Reports of Cases

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

30 September 2013*

(Civil service — Staff of the European Union Agency for Fundamental Rights — Member of the contract staff — Non-renewal of a fixed-term contract for an indefinite period — Reassignment to another department until expiry of the contract — Action for annulment — Action for damages)

In Case F-38/12,

ACTION brought under Article 270 TFUE,

BP, member of the contract staff of the European Union Agency for Fundamental Rights, residing in Barcelona (Spain), 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

(Second Chamber)

composed of M. I. Rofes i Pujol (Rapporteur), President, I. Boruta and K. Bradley, Judges,

Registrar: X. Lopez Bancalari,

having regard to the written procedure and further to the hearing on 2 May 2013,

gives the following

Judgment

1 By application received at the Tribunal Registry on 19 March 2012, BP requests the Tribunal to annul the decisions of 27 February 2012 of the Director of the European Union Agency for Fundamental Rights ('the FRA' or 'the Agency') not to renew her contract as a member of the contract staff for an indefinite period and to reassign her to another department for the last six months of her contract, and to order the FRA to pay compensation for her material and non-material loss.

* Language of the case: English.

Legal context

2 Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter') provides as follows:

'1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

2. This right includes:

(a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;

(b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;

…'

3 Article 22(a) of the Staff Regulations of Officials of the European Union ('the Staff Regulations') provides:

'1. Any official who, in the course of or in connection with the performance of his duties, becomes aware of facts which gives rise to a presumption of the existence of possible illegal activity, including fraud or corruption, detrimental to the interests of the Union, or of conduct relating to the discharge of professional duties which may constitute a serious failure to comply with the obligations of officials of the Union shall without delay inform either his immediate superior or his Director-General or, if he considers it useful, the Secretary-General, or the persons in equivalent positions, or the European Anti-Fraud Office (OLAF) direct.

Information mentioned in the first subparagraph shall be given in writing.

…

3. An official shall not suffer any prejudicial effects on the part of the institution as a result of having communicated the information referred to in paragraphs 1 and 2, provided that he acted reasonably and honestly.

…'

4 Article 85 of the Conditions of Employment of Other Servants of the European Union ('the CEOS') provides as follows:

'1. The contracts of contract staff referred to in Article 3a may be concluded for a fixed period of at least three months and not more than five years. They may be renewed not more than once for a fixed period of not more than five years. The initial contract and the first renewal must be of a total duration of not less than six months for function group I and not less than nine months for the other function groups. Any further renewal shall be for an indefinite period.

…'

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

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

6 On the basis of Article 110 of the Staff Regulations, Article 82(6) of the CEOS and Articles 15 and 24 of Regulation No 168/2007, the management board of the Agency adopted, on 4 June 2008, Decision 2008/04 on general implementing provisions on the procedures governing the engagement and the use of contract staff ('Decision 2008/04').

7 Article 1 of Decision No 2008/04 states that that decision applies to contract staff within the meaning of Article 3a of the CEOS.

8 According to Article 6 of Decision 2008/04:

'…

2. The renewal of a contract in function groups II, III and IV shall be for another fixed period of at least three months and not more than five years. A second renewal without interruption leading to an indefinite-duration contract may only be granted if the first two contracts covered a total period of at least five years.'

9 On 29 May 2009, the Director of the Agency adopted – on the basis of, inter alia, Article 15(4)(c) of Regulation No 168/2007, according to which he is to be responsible for all staff matters and exercises, in respect of staff, the powers conferred by the CEOS on the authority authorised to conclude contracts of employment ('AACC') – Decision 2009/13 regarding the renewal of the contract of employment of contract agents ('Decision 2009/13').

10 In accordance with paragraph 1.1 to 1.3 of Decision 2009/13, where a staff member wishes to renew his contract, following discussion with his head of department, that staff member must send a letter of motivation to the Director of the Agency seven months before the contract of employment expires. The head of department of the staff member is to provide a written statement to the Director of the Agency, a copy of which is provided to the staff member. Six months before the expiry date of the contract, the staff member must receive a letter informing him either that his contract will be renewed or reminding him of the date when the contract will come to an end.

11 Paragraph 1.4 of Decision 2009/13 provides:

'[T]he decision of the Director shall be based on the future developments of the Agency, the performance so far, the adequacy [sic] of the profile to the future needs of the Agency and the budgetary availability.'

Background to the dispute

12 The applicant started working for the Agency on 1 September 2007. She was employed as a member of the contract staff under Article 3(a) of the CEOS to carry out tasks in function group III, at grade 10, on a two-year contract. Her contract was renewed for a period of three years, expiring on 31 August 2012. Therefore, under Article 85(1) of the CEOS and Article 6(2) of Decision 2008/04, any further renewal of the agreement could only be for an indefinite period.

13 The applicant was assigned to the 'Procurement and Finance' team in the 'Administration' department. She performed the duties of an assistant.

14 A career development report ('the CDR') was drawn up for each year of activity of the applicant.

15 In the CDR relating to the year 2008, out of a total of 20 points, namely 10 for efficiency, 6 for abilities and 4 for conduct in the service, the applicant was awarded a total of 13 points: 6.5 for efficiency, 3.5 for abilities and 3 for conduct in the service.

16 It is apparent from the CDR relating to the year 2009 that the applicant was awarded a total of 11.5 points: 6 for efficiency, 3.5 for abilities and 2 for conduct in the service.

17 It is apparent from paragraphs 3 to 7 of the application that, during the months of March 2010, November 2010, August 2011 and September 2011, and at an unspecified date in 2012, the applicant drew to the attention of the Director of the Agency, under Article 22a of the Staff Regulations, various possible irregularities which she claimed had occurred in the Agency's public procurement procedures and which she had come across in the course of her duties.

18 In the CDR relating to the year 2010, the applicant received the same assessment points as those in the 2009 CDR. The 2011 CDR has not been put before the Tribunal.

19 The appraisal of the applicant in respect of 2009 and 2010 was accompanied by negative comments made by the reporting officer. Thus, in the 2009 CDR, the reporting officer stated, inter alia, with regard to efficiency, that the applicant's poor personal relations with other staff members had had an impact on her efficiency during the period being assessed and recommended that she should strive continuously to overcome the situation. Regarding conduct in the service, the reporting officer also referred to the applicant's poor personal relations with colleagues.

20 In his response of 4 March 2011 to the complaint, brought by the applicant under Article 90(2) of the Staff Regulations, seeking a review of the mark awarded to her and the annulment of the reporting officer's comments in the three headings of the 2009 CDR, the Director, acting as AACC, first decided to increase by half a point the mark for efficiency, which was changed to 6.5 points and, secondly, amended the comments under the heading 'conduct in the service' as follows: 'During the reporting period the jobholder had good working relationships with the Agency's staff from other departments but she had some difficulties to deal [sic] with some colleagues within her department. Efforts have been made by both the hierarchy and the jobholder to resolve the situation in a constructive way. A continuous effort should be dedicated [sic] to overcome this situation.'

