 2009/3 was applicable to the selection procedure in question.

40 In that respect, it must be stated that, in accordance with Article 1 of Decision 2009/3, that decision concerns temporary staff within the meaning of Article 2(a) of the CEOS, and that Articles 2 and 3 of Decision 2009/3 are specifically intended to establish the conditions and methods of recruitment for those agents.

41 Accordingly, the FRA was required, in the selection procedure opened by the publication of the vacancy notice, to comply with the provisions of Decision 2009/3.

42 It is now necessary to consider whether, in the present case, the FRA misconstrued the provisions of Decision 2009/3 and, in particular, Article 2 of that decision.

43 The first sentence of the second paragraph of Article 2 of Decision 2009/3 provides that '[l]ong-term employment posts may be filled through an internal engagement procedure or via the Interagency Job Market and then through an external engagement procedure'. Moreover, the first sentence of the third paragraph of Article 2 of Decision 2009/3 provides that '[t]he publication of a long-term employment post may be done simultaneously internally in the Agency and in the Interagency Job Market, before making an external publication of the vacant post'.

44 The applicant infers from those provisions that, where the FRA intends to fill a long-term employment post, it can consider the merits of external candidates only where it has been found that no internal candidate, or at least no candidate on the Interagency Job Market, is 'suitable and qualified for the post'.

45 However, such an interpretation of Article 2 of Decision 2009/3 cannot be accepted.

46 The provisions of Article 2 of Decision 2009/3 cannot be read as compelling the FRA, where it seeks to fill a long-term employment post, to open or exhaust an internal recruitment procedure or a recruitment procedure in the Interagency Job Market before opening an external procedure. The use of the verb 'may' both in the first sentence of the second paragraph of Article 2 of Decision 2009/3 and in the first sentence of the third paragraph of Article 2 of Decision 2009/3 – provisions which have just been quoted in paragraph 43 above – shows only that, where the FRA considers that a long-term employment post could, in all likelihood, be filled by an internal recruitment procedure or a Interagency Job Market recruitment procedure, it is entitled to use either of those procedures. Accordingly, where the FRA considers that, on the contrary, neither of those two recruitment procedures is sufficiently likely to achieve that aim, it is entitled to have recourse, from the outset, to an external recruitment procedure.

47 Moreover, to interpret Article 2 of Decision 2009/3 as obliging the FRA to exhaust an internal recruitment procedure or an Interagency Job Market recruitment procedure before opening an external recruitment procedure, would be contrary to the general scheme of that provision, which is intended to enable the FRA – whose workforce is scheduled to be increased – to recruit staff rapidly in order to enable it to fulfil all its tasks.

48 Nor can the applicant rely, by analogy, on the interpretation of Article 29(1) of the Staff Regulations, concerning the recruitment of officials, as developed by the case-law. The Courts of the European Union have consistently held that, although Article 29(1)(a) of the Staff Regulations requires the appointing authority to consider the possibilities of transfer, appointment in accordance with Article 45a of the Staff Regulations or promotion within the institution, before going on to the following stage (reviewing requests for inter-institutional transfer, consideration of the possibility of organising an internal competition and, if necessary, organising an open competition), that provision does not preclude, for example, the simultaneous publication of an internal vacancy notice and an inter-institutional vacancy notice for the same post (see, to that effect, judgment of 12 February 1992 in Case T-52/90 *Volger* v *Parliament*, paragraph 20).

49 Accordingly, the fact that, in the present case, the FRA had, from the outset, opened an external recruitment procedure to fill the post referred to in the vacancy notice does not, in itself, constitute a breach of Article 2 of Decision 2009/3.

50 Lastly, the applicant is incorrect in claiming that, at the very least, her application should have been considered before those of the external candidates, including that of the candidate who was recruited to fill the post referred to in the vacancy notice. Although it is true that the second sentence of the third paragraph of Article 2 of Decision 2009/3 provides that 'in the case of simultaneous publication internally and in the Interagency Job Market, the applications of the internal candidates shall be considered first', such a provision does not apply where, as in the present case, the FRA has from the outset opened an external recruitment procedure to fill a vacant post.

