Reports of Cases

ORDER OF THE GENERAL COURT (Eighth Chamber)

11 November 2014*

(Actions for annulment — Reform of the Staff Regulations of Officials of the European Union and the Conditions of Employment of other Servants of the Union — Less favourable scheme for the flat-rate payment of travel expenses and for the increase in annual leave by way of additional days off as travelling time — Lack of individual concern — Non-contractual liability — Causal link — Action in part manifestly inadmissible and in part manifestly lacking any foundation in law)

In Case T-20/14,

Huynh Duong Vi Nguyen, official of the Council of the European Union, residing in Woluwe-Saint-Lambert (Belgium), represented by M. Velardo, lawyer,

applicant,

v

European Parliament, represented by L. Visaggio and E. Taneva, acting as Agents,

and

Council of the European Union, represented by M. Bauer and A. Bisch, acting as Agents,

defendants,

ACTION for annulment, pursuant to Article 263 TFEU, of Article 1(65)(b) and (67)(d) of Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council, of 22 October 2013, amending the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union (OJ 2013 L 287, p. 15), in so far as those provisions link the right to reimbursement of annual travel expenses and to travelling time to entitlement to an expatriation allowance, and an application for damages pursuant to Article 340 TFEU, seeking reparation of the pecuniary and non-pecuniary harm allegedly suffered by the applicant,

THE GENERAL COURT (Eighth Chamber),

composed of D. Gratsias, President, M. Kancheva (Rapporteur) and C. Wetter, Judges,

Registrar: E. Coulon,

makes the following

* Language of the case: French.

Order

Background to the dispute

1 Article 4 of Annex VII to Regulation No 31 (EEC)/11(EAEC) laying down the Staff Regulations and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (OJ, English Special Edition 1959-1962, p. 135), in the version applicable until 31 December 2013 (the 'Staff Regulations applicable until 31 December 2013'), provided:

'1. An expatriation allowance shall be paid, equal to 16% of the total amount of the basic salary plus household allowance and the dependent child allowance paid to the official:

(a) to officials:

— who are not and have never been nationals of the State in whose territory the place where they are employed is situated, and

— who during the five years ending six months before they entered the service did not habitually reside or carry on their main occupation within the European territory of that State. For the purposes of this provision, circumstances arising from work done for another State or for an international organisation shall not be taken into account;

(b) to officials who are or have been nationals of the State in whose territory the place where they are employed is situated but who during the 10 years ending at the date of their entering the service habitually resided outside the European territory of that State for reasons other than the performance of duties in the service of a State or of an international organisation.

…

2. An official who is not and has never been a national of the State in whose territory he is employed and who does not fulfil the conditions laid down in paragraph 1 shall be entitled to a foreign residence allowance equal to one quarter of the expatriation allowance.

…'

2 Article 7 of Annex VII to the Staff Regulations applicable until 31 December 2013 provided:

'1. An official shall be entitled to reimbursement of travel expenses for himself, his spouse and his dependents actually living in his household:

(a) on taking up his appointment, from the place where he was recruited to the place where he is employed;

(b) on termination of service within the meaning of Article 47 of the Staff Regulations, from the place where he is employed to the place of origin as defined in paragraph 3 below;

(c) on any transfer involving a change in the place where he is employed.

In the event of the death of an official, the widow and dependents shall be entitled to reimbursement of travel expenses under the same conditions.

Travel expenses shall also include the cost of seat reservations, transport of luggage and, where applicable, hotel expenses necessarily incurred.

2. The basis for calculating the reimbursement shall be the first-class rail fare on the shortest and most economical habitual route by rail between the place of employment and the place of recruitment or origin.

Where the route referred to in the first subparagraph exceeds 500 km and in cases where the usual route includes a sea crossing, the official concerned shall be entitled, on production of the tickets, to reimbursement of the cost of travel by air in business class or equivalent. Where a means of transport other than those mentioned above is used, calculation of reimbursement shall be based on the cost by rail, excluding sleeper accommodation. Where calculation on this basis is not possible, the terms of reimbursement shall be determined by special decision of the Appointing Authority.

3. An official's place of origin shall be determined when he takes up his appointment, account being taken of where he was recruited or the centre of his interests. The place of origin as so determined may by special decision of the appointing authority be changed while the official is in service or when he leaves the service. While he is in the service, however, such decision shall be taken only exceptionally and on production by the staff member of appropriate supporting evidence.'