21 As regards the 2010 CDR, the reporting officer stated, in relation to efficiency, that the continuation of the applicant's poor personal relations with other staff members affected her efficiency during the appraisal period and recommended again that she strive continuously to overcome the situation. With regard to conduct in the service, the reporting officer wrote: '[d]uring the reporting period the jobholder had some difficulties to deal [sic] with some of her colleagues. Efforts have been dedicated by the hierarchy to resolve her frictions with other members of the staff in a constructive way. The situation continued to impact on the performance of the jobholder during the appraisal period. A further effort should be dedicated [sic] to overcome this situation.'

22 The applicant responded to the content of the 2010 CDR and made her disagreement known to the AACC by a letter of 18 April 2011, a letter of 4 May 2011 and an email of 15 May 2011, addressed to the Director, by which she also requested that the matter be referred to the Joint Evaluation Committee. In his response of 29 July 2011, the Director of the Agency rejected all the applicant's arguments.

23 The applicant did not challenge the 2009 and 2010 CDRs before the Courts of the European Union.

24 In the context of the procedure for renewing contracts for members of the contract staff, established by Decision 2009/13, the applicant met her head of department on 30 January 2012 and, the following day, the applicant's lawyers forwarded her letter of motivation to the Director of the Agency, in which she expressed her desire to have her contract renewed.

25 On 21 February 2012, the applicant received by email an invitation to meet the Director of the Agency and the head of the 'Human Resources and Planning' department ('the Human Resources department') on 27 February 2012, an invitation which she initially accepted but which she requested be postponed until 28 February because, inter alia, she wanted her lawyer to attend. The meeting that was postponed to 28 February did not take place because the applicant took sick leave.

26 By email of 24 February 2012, the applicant's head of department forwarded his opinion on the renewal of the applicant's contract ('the head of department's opinion') to the Director of the Agency. In that opinion, structured around ten points, the head of department highlights certain information relating to a recent reorganisation of the department, which transferred tasks to colleagues in other departments, and to the main features of the applicant's CDRs for the previous few years.

27 In that regard, the head of department states, inter alia, that the applicant's CDRs for 2009 and 2010 were below the average for staff members; that, in 2011, the situation was unchanged; that the applicant has had problems with her colleagues, which have had an impact on her performance, and that, despite efforts made by her line management, the Human Resources department and the Director of the Agency, and despite also the training given to the applicant, the situation remained unchanged. The head of department also states that the Agency had twice offered the applicant, in her own interests as much as in the Agency's interests, reassignment to another department, which she refused.

28 On Monday 27 February 2012, at 10 a.m., the Director of the Agency organised a general meeting of all staff, during which he addressed the issue of whistleblowing within the Agency.

29 By a letter of 27 February 2012, communicated to the applicant on the same date, the Director of the Agency informed the applicant that, having studied her letter of motivation and the opinion of the head of department, he had taken a decision not to renew her contract on its expiry on 31 August 2012. The opinion of the head of department was annexed to that letter.

30 The reasons given by the Director of the Agency for the decision not to renew the applicant's contract were, first, the Agency's limited availability of budgetary resources, which obliged him to reconsider the allocation of posts to members of the contract staff, as was apparent from the opinion of the applicant's head of department of 24 February 2012 and, secondly, the applicant's efficiency and conduct in the service, both affected by her poor personal relations with colleagues, a situation which had not improved despite attempts by the hierarchy to resolve friction in a constructive way, in particular by reassignment to another department, which the applicant had refused.

31 The letter of 27 February 2012 contained a second decision by which the applicant was reassigned in the interests of the service, with immediate effect and for the last six months of her contract, to the 'Communication and Awareness Raising' department.

32 On 5 March 2012, the applicant brought a complaint, under Article 90(2) of the Staff Regulations, in which she disputes the merits of the decisions of the Director of the Agency not to renew her contract and to reassign her.

33 The applicant was on sick leave from 8 March 2012 until the end of her contract.

34 By decision dated 5 July 2012, the Director of the Agency, acting as AACC, rejected the complaint brought on 5 March 2012.

Forms of order sought

35 The applicant claims that the Tribunal should:

— annul the decision not to renew her contract of employment;

— annul the decision to transfer her;

— pay compensation for her material loss, assessed at EUR 1 320 per month from September 2012, together with default interest at the European Central Bank (ECB) reference rate increased by two percentage points;

— pay compensation for her non-material loss, assessed at EUR 50 000;

— order the Agency to pay the costs.

36 The Agency contends that the Tribunal should:

— dismiss the action;

— order the applicant to pay the costs.

Procedure

37 On 19 March 2012, without waiting for a decision on her complaint brought on 5 March 2012 and pursuant to Article 91(4) of the Staff Regulations, the applicant brought this action before the Tribunal and an application for interim measures in order to obtain, inter alia, suspension of the decisions of the Director of the Agency not to renew her contract and to reassign her to the 'Communication and Awareness Raising' department until the expiry of her contract.

38 In accordance with Article 91(4) of the Staff Regulations, the main proceedings were suspended until 21 March 2012 pending a decision on the applicant's complaint.

39 By order of 14 June 2012 in Case F-38/12 R *BP* v *FRA*, the President of the Tribunal dismissed the application for interim measures on the ground that the condition as to urgency had not been fulfilled.

40 The main proceedings were resumed on 11 July 2012 after the applicant provided the Tribunal with the decision of the Director of the Agency, of 5 July 2012, rejecting her complaint. On that occasion, the applicant indicated that she had comments to make about the decision to reject her complaint.

41 By letter of 21 November 2012, the applicant requested the Tribunal to authorise a second exchange of pleadings to enable her to produce further documentation that would contradict the statements of the FRA in its defence.

42 The documents that the applicant requested leave to place on the file at that stage are the following: an email from a member of the staff committee which allegedly confirmed the content of the meeting of 30 January 2012 organised by the applicant's head of department in order to discuss with her the renewal of her contract, in which other persons participated; an email sent from a staff member of the Agency which, according to the applicant, summarised the content of the meeting of 27 February 2012 between the Director of the Agency and the staff; a declaration from the abovementioned member of the staff committee which the applicant claimed would confirm that she had been criticised during the meeting of 27 February; finally, proof that the agenda of the executive board meeting, of

24 February 2012, did not contain any point related to whistleblowing and that no minutes of that meeting were published on the intranet site of the Agency. The applicant indicated that she also wished to produce other documents without, however, identifying these.

43 Given that the applicant did not indicate the date of the documents that she sought to place on the file or justify the delay in the submission of the evidence offered, contrary to the rule laid down in Article 42 the Rules of Procedure, the Tribunal did not grant the request. The applicant's request to be allowed to submit a reply in order to provide the Tribunal with information to disprove certain allegations of the FRA was also rejected by the Tribunal in so far as it held that a second exchange of pleadings was not necessary, as the applicant could submit that information at the hearing.

44 At the informal meeting held in preparation for the hearing between the Tribunal and the representatives of the parties, the applicant's lawyer requested additional speaking time to take account of the fact that, as the application had been made pursuant to Article 91(4) of the Staff Regulations, she had not received notice of the rejection of the complaint until after the proceedings had already commenced. With the agreement of the Agency representative, the Tribunal granted that request.