51 It follows that the plea alleging breach of Article 2 of Decision 2009/3 must be rejected.

Plea in law alleging the irregularity of the vacancy notice, breach of Decision 2009/3, substantive irregularities in the conduct of the selection procedure, breach of the principle of equality as between candidates, and breach of the principles of objectivity, transparency and legal certainty

– Arguments of the parties

52 This plea is, in essence, subdivided into three principal submissions.

53 First, the applicant submits that the vacancy notice did not provide any sufficiently precise information regarding the method of assessment of candidates. While the vacancy notice indicated that candidates who obtained 60% of the 'total points' in respect of the selection criteria set out in that notice would be invited to participate in the written and oral tests, it gave no indication as to how those 'total points' would be distributed. Nor, by the same token, did the vacancy notice provide any information on the assessment of the written and oral tests. The applicant infers from this that the selection procedure was unlawful, owing to the lack of a pre-established framework likely to ensure equality as between the candidates and the objectivity and transparency of the recruitment procedure.

54 Secondly, the applicant submits that the method of assessment of candidates was not only unspecific but also unsuitable for the selection of candidates in an appropriate manner. Thus, the points awarded to candidates as regards the selection criteria were finally not taken into consideration for the ranking of candidates on the reserve list. Furthermore, with regard to the written test, any candidate who obtained the minimum score in that test was allowed to proceed to the oral test, irrespective of the candidates' different levels.

55 Thirdly, the applicant submits that, as neither the vacancy notice nor even Decision 2009/3 provides for a final interview with the Director of the FRA, such an interview was unlawfully added to the selection procedure.

56 The FRA contends that the plea should be rejected.

– Findings of the Tribunal

57 As regards the submission that the vacancy notice was not sufficiently specific to ensure the objectivity and transparency of the selection procedure, it should be recalled that the purpose of a vacancy notice is, first, to give those interested the most accurate information possible as to the conditions of eligibility for the post to be filled, in order to enable them to decide whether they should apply for it and, secondly, to set the legal framework in the light of which the appointing authority intends to undertake a comparison of the candidates' merits. That second purpose means that sufficiently specific requirements must be set out to enable that comparison to be carried out and to justify the choice made (see, to that effect, judgment of 19 February 1998 in Case T-3/97 *Campogrande* v *Commission*, paragraph 100).

58 In the present case, it is clear from the documents before the Tribunal that the vacancy notice satisfied the requirements laid down in the case-law referred to above, since it includes a specific description both of the profile of the post at issue and the essential requirements and the 'advantageous characteristics' for filling that post, and that it set out the various steps of the selection procedure. Moreover, the fact that the vacancy notice did not include information relating to the weighting assigned to each of the selection criteria or the method of assessing the written and oral tests does not mean that the choice of the successful candidate must have been made without account being taken of the selection criteria; rather, it shows only that, within the legal framework established by the vacancy notice, the appointing authority intended to allow the Selection Committee some discretion in the weighting to be assigned to each of the selection criteria and in the procedures for the written and oral tests.

59 Nor can the Tribunal uphold the submission that the method of assessment of the candidates was irregular.

60 In that respect, the applicant first points out that the vacancy notice provided that all candidates who obtained at least 60% of the 'total points' would be invited to take a written and oral test. She infers from this that, at the subsequent steps of the selection procedure and, in particular, for the adoption of the reserve list, those criteria were not taken into consideration. However, such an argument must

be rejected, since it is clear from the documents before the Tribunal that, in order to award the marks for the oral test, the Selection Committee based its findings, inter alia, on the compliance by the candidates with the selection criteria.

61 Moreover, as regards the applicant's criticisms of the written test, it is clear from the decision rejecting the complaint that this test was composed of three separate exercises – the first consisting in a case study, the second comprising six questions on the European Union and the FRA, and the third comprising seven questions relating to professional issues – and that a pass in the written test was contingent upon the candidate obtaining a minimum mark indicating that at least two out of the three exercises had been carried out successfully. However, contrary to the assertions made by the applicant, such a method of assessment, the sole purpose of which is to verify the candidates' knowledge and abilities in various fields, was not unsuitable for the selection of candidates in an appropriate manner, even though it would allow all candidates who obtained the minimum score to proceed to the oral test, irrespective of their different levels.

62 The third submission, to the effect that the director of the FRA, acting as appointing authority, had organised an interview with each of the candidates placed on the reserve list, without having a legal basis for doing so, must also be rejected. It should be recalled that, within the scope of the discretion which the appointing authority enjoys in defining the rules for the comparative consideration of candidates, the appointing authority itself and the various higher-ranking officials consulted in the course of the promotion or transfer procedure in question must consider at each stage in the examination of the applications whether it is necessary to obtain further information or form further assessments through interviews with all the candidates or only with some of them, in order to be able to reach a decision in full knowledge of the facts (judgment of 11 July 2007 in Case T-93/03 *Konidaris* v *Commission*, paragraph 107 and the case-law cited).