3 Article 8 of Annex VII to the Staff Regulations applicable until 31 December 2013 provided:

'1. Officials shall be entitled to be paid in each calendar year a sum equivalent to the cost of travel from the place of employment to the place of origin as defined in Article 7 for themselves and, if they are entitled to the household allowance, for the spouse and dependants within the meaning of Article 2.

…

2. The flat-rate payment shall be based on an allowance per kilometre of distance between the official's place of employment and place of recruitment or origin; such distance to be calculated according to the method laid down in the first subparagraph of Article 7(2).

The kilometric allowance shall be:

EUR 0 for every km from	0 to 200 km
EUR 0,3790 for every km from	201 to 1 000 km
EUR 0,6316 for every km from	1 001 to 2 000 km
EUR 0,3790 for every km from	2 001 to 3 000 km
EUR 0,1262 for every km from	3 001 to 4 000 km
EUR 0,0609 for every km from	4 001 to 10 000 km
EUR 0 for every km over 10 000 km.	

To the above kilometric allowance a flat-rate supplement shall be added, amounting to:

…

— EUR 378,93 if the distance by train between the place of employment and the place of origin is greater than 1 450 km,

– …

4. The preceding provisions shall apply to officials whose place of employment is within the territories of the Member States. …

These travel expenses shall be reimbursed in the form of a flat-rate payment based on the cost of air travel in the class immediately superior to economy class.'

4 Article 7 of Annex V to the Staff Regulations applicable until 31 December 2013 provided:

'To the period of [annual leave] shall be added travelling time based on the distance by rail between the place of leave and the place of employment, calculated as follows:

50 to 250 km: one day for the outward-and-return journey,

251 to 600 km: two days for the outward-and-return journey,

601 to 900 km: three days for the outward-and-return journey,

901 to 1400 km: four days for the outward-and-return journey,

1 401 to 2000 km: five days for the outward-and-return journey,

more than 2000 km: six days for the outward-and-return journey.

For the purposes of this Article, the place of leave in respect of annual leave shall be the place of origin.

The preceding provisions shall apply to officials whose place of employment is within the territories of the Member States.

…'

5 Article 1(67) of Regulation (EU, Euratom) No 1023/2013 of the European Parliament and the Council, of 22 October 2013, amending the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union (OJ 2013 L 287, p. 15), reads as follows:

'Annex VII is amended as follows:

…

(d) Article 8 is replaced by the following text:

"Article 8

1. Officials entitled to the expatriation or foreign residence allowance shall be entitled, within the limit set out in paragraph 2, in each calendar year to a flat-rate payment corresponding to the cost of travel from the place of employment to the place of origin as defined in Article 7 for themselves and, if they are entitled to the household allowance, for the spouse and dependants within the meaning of Article 2.

…

2. The flat-rate payment shall be based on an allowance per kilometre of geographical distance between the official's place of employment and his place of origin.

Where the place of origin as defined in Article 7 is outside the territories of the Member States of the Union as well as outside the countries and territories listed in Annex II to the Treaty on the Functioning of the European Union and the territories of the Member States of the European Free Trade Association, the flat-rate payment shall be based on an allowance per kilometre of geographical distance between the official's place of employment and the capital city of the Member State whose nationality he holds. Officials whose place of origin is outside the territories of the Member States of the European Union as well as outside the countries and territories listed in Annex II to the Treaty on the Functioning of the European Union and the territories of the Member States of the European Free Trade Association and who are not nationals of one of the Member States shall not be entitled to the flat-rate payment.

The kilometric allowance shall be:

EUR 0 for every km from	0 to 200 km
EUR 0.3790 for every km from	201 to 1 000 km
EUR 0.6316 EUR for every km from	1 001 to 2 000 km
EUR 0.3790 for every km from	2 001 to 3 000 km
EUR 0.1262 for every km from	3 001 to 4 000 km
EUR 0.0609 for every km from	4 001 to 10 000 km
EUR 0 for every km over	10 000 km

To the above kilometric allowance a flat-rate supplement shall be added, amounting to:

— EUR 189.48 if the geographical distance between the place of employment and the place of origin is between 600 km and 1 200 km,

— EUR 378.93 if the geographical distance between the place of employment and the place of origin is greater than 1 200 km.

– The above kilometric allowances and flat-rate supplements shall be updated every year in the same proportion as remuneration.