45 In her oral submissions, the applicant offered further evidence within the meaning of Article 42 of the Rules of Procedure. That offer of further evidence concerned, first, the description of the position held by the applicant, which was sent to her together with the employment contract and the offer of employment in 2007 and from which the applicant claims it is apparent that she had been recruited to perform duties within the 'Procurement and Finance' team. Secondly, the applicant proposed to place on the file the letter, supplemented by two annexes, which she sent to the Director of the Agency on 6 July 2012 and by which she submitted comments on the latter's decision to reject her complaint.

46 In that regard, first, the applicant has not claimed that it was impossible to submit the job description with the application, whereas, in paragraph 48 of that application, she claims that the tasks related to procurement were part of the essential conditions of the contract of employment. Secondly, the applicant did not indicate the date on which the two annexes attached to the letter of 6 July 2012 had been drawn up. Thirdly, the pre-litigation procedure was closed by the rejection of the complaint and, for that reason, that letter cannot be taken into consideration in the context of the legal proceedings. Accordingly, the Tribunal did not grant the request for leave to submit further evidence presented by the applicant at the hearing.

Law

The first head of claim, seeking annulment of the decision not to renew the applicant's contract

47 In support of this claim, the applicant puts forward several pleas alleging, respectively, (i) manifest error of assessment, (ii) infringement of Articles 21a and 22a of the Staff Regulations, of 'Article 60(6) of the Financial Regulation' and of 'whistleblowing rules [and] protection due to whistleblowers and related retaliations', (iii) infringement of the rights of defence and infringement of Article 41 of the Charter, (iv) breach of the principle of equal treatment and, (v) manifest non-observance of the interest of the service, misuse of powers, breach of the principles of good administration and the duty to have regard for the interests of staff and of Article 41 of the Charter.

48 The Tribunal considers it necessary to examine first, and jointly, the first and fifth pleas, the latter in so far as it alleges infringement of the principle of good administration and the duty to have regard for the interests of staff. Thereafter, it will examine successively, and in this order, the second plea together with the fifth plea in so far as it alleges a misuse of powers, then the third and fourth pleas.

Since the complaint raised in the fifth plea alleging infringement of Article 41 of the Charter is not supported by any argument, contrary to the rule provided for in Article 35(1)(e) of the Rules of Procedure, it must be declared inadmissible.

Manifest error of assessment and breach of the principles of good administration and the duty to have regard for the interests of staff

– Observations of the parties

49 With regard to manifest error of assessment, the applicant submits that the reasons on which the decision not to renew her contract is based are not justified.

50 The applicant gives an overview of the conditions listed in paragraph 1.4 of Decision 2009/13, which should form the basis of the decision of the Director of the Agency regarding the renewal of the employment contract of a member of the contract staff, namely the future developments of the Agency, the efficiency of the staff member, the suitability of the profile for the future needs of the Agency and the budgetary considerations, in order to demonstrate a manifest error of assessment.

51 The applicant claims, as regards the future development of the Agency, that it is apparent from paragraphs 1.2, 2.2 and 2.3 of the Multiannual Staff Policy Plan for the period 2012-2014 ('the Staff Management Plan 2012-2014'), adopted by the management board of the Agency on 19 May 2011, that the Agency needs staff with her qualifications.

52 As regards her efficiency, the applicant states that the assertions of her head of department contained in his email of 24 February 2012 are, first, clearly false and unsupported by any evidence and, secondly, in total contradiction with the content of the CDRs approved by the Director of the Agency. The applicant refers to her 2008 CDR, the response given by the Director of the Agency on 22 July 2010, the complaint in which she challenged the rejection of her application for a post of administrative assistant in the assistants' function group (AST) at grade AST 4, the response of the Director of the Agency of 4 March 2011, the complaint made against her 2009 CDR (see paragraph 20 of the present judgment) and the response of the Director of the Agency of 29 July 2011, the challenge made to her 2010 CDR (see paragraph 20 of this judgment), all of which documents contain positive assessments of her performance in the Agency. She adds that the references to poor personal relations with colleagues in the 2009 and 2010 CDRs had been included in those reports in an abusive manner, as she had merely had differences of opinion with two colleagues concerning two calls for tenders. The applicant also refers, without however placing them on the file, to emails that had been sent to her between the months of July and November 2009, from which she cites some sentences in her application, which, she claims, demonstrates the good cooperation between her and her colleagues and the absence of the alleged poor personal relations.

53 As regards the suitability of her profile for the future needs of the Agency, the applicant claims that, as the holder of two university degrees and a master's degree in European Union law, in addition to her expertise in the field of public procurement gained over 27 years of professional experience, her profile is clearly suited to the position that she held. Furthermore, it is apparent from the Staff Management Plan 2012-2014 that, in function group III, the number of contract staff members will double in 2013. Finally, the Agency has, she claims, a high number of vacant posts.

54 With regard to the budgetary resources of the Agency, the applicant states that the budget for 2012 increased significantly compared with 2009, which shows both the availability of resources and the need for additional staff. At the hearing, the applicant argued that the Agency had recruited staff since her departure in positions for which she had the required qualifications.

55 As regards the principles of good administration and the duty to have regard for the interests of staff, the applicant argued that the decision not to renew her contract was not taken in the interest of the service, in breach of those principles. In so far as, after her reassignment, only one person actually worked in the 'Procurement and Finance' team, and given that the average number of calls for tender per year varies between 12 and 15 and that those procedures last between 7 and 12 months, it is impossible to manage them in accordance with the applicable rules.

56 The Agency contends that these pleas should be rejected as being unfounded.

– Findings of the Tribunal

57 As regards the plea alleging manifest error of assessment, it should be recalled, first, that according to settled case-law, a staff member who is the holder of a fixed-term contract does not, in principle, have any right to the renewal of his contract, which is a mere option, subject to the condition that such renewal is consistent with the interest of the service (see, with regard to a member of the temporary staff, judgment of 11 July 2012 in Case F-85/10 *AI* v *Court of Justice*, paragraph 151 and the case-law cited).

58 By contrast with officials, whose security of tenure is guaranteed by the Staff Regulations, members of the temporary staff are covered by another system, the CEOS, based on the contract of employment entered into with the European Union, in this case the Agency. It follows from Article 85(1) of the CEOS that the duration of the employment relationship between an institution or agency and a member of the contract staff referred to in Article 3a of the CEOS engaged for a fixed period is, necessarily, governed by the conditions laid down in the contract concluded between the parties. Furthermore, according to equally settled case-law, the administration has a broad discretion in relation to contract renewal (see judgment of 19 February 2013 in Case F-17/11, *BB* v *Commission*, paragraph 58 and the case-law cited).

59 Even though the administration has a broad discretion, when the Tribunal has before it an action for annulment directed against an act adopted in the exercise of that discretion, it none the less carries out a review of legality, which manifests itself in several respects (see, to that effect, judgment of 13 June 2012 in Case F-63/11, *Macchia* v *Commission*, paragraph 47, on appeal before the General Court, Case T-368/12 P).