63 In those circumstances, although neither the vacancy notice nor Decision 2009/3 expressly provided for a final interview with the Director of the FRA, he cannot be criticised for organising such an interview with the candidates on the reserve list, in order to obtain further information or form further assessments.

64 After all, the fact that the Director of the FRA organised an oral interview did not have substantial consequences for the outcome of the recruitment procedure, since it is clear from the documents before the Tribunal that the successful candidate is the candidate who obtained the highest marks in the oral test.

65 Consequently, the second plea in law must be rejected as unfounded.

Plea in law alleging breach of Article 3(2)(a) of Decision 2009/3

– Arguments of the parties

66 The applicant submits that the FRA failed to respect either the rule of the anonymity of candidates, or the rule that written tests must be organised simultaneously for all candidates. Article 3(2)(a) of Decision 2009/3 provides that those rules, which are set out in section 6.1 of the General rules governing open competitions adopted by EPSO (OJ 2009 C 47 A, p. 1, 'EPSO General Rules'), are to apply to selection procedures organised by the FRA. The applicant adds that other serious irregularities vitiated the selection procedure at issue, such as the lack of supervision of candidates during the written test and the fact that she was provided with a faulty computer.

67 The FRA contends that the plea in law should be rejected.

– Findings of the Tribunal

68 It should be recalled that Article 3(2)(a) of Decision 2009/3 provides that '[t]he agency may organise a selection procedure, in which it must apply similar standards to those applied in general officials' competitions organised by EPSO'.

69 Contrary to the assertions made by the applicant, the use in Article 3(2)(a) of Decision 2009/3 of the adjective 'similar' shows that the FRA did not intend to make it a strict rule that the selection procedures which it organises must comply with the standards laid down by EPSO for competitions for the recruitment of officials, but wished only to provide, in those procedures, every guarantee of impartiality, objectivity, and equal treatment.

70 It follows that the applicant cannot validly claim that, in the selection procedure at issue, the FRA did not strictly apply the EPSO General Rules, including section 6.1.1, according to which '[t]he written tests will be held simultaneously at one or more centres in the European Union' or section 6.1.2, which provides that '[t]ests are marked anonymously, without reference to candidates' names' and that '[c]opies of the written tests are sent by EPSO to markers with a secret number, so that candidates' identity is not revealed'.

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

72 Lastly, the applicant has not produced any evidence to show that the computer with which she was provided for the test was faulty.

73 The plea alleging breach of Article 3(2)(a) of Decision 2009/3 must accordingly be rejected.

Plea in law alleging irregular composition of the Selection Committee, breach of the principles of good administration, objectivity, and impartiality of the selection, and misuse of power

– Arguments of the parties

74 The applicant submits that the composition of the Selection Committee was irregular since, in contrast with previous recruitment procedures for members of temporary staff for the Finance and Procurement team, none of its members was a procurement specialist.

75 The applicant submits, moreover, that there is doubt as to the objectivity and impartiality of the Chairman and one of the members of the Selection Committee – namely, the Head of the Administration Department, and the Finance Manager of the FRA, respectively – as those two individuals, she claims, engaged in 'improper conduct' towards her, amounting to psychological harassment, for a long period before the recruitment procedure. The applicant adds that the Head of the Administration Department, in respect of whom she had lodged a Request for Assistance under Article 24 of the Staff Regulations on 6 August 2010, even continued to engage in 'improper conduct' during the oral test, by, inter alia, limiting the time allowed for the applicant to reply and by distorting the pre-established questions.

76 Lastly, the applicant states that, before being recruited by the FRA, the successful candidate had worked at the European Agency for Reconstruction (EAR). She submits that both the Head of the Administration Department and the Finance Manager of the FRA also worked at EAR before joining the FRA.

77 The FRA contends that the plea in law should be rejected.

– Findings of the Tribunal

78 As regards the submission that members of the Selection Committee had insufficient expertise to assess the candidates' merits in the key area of the post to be filled, namely the field of finance and procurement, it should be recalled, first, that the vacancy notice provided, in the section 'Functions and Duties', that the holder of the post would be responsible for, inter alia, assistance in procurement and purchasing procedure, preparation and follow-up of calls for tenders, contacts with suppliers, preparation of procurement contracts, processing of financial transactions in accordance with the FRA's financial rules and assisting in the preparation and execution of the FRA's budget. It follows that the members of the Selection Committee – or, at the very least, one of them – had demonstrably to have expertise in the above areas in order to undertake an objective assessment of the candidates' knowledge and their suitability for the post.