…

4. The preceding provisions shall apply to officials whose place of employment is within the territories of the Member States. …

The flat-rate payment shall be based on the cost of air travel in economy class.'"

6 Article 1(65) of Regulation No 1023/2013 states:

'Annex V is modified as follows:

…

(b) Article 7 is replaced by the following text:

"Officials who are entitled to the expatriation or foreign residence allowance shall be entitled to two and a half days of supplementary leave every year, for the purpose of visiting their home country.

The first paragraph shall apply to officials whose place of employment is within the territories of the Member States. If the place of employment is outside those territories, the duration of the home leave shall be fixed by special decision taking into account particular needs."'

7 Pursuant to Article 3(2) of Regulation No 1023/2013 those provisions applied as from 1 January 2014.

8 On recruitment the place of origin of the applicant, Ms Huynh Duong Vi Nguyen, was established as New York (United States). Given her Belgian nationality and her place of employment, namely Brussels (Belgium), she did not satisfy the conditions governing eligibility for an expatriation allowance laid down in Article 4(1)(a) of the Staff Regulations applicable until 31 December 2013. Nor did she satisfy the conditions of eligibility for that allowance laid down in Article 4(1)(b) of those regulations. In view of her nationality and her place of employment she was equally ineligible for a foreign residence allowance under Article 4(2) of the Staff Regulations applicable until 31 December 2013. She was, however, eligible to receive reimbursement of her travel expenses between her place of employment and her place of origin, under Article 8 of Annex VII to the Staff Regulations applicable until 31 December 2013, as well as travelling time under Article 7 of Annex V to those regulations. Since taking up employment on 1 June 2009 she has, therefore, received an annual sum of EUR 4 835.53 in travel expenses for herself, her spouse and their child, as well as six additional days of leave for travelling time.

Procedure and forms of order sought

9 By application lodged at the Registry of the General Court on 8 January 2014, the applicant brought the present action.

10 By documents lodged at the Court Registry on 26 and 27 March 2014 respectively, the Council of the European Union and the European Parliament each raised a plea of inadmissibility pursuant to Article 114(1) of the Rules of Procedure of the General Court.

11 On 12 May 2014, the applicant submitted observations on the pleas of inadmissibility raised by the Council and the Parliament.

12 In her application, the applicant claims that the Court should:

— annul the provisions of Regulation No 1023/2013 amending Article 7 of Annex V and Article 8 of Annex VII of the Staff Regulations of Officials of the European Union by linking the right to travel expenses and travelling time to the expatriation or foreign residence allowance;

— order the Council and the Parliament to pay her a sum of EUR 169 051.96 Euros in pecuniary damages plus a sum of EUR 40 000 Euros in non-pecuniary damages, together with default and compensatory interest at the rate of 6.75%;

— order the Council and the Parliament to pay the costs.

13 The Council contends that the Court should:

— dismiss the action as inadmissible;

— order the applicant to pay the costs.

14 The Parliament contends that the Court should:

— dismiss the action as inadmissible;

— order the applicant to pay the costs.

15 By document lodged at the Court Registry on 16 April 2014, the European Commission sought leave to intervene in the present proceedings in support of the Parliament and the Council.

Law

16 Pursuant to Article 114(1) of the Rules of Procedure, the Court may, if a party so requests, rule on the question of admissibility without considering the merits of the case. Under Article 114(3), unless the Court otherwise decides, the remainder of the proceedings is to be oral. Moreover, Article 111 of the Rules of Procedure provides that, where it is clear that the General Court has no jurisdiction to take cognisance of an action or where the action is manifestly inadmissible or manifestly lacking any foundation in law, the Court may, by reasoned order, and without taking further steps in the proceedings, give a decision on the action.

17 In the present case, the Court considers that the information in the documents before it is sufficient for there to be no need to proceed to the oral stage of the proceedings.

18 In her application the applicant, who is a grade AST II official employed in the 'Media/Press Unit' of the 'Communication and Transparency Directorate' of the Council, essentially seeks to obtain, first, the annulment of Article 1 (65)(b) and (67)(d) of Regulation No 1023/2013 ('the contested provisions') in so far as those provisions link the right to reimbursement of annual travel expenses and to the travelling time for the journey to the award of an expatriation or foreign residence allowance, and, secondly, damages and interest in reparation of the pecuniary and non-pecuniary harm that she has allegedly suffered as a result of the adoption of the contested provisions.