60 As regards the request for annulment of a decision not to renew the contract of a member of the contract staff, which constitutes an act adversely affecting the party concerned (see, regarding a contract of a member of the temporary staff, judgment of 15 October 2008 in Case T-160/04 *Potamianos* v *Commission*, paragraphs 21 to 24; as regards a contract of a member of the contract staff, order of 15 April 2011 in Joined Cases F-72/09 and F-17/10 *Daake* v *OHIM*, paragraph 36), the review undertaken by the Courts of the European Union must be confined to ascertaining that there was no manifest error in the assessment of the interests of the service which may have provided grounds for that decision, or misuse of powers, or prejudice to the duty to have regard for the interests of officials which is incumbent on an administration when it is called upon to decide on the renewal of a contract between itself and one of its staff (*BB* v *Commission*, paragraph 59 and the case-law cited).

61 An error may only be classified as manifest where it is easily recognisable and can be readily detected, in the light of the criteria which the legislature intended to apply to the administration in the exercise of its discretion. Establishing that the administration committed a manifest error in assessing the facts such as to justify the annulment of the decision made on the basis of that assessment requires, therefore, that the evidence, which it is for the applicant to adduce, is sufficient to make the findings

of the administration implausible. In other words, a plea alleging a manifest error must be rejected if, despite the evidence adduced by the applicant, the challenged assessment may still be accepted as being justified and coherent (*AI* v *Commission*, paragraph 153 and case-law cited).

62 It should be added that, according to settled case-law, the duty to have regard for the interests of officials and the principle of good administration require in particular that, when it takes a decision concerning the situation of an official or other staff member, even in the exercise of a broad discretion, the competent authority should take into consideration all the factors which may affect its decision; when doing so, it must take into account not only the interests of the service but also those of the official or staff member concerned. Having regard specifically to the extent of the discretion of the institutions, bodies and agencies in evaluating the interests of the service, the review undertaken by the Courts of the Union must be confined to the question whether the competent authority remained within reasonable limits and did not use its discretion incorrectly (*BB* v *Commission*, paragraph 61, and the case-law cited).

63 It is in the light of the foregoing considerations that the arguments advanced by the applicant in support of the pleas alleging manifest error of assessment and breach of the principle of good administration and of the duty to have regard for the interests of officials must be examined.

64 It is apparent from the decision of the Director of the Agency not to renew the applicant's contract as a member of the contract staff, that it is based on two grounds: the first relating to the Agency, namely that the limited budgetary resources led the Agency to review priorities in the allocation of positions assigned to members of the contract staff; the second relating to the applicant, namely her performance and her conduct within the department, which are linked to her poor personal relations with colleagues.

65 The arguments put forward by the applicant in support of the existence of a manifest error of assessment, as set out in paragraphs 51 to 54 of the present judgment, are based on a misreading of the evidence to which she refers and cannot succeed.

66 As regards the first ground on which the decision not to renew the applicant's contract relies, namely the limited budgetary resources of the Agency, the Tribunal notes, first, that, contrary to what the applicant claims, the increase in the Agency's budget since 2009, the only evidence of which provided by the applicant being the Agency's statement of revenue and expenditure for the year 2012, even if it were proved, would not suffice, in itself, to show that 'there is indeed a need for additional staff in the Agency … in particular in [the Procurement and Finance] team'. Secondly, the fact that the overall budget allocated to temporary staff increased between 2011 and 2012, as is apparent from a file note on interim personnel services of 13 December 2011, drawn up by the head of the Human Resources department, does not necessarily imply that the Agency has made excessive use of that category of staff. Finally, the fact that the Agency's budget has increased for operational projects related to new Member States does not mean that the contract of the applicant, assigned to the 'Administration' department, must necessarily be renewed.

67 With regard to the second ground of the decision not to renew the applicant's contract, and in particular the efficiency of the applicant, it is apparent from the 2009 and 2010 CDRs, the arithmetical calculations of which, identical for both years, were lower than those of the 2008 CDR (see paragraphs 16 and 18 of the present judgment), that both in his comments on efficiency and those on conduct in the service, the applicant's reporting officer noted that there were poor personal relations between the applicant and colleagues, relations that had a negative impact on her efficiency. It is also apparent from the opinion of the head of department that the applicant's CDRs for the years 2009 and 2010 were below the staff average and that in 2011 the situation had followed the same trend.

68 While it is true that, as is apparent from paragraph 20 of the present judgment, following the complaint brought by the applicant against her 2009 CDR, the Director of the Agency increased by half a point the mark awarded to her for efficiency, the fact nevertheless remains that he then indicated that, except for the comments concerning conduct in the service that he amended, he was of the view that the CDR in question contained a correct assessment of the efficiency of the applicant during the evaluation period. Accordingly, the reporting officer's comments on the efficiency of the applicant, relating to the impact of poor personal relations with colleagues, remained unchanged. Finally, it is apparent from paragraph 22 of the present judgment that, although the applicant expressed her disagreement with the content of the 2010 CDR in several respects, the Director of the Agency, having verified that the assessment procedure had been correctly followed, concluded that there was no manifest inconsistency between the comments and the mark awarded and confirmed the assessments of the reporting officer.

69 During the hearing, the applicant denied having had poor personal relations with her colleagues. She asserted that the reporting officer's comments in that regard, contained in the 2009 and 2010 CDRs, were false and highlighted the absence, in those documents, of any example of such supposedly conflictual relations.

70 The Tribunal notes that the opposing views of the parties as to the existence of poor personal relations between the applicant and her colleagues could simply be the result of a difference of assessment between a staff member and her immediate superiors concerning, on the one hand, acceptable differences of opinion between colleagues on professional issues and, on the other, poor personal relations affecting the efficiency of the person concerned. However, in the present case, the assessments of the reporting officer were confirmed by the Director of the Agency, in part in the case of the 2009 CDR and entirely in the case of the 2010 CDR. Even if it were to be accepted that the applicant did not receive written communication of examples of the poor personal relations referred to by the reporting officer, the Tribunal considers that that does not mean that the applicant remained unaware in that regard. Even if the reporting officer did not spontaneously provide examples to the applicant during their meeting, on 22 February 2010, in the context of drawing up the 2009 CDR, or during their meeting, on 4 March 2011, in the context of drawing up the 2010 CDR, the fact remains that she could have asked for them on those occasions.

71 As regards the email extracts cited in the application, the Tribunal notes that as those emails have not been included as annexes to the application, it is unable to assess to what extent they may be relevant. In any event, even if they are directly relevant, the Tribunal must point out that the fact that the applicant had a good working relationship with some colleagues does not suffice to demonstrate that the successive assessments of her superiors, according to which her poor personal relations with some of her colleagues had a negative impact on her efficiency, were erroneous.

72 Consequently, and without it being necessary to examine the other two criteria set out in paragraph 1.4 of Decision 2009/13, namely the future developments of the Agency and the suitability of the staff member's profile to the future needs of the Agency, as the four criteria are not cumulative, it should be pointed out that the decision of the Director of the Agency, acting as AACC, not to renew the applicant's contract as a member of the temporary staff, is not vitiated by manifest error of assessment.