79 In the present case, contrary to the assertions made by the applicant, it is clear from the documents before the Tribunal that two of the four members of the Selection Committee – namely, the Head of the 'Administation' department of the FRA and the Financial Director of the FRA – had in-depth knowledge and experience in the area of procurement.

80 The first submission must therefore be rejected.

81 As regards the second submission, that there is a doubt as to the objectivity and impartiality of the Chairman and one of the members of the Committee – namely, the Head of the Administration department, and the Finance Manager of the FRA, respectively – there is nothing in the documents before the Tribunal to suggest that, before or during the selection tests, those individuals subjected the applicant to psychological harassment or engaged in 'improper conduct' towards her.

82 The second submission must also be rejected.

83 As regards the third submission, the fact that, before being hired for the post referred to in the vacancy notice, the successful candidate had worked in an agency of the European Union where both the Head of the Administration Department and the Finance Manager of the FRA had also worked before joining the FRA does not constitute evidence that the decision rejecting the application or the recruitment decision were vitiated by misuse of power.

84 The third submission cannot succeed either.

85 It follows that the plea in law alleging irregular composition of the Selection Committee, breach of the principles of good administration, objectivity, and impartiality of the selection, and misuse of power must be rejected.

Plea in law alleging breach of the duty to state reasons

– Arguments of the parties

86 The applicant submits that the appointing authority failed to comply with its duty to state reasons. She submits that the appointing authority did not provide her with any information concerning the method of assessment of each of the tests; nor did it explain to her why she only received 37.1 points in the oral test. Likewise, despite her request, the appointing authority refused to disclose to her the score obtained by the successful candidate, which, the applicant submits, prevented her from understanding why that candidate was deemed more suitable for the post at issue.

87 Lastly, the applicant submits that, by failing to provide her with such information, the appointing authority acted in breach of the principle of good administration laid down in Article 41 of the Charter of Fundamental Rights ('the Charter'), and the principle of equal treatment.

88 The FRA contends that the plea in law should be rejected.

– Findings of the Tribunal

89 It should be recalled that, according to settled case law, the duty to state reasons laid down in the second paragraph of Article 25 of the Staff Regulations is intended, first, to provide the person concerned with details sufficient to allow him to ascertain whether the measure is well founded and whether it is appropriate to bring proceedings before the Tribunal and, secondly, to enable the Tribunal to review the legality of the measure (see, by way of example, judgment of 15 September 2005 in Case T-132/03 *Casini* v *Commission*, paragraph 30 and the case-law cited). Moreover, Article 41(2)(c) of the Charter provides that the right to good administration includes, inter alia, 'the obligation of the administration to give reasons for its decisions'.

90 However, in the context of a recruitment procedure to fill a vacant post, as in the present case, such a duty to state reasons must be reconciled with observance of the secrecy surrounding the proceedings of selection committees, which precludes disclosure of the attitudes adopted by individual members of the committee and disclosure of factors relating to individual or comparative assessments of candidates (see, by analogy, judgment of 14 November 2006 in Case T-494/04 *Neirinck* v *Commission*, paragraph 73).

91 In the present case, after indicating to the applicant, in the decision to reject the application, that the 'profile [of the successful applicant] better suited the required qualifications' and then specifying, in the email of 6 July 2010, that the applicant 'achieved points above the threshold', the appointing authority subsequently provided the applicant with additional information, in particular in the decision of 22 July 2010 rejecting the complaint. Thus, in the latter decision, the appointing authority indicated that 13 candidates had been invited to take the written and oral tests; that the applicant had passed the written test, obtaining the average mark in two of the three questions; that she had obtained 37.1 points in the oral test, that is to say, more than minimum number of points required (31.8 points); and that, subsequently, she had been placed on the reserve list together with four other candidates. Lastly, at the hearing, the FRA submitted a document from which it is clear that, in the context of the oral test, the applicant had been placed fourth, behind candidates who had obtained, respectively, 42.8, 39.3 and 38.1 points, and that the candidate placed first was the candidate who was chosen for the post at issue.