19 The applicant raises five pleas in law in support of her application: first, infringement of the right to information and consultation of workers, as enshrined in Article 27 of the Charter of Fundamental Rights of the European Union; second, infringement of the principle of due regard for acquired rights, the principles concerning 'inter-temporal law' and the principle of legal certainty; third, infringement of the principle of the right to legitimate expectations; fourth, infringement of the principle of equal treatment and, fifth, infringement of the principle of proportionality.

20 In support of her claim for damages the applicant argues that there is a causal link between the contested provisions and the pecuniary harm suffered by her in the form of loss of reimbursement of travel expenses, and loss of travelling time, for the years of service that remain to be completed by her until retirement. She also argues that the loss of reimbursement of travel expenses, and of travelling time, cause her non-pecuniary harm by making it difficult to maintain an emotional bond with her place of origin.

21 The Parliament and the Council each contend that both the application for annulment and the claim for damages are inadmissible.

The application for annulment

22 The Parliament and the Council challenge the applicant's *locus standi*. The Parliament also argues that, in any event, the applicant lacks any interest in bringing proceedings against Article 8(1) of Annex VII to the new Staff Regulations.

23 With regard to *locus standi*, the Council maintains that the applicant is not directly affected by the contested provisions, in so far as only individual decisions taken by the Appointing Authority in the form of, for example, a pay slip from which travel expenses have been deleted, or an individual decision concerning the number of leave days granted as travelling time, can clearly alter the applicant's legal situation and definitively determine the position of the institution in respect of the applicant.

24 Moreover, according to the Parliament and the Council, the contested provisions do not affect the applicant in an individual manner. In essence, they contend that the contested provisions are of a general nature and are, therefore, applicable to all officials who are, or in the future will be, in the same legal and factual situation as the applicant.

25 In that respect it should be noted that Regulation No 1023/2013 was adopted on the basis of Article 336 TFEU, in accordance with the ordinary legislative procedure. It is, therefore, clear that the contested provisions fall within the category of legislative acts of general application, in respect of which, under the fourth paragraph of Article 263 TFEU, the admissibility of actions for annulment brought by natural or legal persons is subject to respect of the conditions of direct and individual concern (see, to that effect, judgment of 3 October 2013 in *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, ECR, EU:C:2013:625, paragraphs 56 to 60).

26 It is, therefore, necessary to examine whether, in the present case, the applicant fulfils the conditions for being directly and individually concerned by the contested provisions.

27 In this respect it must be borne in mind that, according to settled case-law, natural and legal persons satisfy the condition of individual concern only if the contested act affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons, and by virtue of these factors distinguishes them individually just as in the case of the person addressed (judgments of 15 July 1963 in *Plaumann* v *Commission*, 25/62, ECR, EU:C:1963:17; of 29 April 2004 in *Italy* v *Commission*, C-298/00 P, ECR, EU:C:2004:240, paragraph 36; of 9 June 2011 in *Comitato 'Venezia vuole vivere' and Others* v *Commission*, C-71/09 P, C-73/09 P and C-76/09 P, ECR, EU:C:2011:368, paragraph 52, and in *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, cited in paragraph 25 above, EU:C:2013:625, paragraph 72).

28 The applicant claims that in the present case the condition of individual concern is fulfilled twice. She could, in fact, base her individual concern on the right of each official to participate in proceedings for amending the Staff Regulations on the basis of Article 27 of the Charter of Fundamental Rights, as well as on the effects upon her of the contested provisions, namely the immediate and certain loss of travel expenses and travelling time.

29 Moreover, she argues that refusal, in the present case, to recognise that she is individually concerned would amount to obliging her to have recourse to the pre-litigation procedure laid down by Article 90 of the Staff Regulations for introducing an action against a decision of the Appointing Authority adversely affecting an official on the basis of Article 270 TFEU. That, according to the applicant, would constitute a breach of her right to an effective remedy.

30 These arguments must, however, be rejected.

31 With regard to the applicant's argument that Article 27 of the Charter of Fundamental Rights confers the right to participate in proceedings on every official, it must be recalled that the fact that a person intervenes in some way in the process leading to the adoption of an act of the European Union is sufficient to distinguish that person individually as regards the act in question only if the applicable rules of the Union grant him certain procedural guarantees. However, unless there is an explicit provision to the contrary, neither the process of drawing up measures of a general nature, nor the measures themselves, require, by virtue of general principles of Union law, such as the right to be heard, the participation of affected persons, their interests being deemed to be represented by the political bodies called upon to adopt those measures (judgment of 2 March 2010 in *Arcelor* v *Parliament and Council*, T-16/04, ECR, EU:T:2010:54, paragraph 119).