73 As regards the principle of good administration and the duty to have regard for the interests of officials, the Tribunal notes that both the applicant's head of department and the Director of the Agency have shown benevolence towards her, by drawing to her attention, in any event in connection with the 2009 and 2010 CDRs, to her poor personal relations within her team, twice proposing to reassign her to another service, providing her with access to training courses and making recommendations to her concerning the efforts that she should make, which were, however, to no avail.

74 In deciding whether or not it was appropriate to renew the applicant's contract upon its expiry, the AACC was required to consider not only the interest in continuing the employment relationship, as expressed by the applicant in her letter of motivation, but also the interests of the service, defined by the need of any employer to ensure, as far as possible, a healthy and calm work environment for its staff.

75 However, as is apparent from the documents in the case file, when adopting the contested non-renewal decision, which, it should be recalled, concerned the renewal of the applicant's contract for an indefinite period, the Agency took into account both the applicant's letter of motivation and the interests of the service, consisting in particular in the need to ensure as far as possible a good working environment within the 'Procurement and Finance' team.

76 It follows that, in deciding not to renew, upon expiry, the applicant's contract as a member of the temporary staff, the Director of the Agency did not breach the principle of good administration or the duty to have regard for her interests.

77 The first plea and the fifth plea, therefore, in so far as the latter alleges breach of the principles of good administration and the duty to have regard for the interests of staff must be rejected as unfounded.

The second plea, alleging infringement of Articles 21a and 22a of the Staff Regulations, of Article 60(6) of the Financial Regulation and of 'whistleblowing rules [and] protection due to whistleblowers and related retaliations' and misuse of powers

78 At the outset, the Tribunal notes that, even if Article 21(a) of the Staff Regulations, which establishes the procedure to be followed by an official who receives an order which he considers to be irregular or likely to give rise to serious difficulties, to inform his immediate superior of it, is reproduced in paragraph 98 of the application, there is no indication as to how that provision was infringed by the Director of the Agency when he adopted the decision not to renew the applicant's contract as a member of the contract staff. As the first complaint is in no way supported by any argument, contrary to the rule provided for in Article 35(1)(e) of the Rules of Procedure, it is necessary to declare it inadmissible. The same conclusion, for the same reasons, must be applied to the complaint alleging infringement of Article 60(6) of the Financial Regulation and of 'whistleblowing rules [and] protection due to whistleblowers and related retaliations', which have not even been identified.

79 The second plea thus remains to be considered only in so far as it alleges infringement of Article 22a of the Staff Regulations and the fifth plea in so far as it alleges misuse of powers.

– Observations of the parties

80 The applicant claims that the decision not to renew her contract was adopted not for the reasons given in the decision in question but because she reported, as from March 2010, several irregularities in the Agency's public procurement procedures. In so doing, she acted in good faith, in the sole interest of the Agency, in accordance with her duty of loyalty and respect for her colleagues. Under Article 22a(3) of the Staff Regulations, therefore, she should not have suffered retaliation on the part of her superiors. Furthermore, the decision not to renew the contract is vitiated by misuse of powers.

81 In that regard, the applicant claims that, during the meeting of 27 February 2012 between the Director of the Agency and all of the staff, during which members of the staff who reported irregularities in the Agency were allegedly severely criticised, negative and defamatory reference was made to her, which, although implicit, was clear, the colleagues present at the meeting understanding that she was the subject of the criticism, and that the decisions not to renew her contract and to reassign her were

communicated to her immediately after the meeting. The applicant adds that in the evening of the same day an email was sent by a member of staff of the Agency to all staff, referring to extracts read during the meeting and containing the same ironic and inappropriate comments.

82 The applicant also argues that her whistleblowing initiatives regarding irregularities in the Agency's public procurement procedures had already led the head of her department to downgrade her assessment in 2009 and 2010. Whereas her 2009 CDR had, in part, been rectified by the Director of the Agency, her 2010 CDR had not, which showed the growing resentment of her superiors towards her.

83 Furthermore, again according to the applicant, the fact that she testified in favour of a colleague, in August 2011, undoubtedly also played a role in the decision of the Director of the Agency not to renew her contract.

84 During the hearing, the applicant insisted that she had decided not to attend the meeting of 27 February 2012 because she had been informed in advance, on the same day, by colleagues, that the Director of the Agency would address the issue of the application, within the Agency, of Article 22a of the Staff Regulations.

85 The Agency contends that the two pleas should be rejected. With regard to the meeting held on Monday 27 February 2012 between the Director of the Agency and the staff, it states that it was the executive board of the Agency that requested the Director, at a meeting held on Friday 24 February 2012, to explain to the staff the rules concerning whistleblowing within the Agency.

– Findings of the Tribunal

86 It should be noted that, in accordance with settled case-law, the concept of misuse of powers applies to cases where an administrative authority has used its powers for a purpose other than that for which they were conferred on it. A decision may be vitiated by misuse of powers only if it appears, on the basis of specific, objective and consistent evidence, to have been taken for purposes other than those stated. It is therefore not sufficient to refer to certain facts in support of allegations; there must also be adduced specific, objective and consistent evidence to support their truth or, at the very least, their probability (judgment of 22 October 2008 in Case F-46/07 *Tzirani* v *Commission*, paragraph 159 and the case-law cited).

87 Article 22a(3) of the Staff Regulations provides that an official who has communicated, pursuant to paragraph 1 of that article, information concerning facts which give rise to a presumption of the existence of possible illegal activity or of conduct which may constitute a serious failure to comply with the obligations of officials of the European Union 'shall not suffer any prejudicial effects on the part of the institution … provided that he acted reasonably and honestly'.

88 Consequently, the fact that a decision that was unfavourable to an official chronologically followed the communication of information from that official made within the context of Article 22a of the Staff Regulations must lead the Civil Service Tribunal, when hearing an action directed against the decision in question supported by a plea of misuse of powers, to consider that plea particularly carefully (see, to that effect, judgment of 24 February 2010 in Case F-2/09 *Menghi* v *ENISA*, paragraph 138).

89 None the less, those provisions do not offer an official who has communicated information concerning facts which give rise to a presumption of the existence of possible illegal activity, pursuant to Article 22a(1) of the Staff Regulations, protection against any decision likely adversely to affect him, but only against decisions adopted as a result of that communication.

90 In the present case, although it is not disputed that the decision not to renew the applicant's contract was adopted nearly two years after the applicant began, in March 2010, to report to the Director of the Agency possible irregularities in certain procurement procedures followed by the Agency, it is not apparent from the documents of the file that this is one of the reasons for that decision.

91 First, it is not disputed by the parties that the applicant was not present at the meeting of 27 February 2012 between the Director of the Agency and the staff. In those circumstances, the information provided by the applicant concerning the exchanges during the meeting and on the content and tone of what was said consists merely of reported statements which the Tribunal cannot take into consideration.

92 As regards the content of the email sent by a staff member to all staff of the Agency after the meeting of 27 February 2012, the Tribunal finds that it contains the following message: 'Dear colleagues, [f]or your information, this email below, sent to all research colleagues, was the evidence of "whistleblowing on irregularities" mentioned today at the staff meeting.' The Tribunal also finds, in that regard, that another email was attached to the abovementioned email, the latter email having been sent on 21 February 2012 by another staff member to a part of the staff of the Agency. The latter email was worded as follows: '… our external evaluator … is preparing a questionnaire for launching a stakeholders' survey. On behalf of … may I kindly ask you to inform me of Commission and [other European Union] Agencies colleagues … you work with and who could provide useful input to the external evaluators regarding our work. We would need to submit our contacts to [our external evaluator by] 22 February. I am very sorry for this short notice. …'

93 It is apparent, therefore, from the wording of those two emails that the applicant's name does not appear in them and that there is no question of ridiculing either her or her behaviour, even indirectly.