92 In those circumstances, the FRA satisfied its duty to state reasons.

93 That finding is not called into question by the other arguments put forward by the applicant.

94 The applicant cannot take issue with the appointing authority for failing to specify to her the methods of assessment for each of the tests, since compliance with the duty to state reasons does not require that such information be communicated to the party concerned.

95 Furthermore, although the applicant criticises the appointing authority for refusing to provide her with the marks obtained by the successful candidate, that submission must be rejected in any event as having no factual basis. As has been noted, the FRA sent the applicant a document showing that the successful candidate had obtained 42.8 points, that is to say, the highest marks of the candidates invited to the oral test.

96 Consequently, the plea in law alleging breach of the duty to state reasons must be rejected.

Plea in law alleging manifest error of assessment

– Arguments of the parties

97 The applicant submits that the appointing authority should have selected her application and submits in that respect that she satisfied all the selection criteria, including those relating to professional experience and knowledge of the processing of financial transactions as carried out at FRA. In contrast, according to the applicant, the successful candidate did not show that she had such knowledge or experience.

98 The applicant adds that her university qualifications are higher than those of the successful candidate and that she has more than 24 years of experience in the field of procurement and contracts.

99 Lastly, the applicant submits that the appointing authority did not take into consideration the fact that, although she is a member of the contract staff in grade AST 4, since 7 July 2008 she has taken on procurement-related tasks which were previously entrusted to a member of the contract staff in grade AST 7.

100 The FRA contends that the plea should be rejected.

– Findings of the Tribunal

101 According to settled case-law, in exercising the discretion available to it regarding an appointment or promotion, the administration must examine carefully and impartially all the relevant parts of each application and meticulously observe the requirements laid down in the vacancy notice, thus being required to reject any candidate who does not meet those requirements. The vacancy notice constitutes a legal framework which the administration imposes on itself and to which it must adhere strictly (see, to that effect, judgment of 30 October 1974 in Case 188/73 *Grassi* v *Council*, paragraphs 26, 38 and 41; judgment of 18 September 2003 in Case T-73/01 *Pappas* v *Committee of the Regions*, paragraph 54; judgment of 9 November 2004 in Case T-116/03 *Montalto* v *Council*, paragraph 65; and judgment of 4 May 2005 in Case T-30/04 *Sena* v *EASA*, paragraph 80).

102 As regards the question whether there was any error in the choice of the successful candidate, such an error must be manifest and must exceed the wide discretion enjoyed, within the legal framework laid down in the vacancy notice, by the administration in comparing the merits of candidates and in assessing the interests of the service. The Tribunal's review must accordingly be confined to the question whether, in the light of the various considerations which influenced the administration in making its assessment, the administration has remained within reasonable bounds and has not used its power in a manifestly incorrect way or for purposes other than those for which that power was conferred upon it (judgment of 6 May 2009 in Case F-39/07 *Campos Valls* v *Council*, paragraph 43). The Tribunal cannot therefore substitute its assessment of the qualifications and merits of the candidates for that of the administration where there is no evidence that, in assessing those qualifications and merits, the administration made a manifest error of assessment (see, for example, judgment of 4 February 1987 in Case 324/85 *Bouteiller* v *Commission*, paragraph 6).

103 In the present case, the applicant has not established that the appointing authority made a manifest error of assessment.

104 Even though the applicant argues that, as required by the vacancy notice, she has at least three years' professional experience and knowledge of the processing of financial transactions as carried out at the FRA – that is to say, using the ABAC IT system – and adds that, since 2008, the Director of the FRA has entrusted her with several tasks which required expertise in that IT tool, it should be recalled that the mere fact that the applicant has obvious and acknowledged merits does not exclude the possibility

that, in the context of consideration of the candidates' comparative merits, other candidates may have greater merits. Likewise, the fact that the applicant satisfies all the criteria in the vacancy notice does not in itself suffice to prove that the appointing authority made a manifest error of assessment.

105 Moreover, although it is true that the successful candidate was not familiar with the ABAC Workflow and ABAC Contracts applications, it should be pointed out that, according to the vacancy notice, knowledge of those applications did not constitute an essential selection criterion, but merely an 'advantageous' characteristic. In addition, it is clear from the documents before the Tribunal that the successful candidate had relevant experience in the field of financial transaction processing in general, since, before being recruited by the FRA, she had worked for four years as an agent responsible for, inter alia, financial aspects of calls for tenders at the EAR.

106 Lastly, even if the applicant has university qualifications of a higher level than those obtained by the successful candidate, that fact would not constitute a conclusive assessment factor which could override the interests of the service, which is the decisive criterion determining the choice of candidates to fill a vacant post.