32 In the present case it is clear that neither Article 336 TFEU, on the basis of which the contested provisions were adopted, nor Article 10 of the Staff Regulations, nor even Article 27 of the Charter of Fundamental Rights, confer an individual procedural right on members of staff of the institutions of the European Union.

33 In that respect it must be recalled that although the right to information and consultation of workers and the right to negotiation and collective action enshrined, respectively, in Article 27 and Article 28 of the Charter of Fundamental Rights, may be applicable to relations between the Union institutions and their staff, as is apparent from the judgment of 19 September 2013 in review of *Commission* v *Strack* (C-579/12 RX-II, ECR, EU:C:2013:570), the exercise of those rights is limited to cases and conditions laid down in EU law, in accordance with the very wording of those provisions.

34 Thus, as far as Union officials are concerned, the first and second paragraphs of Article 10 of the Staff Regulations applicable until 31 December 2013 provided for the consultation of officials by means of the Staff Regulations Committee, a joint body composed of an equal number of representatives of the institutions of the Union and representatives of their staff committees, on all Commission proposals to revise the Staff Regulations. Moreover, the second paragraph of Article 10b of those regulations provided that the Commission proposals referred to in Article 10 might be the subject of consultations by trade unions or staff associations.

35 The Staff Regulations applicable until 31 December 2013 did not, however, provide any individual right for officials to participate in their revision.

36 The applicant's argument that, in the present case, the participation of the trade unions was not respected, apart from the fact that it is merely an assertion which is not substantiated by any evidence, is ineffective, given that the alleged infringement of a procedural right of the trade unions in the procedure for amending the Staff Regulations would, in any event, be without consequence as regards the existence of a procedural right for the applicant.

37 It follows that the applicant cannot rely on Articles 27 and 28 of the Charter of Fundamental Rights to support her claim that she is individually concerned by the contested provisions.

38 With regard to the applicant's argument that she is individually concerned by the contested provisions because of their certain and immediate effect on her legal situation, it should be noted that, as the Parliament and the Council have rightly observed, such an argument tends to show the applicant's direct concern rather than her individual concern.

39 In her observations on the pleas of inadmissibility the applicant did, however, specify that her individual concern stems from the fact that she belongs to a limited group of persons, 30 officials, with regard to whom the contested provisions would have the certain and immediate effect of depriving them of an acquired right, namely the reimbursement of travel expenses and travelling time. According to the applicant those officials are the only ones, up to now, to have obtained reimbursement of travel expenses and travelling time without at the same time being entitled to

receive an expatriation or foreign residence allowance. By linking those rights to entitlement to an expatriation or foreign residence allowance the contested provisions have the effect of abolishing an acquired right for a limited group of persons. According to the applicant, no persons other than those belonging to that group could, in the future, be in a similar legal and factual situation, because officials recruited after 1 January 2014 can no longer benefit from those rights without being eligible for the expatriation or foreign residence allowance.

40 The Court has held in that regard that where the decision affects a group of persons who were identified or identifiable when that measure was adopted by reason of criteria specific to the members of the group, those persons may be individually concerned by that measure inasmuch as they form part of a limited class of economic operators (see judgment of 23 April 2009 in *Sahlstedt and Others* v *Commission*, C-362/06 P, ECR, EU:C:2009:243, paragraph 30 and the case-law cited).

41 Moreover, according to the case-law, a person may be considered to be individually concerned by a measure because he is part of a limited class of economic operators when that measure alters rights acquired by him prior to its adoption (see order of 17 February 2009 in *Galileo Lebensmittel* v *Commission*, C-483/07 P, ECR, EU:C:2009:95, paragraph 46 and the case-law cited).

42 However, in the present case, it should be noted that the applicant has not provided any details with regard to either the legal and factual situation, or the identity, of the officials who are in a similar situation to herself. She has merely specified that she is prepared to provide further information should the Court deem it necessary and invites the Court to question the Parliament and the Council in that respect.