94 As regards the applicant's assertion that, prior to the meeting on Monday 27 February 2012, she had been warned by colleagues about one of the issues that the Director of the Agency was going to address, namely the rules on whistleblowing at the FRA, the applicant was unable to give a plausible answer as to how those colleagues could have been informed of this, even though the subject was not on the agenda of the meeting and the meeting of the executive board of the Agency, during which, according to the FRA, the board had asked the Director to make a presentation to the staff on that issue, had taken place on the previous Friday, 24 February 2012.

95 Second, as the 2009 CDR only relates to that year as a whole, the reporting officer could not take into account, when drawing it up, the fact that, as set out in paragraphs 3 to 7 of the application, the applicant began, from the month of March 2010, to report to the Director of the Agency possible irregularities in the public procurement procedures of the Agency. Furthermore, it is apparent from that CDR that the applicant met with her reporting officer on 24 February 2010, that is, before she informed the Director of the Agency of the abovementioned irregularities. In so far as, in her comments addressed to the Director of the Agency on 27 October 2010 challenging the 2009 CDR, the applicant does not criticise the reporting officer for not having commented on her poor personal relations, the Tribunal finds that the content of the CDR was discussed at that meeting.

96 Third, the applicant herself refers, in her comments of 27 October 2010 challenging the 2009 CDR, to a poor working environment that had been created and maintained within the 'Procurement and Finance' team, a situation which, she alleges, had already arisen in 2009, and to an investigation, closed without further action, which was conducted by her head of department and in the course of which the applicant's fundamental rights were infringed.

97 Fourth, as stated in paragraph 20 and recalled in paragraph 68 of the present judgment, although it is true that, in his response to the complaint regarding the 2009 CDR, the Director of the Agency amended certain assessments of the reporting officer regarding conduct in the service, the fact remains that the Director of the Agency indicated that the CDR in question contained a correct

assessment of the applicant's efficiency during the appraisal period and that the reporting officer's comments on efficiency, relating to the impact of the applicant's poor personal relations with other colleagues, remained unchanged.

98 Fifth, as regards testimony allegedly given by the applicant in support of a colleague in August 2011 and which, in her opinion, had undoubtedly also played a role in the adoption of the decision not to renew her contract, it suffices to note that the applicant does not provide other information in that regard.

99 Consequently, the arguments and evidence submitted by the applicant, both in the part of the application regarding the facts of the case and at the hearing, do not establish that the decision of the Director of the Agency not to renew her contract for an indefinite period, when it expired, was adopted in breach of Article 22(a)(3) of the Staff Regulations nor that it had the purpose of achieving an end other than that stated.

100 It follows that it is necessary to reject the second plea as being in part inadmissible and in part unfounded, and the fifth plea, in so far as it alleges misuse of powers, as unfounded.

The third plea, alleging infringement of the rights of defence and infringement of Article 41 of the Charter

– Observations of the parties

101 The applicant criticises the Director of the Agency for adopting the decision not to renew her contract on the basis, inter alia, of negative comments made concerning her efficiency and conduct in the service.Those issues were never discussed with her in advance, as the procedure to draw up the 2011 CDR had not yet commenced when the Director of the Agency adopted his non-renewal decision. Moreover, she did not have the opportunity to express her view on that decision or on the opinion of the head of department, which was communicated to her together with the decision not to renew her contract. Finally, she was unable to consult the documents that showed that the distribution of posts allocated to contract staff had to change or that budgetary restrictions were necessary, as she was entitled to under the principle of access to the file.

102 The Agency contends that the plea should be rejected.

– Findings of the Tribunal

103 It should be recalled, in that regard, that, as is apparent from paragraph 60 of the present judgment, where the contract of service of a member of staff is renewable, a decision not to renew the contract of a member of the temporary or contract staff constitutes a decision which adversely affects the person concerned.

104 In the present case, the Director of the Agency states, in his decision not to renew the contract, that one of the two reasons for adopting that decision concerns the applicant, namely her efficiency and conduct in the service, that efficiency and conduct having been affected by her poor personal relations with her colleagues.

105 It is apparent from paragraphs 19 to 21 of the present judgment that the 2009 and 2010 CDRs were accompanied by comments of the reporting officer relating to the applicant's poor personal relations within the team to which she was assigned which had, according to the reporting officer, a negative impact on her efficiency during those two years. Those comments were, for the most part, confirmed by the Director of the Agency. It is not disputed that, in the context of drawing up those CDRs, the

applicant met with the reporting officer, respectively on 24 February 2010 and 4 March 2011, and that the Director of the Agency responded to the complaints brought by the applicant against both of those CDRs which, however, have not been challenged before the Tribunal. The applicant cannot validly argue, therefore, that, in the present case, her right to be heard has been infringed in respect of the assessments relating to her efficiency and conduct in the service during the years 2009 and 2010.

106 As regards the possible infringement of the applicant's right to be heard before the adoption of the decision of the Director of the Agency not to renew her employment contract, the Tribunal finds that Decision 2009/13, concerning the procedure for the renewal of the employment contract of contract staff, provides for the hearing of the person concerned at two stages. First of all, during a meeting with the head of department which, in the case of the applicant, took place, according to the Agency, on 30 January 2012.

107 Then, the person concerned is 'heard' by way of the letter of motivation that he sends to the Director of the Agency seven months before the expiry of his contract, in this case the letter of 31 January 2012 sent by the applicant through her lawyers. In her letter of motivation, the applicant was able to express herself and put forward all the reasons militating in favour of a decision that would have been positive for her.

108 As regards the opinion of the head of department, a copy of which was received by the applicant and concerning which she wanted to express her point of view, it suffices to note that it constitutes a preparatory measure for the decision not to renew the contract. As it is not an act adversely affecting the applicant, within the meaning of Article 90(2) and Article 91(1) of the Staff Regulations, she cannot validly claim the right to make observations regarding its content (see, to that effect, judgment of 14 September 2011 in Case T-236/02 *Marcuccio* v *Commission*, paragraph 133, on appeal before the Court of Justice, Case C-617/11 P). In any event, in view of the 2009 and 2010 CDRs, the assessments set out in the opinion of the head of department could not have caught the applicant unprepared.

109 Consequently, the applicant's right to be heard before the adoption of an adverse decision has been respected in the present case.

110 With regard to a possible infringement of Article 41 of the Charter by the Agency, in so far as the applicant did not have access to the documents that show that the distribution of posts allocated to contract staff had to change or that budgetary restrictions were necessary, the Tribunal notes that the applicant herself had placed in the case file, as annexes to the application, the Staff Management Plan 2012-2014 and the statement of revenue and expenditure of the Agency for the year 2012. The fact that there is a difference between the parties as to how these two documents should be interpreted does not mean that the applicant did not have access to the documents that formed the basis of the decision not to renew her contract.