107 In those circumstances, the plea in law alleging manifest error of assessment must be rejected.

Plea in law alleging the absence from the Selection Committee of a Staff Committee representative

– Arguments of the parties

108 At the hearing, the applicant submitted that, in breach of Article 3 of Decision 2009/3, none of the members of the Selection Committee was designated by the Staff Committee. She claims that, although the Staff Committee designated an agent to represent it on the Selection Committee, that agent participated in the work of the Selection Committee only as an observer, and not as a full member, and did not have a vote as regards the assessment of the candidates' merits. The applicant adds that it was not until she read the defence that she became aware of that irregularity.

109 The FRA contends that the plea is inadmissible, as it was not raised in the application, and submits that, in any event, it should be rejected.

– Findings of the Tribunal

110 It follows from Article 3(1)(b) of Decision 2009/3, read in conjunction with Article 3(2)(c) thereof, that, where the FRA organises a selection procedure for long-term employment posts, it must set up a Selection Committee consisting of at least three members, including one member from the Human Resources and Planning department of the Agency, one member from the department concerned by the recruitment procedure, and one person designated by the Staff Committee.

111 Having recalled the legal framework, it is necessary, as a preliminary, to examine the admissibility of the plea in law put forward by the applicant.

112 Under Article 35(1)(e) and Article 43(1) of the Rules of Procedure of the Civil Service Tribunal, the application initiating proceedings must state the pleas in law and the arguments of fact and law relied on, and no new plea in law may be introduced after the first exchange of pleadings unless it is based on matters of law or of fact which have come to light in the course of the procedure.

113 However, a plea which constitutes an amplification of a plea previously made, either expressly or by implication, in the original application and is closely linked to it must be declared admissible (judgment of 30 September 2010 in Case F-29/05 *Vivier* v *Commission*, paragraph 32).

114 In the present case, it is clear from the documents before the Tribunal, and in particular from the application, that the plea in law alleging the absence from the Selection Committee of a Staff Committee representative is not among the pleas in law and submissions set out by the applicant in her application and that it is not closely linked with any of the pleas in law and submissions relied on in the application.

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

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

117 As none of the pleas in law raised against the contested decision have been upheld, the claim for annulment must be rejected.

Claim for compensation

Arguments of the parties

118 The applicant submits that, as a result of the unlawful nature of the decision to reject the application and the recruitment decision, she suffered significant material damage in terms of remuneration. If, following the annulment of those decisions, her retroactive appointment to the post in question should prove too difficult a solution to implement, the applicant claims that the FRA should be ordered to pay her the difference between her current salary and the salary she would have obtained had she been appointed to the post at issue, until retirement age, including all allowances and pension rights, or a percentage of that amount.

119 The applicant also submits that she has suffered a non-material damage, stressing that the unlawfulness vitiating the contested decisions came about in a wider context of psychological harassment. She claims that the Tribunal should order the FRA to pay her EUR 10 000 by way of compensation for that non-material damage.

120 The FRA contends that the claim for damages should be rejected.

Findings of the Tribunal

121 According to consistent case-law relating to the civil service, a claim for compensation for damage must be dismissed where there is a close connection between that claim and a claim for annulment which has been rejected as unfounded (judgment of 10 June 2004 in Case T-330/03 *Liakoura* v *Council*, paragraph 69 and the case-law cited).

122 In the present case, the examination of the submissions put forward in support of the claim for annulment has not revealed any unlawfulness. Moreover, the applicant has failed to establish that the contested decisions came about in a context of psychological harassment. As the FRA has not committed any fault such as to incur liability, the claim for compensation must be dismissed as unfounded.

Costs

123 Under Article 87(1) of the Rules of Procedure of the Civil Service Tribunal, subject to the other provisions of Chapter 8 of Title 2 of those Rules, 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 87(2), the Tribunal may, if equity so requires, decide that an unsuccessful party is to pay only part of the costs or even that that party is not to be ordered to pay any.

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

On those grounds,

THE CIVIL SERVICE TRIBUNAL (First Chamber)

hereby:

1. **Dismisses the action;**

2. **Declares that Ms Trentea must bear her own costs and orders her to pay the costs incurred by the European Union Agency for Fundamental Rights.**

Kreppel Perillo Barents

Delivered in open court in Luxembourg on 11 December 2012.

W. Hakenberg
Registrar

H. Kreppel
President