111 Consequently, the third plea must be rejected in its entirety as unfounded.

The fourth plea, alleging breach of the principle of equal treatment

– Arguments of the parties

112 The applicant claims that the employment contracts of other contract staff have been renewed for an indefinite period by the Agency without any lack of budgetary resources being alleged, which is contrary to the principle of equal treatment, and the applicant is, moreover, the first member of staff whose contract has not been renewed when it expired.

113 The Agency contends that the plea should be rejected.

– Findings of the Tribunal

114 According to settled case-law, a breach of the principle of equal treatment occurs when two categories of person whose factual and legal circumstances disclose no essential difference are treated differently (see judgment of 11 February 2009 in Case F-7/08 *Schönberger* v *Parliament*, paragraph 45 and the case-law cited).

115 It is apparent from paragraph 64 of the present judgment that the decision not to renew the applicant's contract was adopted on two grounds, the first being budgetary and organisational and the second relating specifically to the applicant, because of her inefficiency and her conduct in the service.

116 However, even assuming that the applicant's colleagues who were offered a contract for an indefinite period were, in relation to the budgetary resources, in the same situation as the applicant, she has not submitted evidence that their 2009 and 2010 CDRs contained comments about their efficiency or their conduct in the service that are similar to those made about her.

117 Consequently, the fourth plea must be rejected as unfounded.

118 It follows from the foregoing that the claim seeking annulment of the decision not to renew the applicant's contract as a member of the contract staff must be dismissed.

The second head of claim, seeking annulment of the reassignment decision

119 In support of her claim seeking annulment of the reassignment decision of 27 February 2012, the applicant relies on three pleas alleging (i) failure to state reasons and misuse of powers, (ii) irregular and unilateral amendment of an essential element of the contract of service and a discrepancy between post and grade and, (iii) non-observance of the interest of the service and manifest error of assessment.

120 The Tribunal will consider those pleas in the same order.

The first plea, divided into two parts, alleging failure to state reasons and misuse of powers

– Arguments of the parties

121 The applicant claims that the decision of 27 February 2012, in that it ordered her transfer from the 'Procurement and Finance' unit to the 'Communication and Awareness Raising' unit, fails to state reasons in so far as it indicates only that she is transferred 'in the interest of the service'. The applicant makes the assumption that the decision is, in fact, a retaliatory measure intended to punish her for having reported certain internal irregularities and for having provided, in August 2011, testimony in support of one of her colleagues in the context of an action brought by that colleague before the Tribunal. If that was the case, the decision would also have been vitiated by misuse of powers.

122 The Agency contends that both parts of the plea should be rejected.

– Findings of the Tribunal

123 It should be pointed out, at the outset, that the decision of 27 February 2012 did indeed order the assignment of the applicant, in the interest of the service, to the 'Communication and Awareness Raising' unit ('you will be assigned … to …'). Although described, in the penultimate paragraph of the decision, as a transfer measure ('[t]his transfer will take place as of 27th February 2012'), that decision

constitutes, in fact, a reassignment measure, as the applicant was transferred with her post (see, to that effect, judgment of 5 December 2012 in Joined Cases F-88/09 and F-48/10 *Z* v *Court of Justice*, paragraph 108, on appeal before the General Court, Case T-88/13 P).

124 According to settled case-law, the obligation to state reasons laid down by the second paragraph of Article 25 of the Staff Regulations, which reiterates the general obligation laid down in Article 296 TFEU, 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. It is also settled case-law that the extent of the duty to state reasons must, in each case, be determined not only by taking into consideration the contested decision but also the particular circumstances surrounding its adoption (judgment of 17 May 2006 in Case T-93/04 *Kallianos* v *Commission*, paragraphs 100 and 101; judgment of 30 November 2010 in Case F-97/09 *Taillard* v *Parliament*, paragraph 33).

125 It should also be pointed out that the reasons given for a decision are sufficient if it was adopted in circumstances known to that person which enable him to understand the scope of the measure concerning him. That is the case where the decision was preceded by interviews with the hierarchy which related to the situation in question. Furthermore, a statement of reasons for a decision is sufficient if it refers to a document which is already in the possession of the person concerned and which contains the matters on which the institution based its decision (judgment of 2 July 2009 in Case F-49/08, *Giannini* v *Commission*, paragraph 117).

126 In the present case, the Tribunal finds, first, that the reassignment decision was adopted at the same time as the decision not to renew the applicant's contract, with regard to which the applicant does not allege a failure to state reasons. Secondly, the non-renewal decision refers, on the one hand, to the applicant's efficiency and to her conduct in the service, in connection with her poor personal relations with some colleagues and, on the other, to the fact that the applicant had, in the past, twice refused a proposal by her superiors to reassign her to another service, all of which issues were referred to in the applicant's 2009 and 2010 CDRs. Thirdly, as stated above, the applicant received a copy of the opinion of the head of department.

127 In those circumstances, the Tribunal finds that the decision of 27 February 2012, in so far as it ordered the reassignment of the applicant to the 'Communication and Awareness Raising' unit, states sufficient reasons. It follows from this that the first part of the plea is unfounded.

128 As regards the misuse of powers, the Tribunal notes that the applicant confines herself to speculation and conjecture, providing only suspicions as to the reasons that prompted her superiors to adopt the reassignment decision. Furthermore, she emphasises her testimony given in August 2011 in support of a colleague, whereas her 2009 and 2010 CDRs had already highlighted that her poor personal relations had negatively affected her efficiency and her conduct in the service. In the absence of prima facie evidence in support of the applicant's claims, relating to misuse of powers, the second part of the first plea must be declared unfounded.

129 Consequently, the first plea must be rejected in its entirety.

The second plea, alleging irregular and unilateral amendment of an essential element of the contract of service and a discrepancy between post and grade

– Arguments of the parties

130 The applicant claims that the Agency was not authorised to unilaterally amend an essential element of her contract of service by changing her post against her will, resulting in a modification of her tasks which, in turn, became less important. She adds that, under Article 2 of Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (OJ 1991 L 288, p. 32), the employer is required to bring to the notice of the employee the essential elements of the employment relationship, such as, inter alia, the title, grade, nature or category of the work for which the employee is employed or a brief specification or description of the work.

131 The Agency contends that the plea should be rejected.

– Findings of the Tribunal

132 It should be recalled at the outset, that, according to settled case-law, the institutions enjoy a broad discretion to organise their departments in keeping with the tasks entrusted to them and to assign the staff available to them in the light of such tasks, on condition, however, that they are assigned in the interests of the service and in conformity with the principle that staff must be assigned to an equivalent post (judgment of 22 January 1998 in Case T-98/96, *Costacurta* v *Commission*, paragraph 36 and the case-law cited).

133 It should also be noted that the reassignment of an official is not conditional upon consent of that official. If that were the case, it would result in a restriction on the institutions' freedom to organise their departments and adapt them to changing needs (*Costacurta* v *Commission*, paragraph 40 and the case-law cited).

134 The Agency states, without being plausibly contradicted by the applicant, that she was reassigned with her post. It follows that, in the present case, the principle that staff must be assigned to an equivalent post was, by definition, observed. In any event, the Tribunal finds that the employment contract between the Agency and the applicant, signed on 31 August 2007, put before the Tribunal as an annex to its defence, places the applicant in function group III, grade 10, step 1, and refers to the table in Article 80(2) of the CEOS as regards the tasks to be carried out, that is to say, '[e]xecutive tasks, drafting, accountancy and other equivalent technical tasks, performed under the supervision of officials or temporary staff'.

135 At the hearing, the applicant argued that her contract of employment should be read together with the job description attached to the offer of employment that was made to her and according to which she was going to be assigned to the 'Procurement and Finance' team of the 'Administration' department.

136 In that regard, the Tribunal finds, first, that as the job description and the offer of employment on which the applicant relies were not in the case file, it is unable to assess their content and, secondly, that, as the contract of service does not refer to that description even indirectly, it cannot be considered as forming an integral part of that contract.

137 As the applicant has, therefore, failed to demonstrate that the tasks allocated to her after her reassignment, on 27 February 2012, did not correspond to the tasks of the function group in which she had been placed since 2007, the plea must be rejected as unfounded, without it being necessary to examine whether Directive 91/533 may impose additional obligations on the Agency.

The third plea, alleging non-observance of the interest of the service and manifest error of assessment

– Arguments of the parties

138 The applicant states that the interest of the service required her retention in the 'Procurement and Finance' team, rather than her reassignment to a post in respect of which she had no special knowledge or useful experience, given that after her departure, in February 2012, only two members of staff remained, one of whom was on maternity leave and who remained on such leave until the following September, and the other was not a specialist in the area concerned. She adds that the only reason she was reassigned was that she was considered a troublemaker and had reported irregularities in the public procurement procedures.

139 The Agency contends that the plea should be rejected.

– Findings of the Tribunal

140 The concept of the interests of the service, as defined by case-law, relates to the smooth running of the institution in general and, in particular, to the specific requirements of the post to be filled (judgment of 18 April 1996 in Case T-13/95 *Kyrpitsis* v *ESC*, paragraph 51).

141 According to settled case-law, the reassignment of an official in order to put an end to an administrative situation which has become intolerable must be regarded as having been taken in the interest of the service (*Costacurta* v *Commission*, paragraph 39 and the case-law cited).

142 It is also established case-law that relationship difficulties, when they cause tensions which are prejudicial to the proper functioning of the service, may justify, precisely in the interest of the service, the reassignment of an official, without it being necessary to determine the identity of the person responsible for the incidents in question or the veracity of the complaints made on both sides (*Z* v *Court of Justice*, paragraph 123).

143 In the present case, it is apparent both from the 2009 and 2010 CDRs and from the opinion of the head of department that the applicant had poor personal relations with some members of her team and that her superiors had twice proposed to reassign her to another department, which she opposed.

144 In those circumstances, the Director of the Agency cannot be accused of disregarding the interests of the service or committing a manifest error of assessment when he made, on 27 February 2012, his decision to reassign the applicant to another department until the end of her contract.

145 Therefore, the third ground of appeal should also be rejected as unfounded.

146 Finally, it should be pointed out that at paragraphs 108 and 109 of the application, the applicant states that she was never heard by the Director of the Agency before the reassignment decision and that she did not have, therefore, the opportunity to express her views on that decision which adversely affects her.

147 The Tribunal notes that this complaint is included in the arguments relating to the third plea, alleging infringement of the rights of defence and of Article 41 of the Charter, raised in support of the first head of claim, which seeks the annulment of the decision not to renew the contract.

148 However, to be considered by the Tribunal, that complaint, which emphasises a defect that may have vitiated the adoption of the reassignment decision, should have been raised in the second head of claim, seeking the annulment of that decision, and not only in the first head of claim. The Tribunal observes that, in its defence, the Agency addressed the pleas raised in each head of claim in turn, as they were raised in the application.

149 In those circumstances, since, on the one hand, it is not for the Tribunal to join together as it sees fit the arguments, complaints and pleas of an application under one or other head of claim and, on the other hand, the way in which that complaint was presented could affect the rights of defence of the Agency, it is necessary to declare that complaint to be inadmissible.

150 It follows from the foregoing that the claim for annulment of the decision to reassign the applicant must be dismissed.

The third and fourth heads of claim, seeking damages

Arguments of the parties

151 By these two heads of claim, the applicant seeks compensation for the material and non-material damage which she claims to have suffered as a result of the decision not to renew her contract, the reassignment decision, and the manner in which those two decisions were notified to her. She estimates the material damage in the sum of EUR 1 320 per month, from the month of September 2012, plus default interest at the ECB's reference rate plus two percentage points, and non-material damage in the sum of EUR 50 000.

Findings of the Tribunal

152 According to settled case-law, where the damage on which an applicant relies arises from the adoption of a decision whose annulment is sought, the rejection of the claim for annulment entails the rejection of the claim for damages, as those claims are closely linked (judgment of 23 October 2012 in Case F-57/11 *Eklund* v *Commission*, paragraph 106).

153 By contrast, where the damage does not arise from the adoption of a decision or where the claim for annulment is not dismissed, the administration can be held liable in damages only if the applicant establishes that there is an irregularity, actual damage and a causal link between the act and the damage alleged to have been suffered (judgments of 1 June 1994 in Case C-136/92 P *Commission* v *Brazzelli Lualdi and Others*, paragraph 42, and of 21 February 2008 in Case C-348/06 P *Commission* v *Girardot*, paragraph 52). As those conditions must be satisfied cumulatively, the fact that one of them has not been satisfied is a sufficient basis on which to dismiss an action for damages (judgment of 9 September 1999 in Case C-257/98 P *Lucaccioni* v *Commission*, paragraph 14).

154 In the present case, it must be noted that the material and non-material damage to which the applicant refers arise from the decisions of the Director of the Agency, who refused to renew her contract as a member of the contract staff when it expired and reassigned her to another department until her contract expired. However, since the claim seeking annulment of the two contested decisions was dismissed without the Tribunal finding irregularity in the decision-making behaviour of the Director of the Agency, the claim for compensation must be dismissed.

155 In the light of all the foregoing, the action must be dismissed in its entirety as in part inadmissible and in part unfounded.

Costs

156 Under Article 87(1) of the Rules of Procedure, without prejudice 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.

157 It is apparent from the reasons set out in the present judgment that the applicant has been unsuccessful. Furthermore, in its pleadings the Agency has expressly requested that the applicant 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 should bear her own costs, including those incurred in the proceedings for interim relief, and pay those incurred by the Agency, including those incurred by the Agency in the proceedings for interim relief.

On those grounds,

THE CIVIL SERVICE TRIBUNAL

(Second Chamber)

hereby:

1. Dismisses the action.

2. Declares that BP shall bear all her own costs and orders her to pay all costs incurred by the European Union Agency for Fundamental Rights.

Rofes i Pujol Boruta Bradley

Delivered in open court in Luxembourg on 30 September 2013.

W. Hakenberg
Registrar

M. I. Rofes I Pujol
President