43 In the case of an action against a measure which is of general application and of a legislative nature, as in the present case, it is for the applicant to show that she fulfils the condition of individual concern laid down in Article 263 TFEU.

44 It is, therefore, for the applicant to furnish proof to substantiate her claim that she belongs to a limited group of officials who are in a similar legal and factual situation to herself.

45 Furthermore, even if it should prove to be true, as the Council seems implicitly to acknowledge, that the applicant does in fact belong to a limited group of officials on whom the contested provisions would have the effect of depriving them of their entitlement to reimbursement of travel expenses and to travelling time, it is clear that this situation is not the result of a right acquired by those officials only.

46 Contrary to the applicant's claim, an acquired right to reimbursement of travel expenses, and to travelling time, specific to officials who were not entitled to an expatriation or foreign residence allowance did not exist. According to Article 7 of Annex V, and Article 8 of Annex VII, to the Staff Regulations applicable until 31 December 2013, entitlement to travel expenses and travelling time, regardless of the expatriation or foreign residence allowance, was, in fact, the right of all Union officials.

47 The consequence of the decision of the Parliament and the Council to link, by means of the contested provisions, entitlement to those rights to eligibility for an expatriation or foreign residence allowance is to deprive the applicant of those rights because of the legal and factual situation in which she, like other officials, now finds herself. Moreover, contrary to the applicant's claim, it is not inconceivable that other officials will, in the future, find themselves in a situation analogous to hers. For example, this could be the case for an official who loses his expatriation allowance as a result of a new assignment on the territory of a Member State whose nationality he holds and who does not fulfil the conditions of eligibility for an expatriation allowance laid down in Article 4(2) of Annex VII to the Staff Regulations. He would thus be deprived of reimbursement of travel expenses and travelling time.

48 According to established case-law, the possibility of determining, at the time of the adoption of a contested measure, more or less precisely the number, or even the identity, of the persons to whom that measure applies by no means implies that it must be regarded as being of individual concern to them, as long as it is established that that application takes effect by virtue of an objective legal or factual situation defined by the measure in question (see judgment in *Arcelor* v *Parliament and Council*, cited in paragraph 31 above, EU:T:2010:54, paragraph 106 and the case-law cited).

49 It follows that the applicant is not individually concerned by the contested provisions.

50 That conclusion cannot be called into question by the applicant's argument that refusal to recognise that she is individually concerned by the provisions contested in the present case would constitute an infringement of her right to an effective remedy by obliging her to use the pre-litigation procedure laid down in Article 90 of the Staff Regulations.

51 The applicant's argument is based on the premiss, contested by the Parliament and the Council, that neither her pay slip for the month of July 2014, nor the list of days allocated as travelling time in the Council's computerised system for the management of leave, constitute measures adversely affecting her so that, pursuant to Article 91 of the Staff Regulations, she could bring an action before the Union courts only at the end of the pre-litigation procedure laid down in Article 90 of those regulations.

52 First it should be noted that in the present case the Court is not seised of an action for the annulment of implied or express Council decisions that would entail the application of Article 7 of Annex V and Article 8 of Annex VII to the Staff Regulations in respect of the applicant, but of an action for annulment directed against the provisions modifying those regulations. The question whether or not the applicant is individually concerned by the contested provisions and, therefore, whether the present case is admissible, cannot depend upon the admissibility of a hypothetical action against individual decisions of the Appointing Authority regarding the applicant which had not, in any event, been adopted at the time when the case was lodged.

53 Secondly, it should also be noted that, in accordance with Article 256 TFEU, Article 1 of Annex I to the Statute of the Court of Justice of the European Union and Article 91 of the Staff Regulations, the Civil Service Tribunal has jurisdiction at first instance in disputes between the European Union and its officials brought pursuant to Article 270 TFEU. Consequently, the General Court cannot, in the case of an action for the annulment of a provision of the Staff Regulations brought by an official on the basis of Article 263 TFEU, prejudge the admissibility of an action introduced by that same official against a pay slip or a list of leave days as such an action falls within the jurisdiction of the Civil Service Tribunal.

54 It follows that the conditions of admissibility for an action that the applicant may bring against individual decisions of the Appointing Authority implementing the contested provisions are irrelevant when examining the admissibility of the present case and cannot, therefore, remedy the applicant's lack of individual concern.

55 As the conditions for being directly and individually concerned by the act of which annulment is sought are cumulative, it follows, without there being any need to examine whether the applicant is, in fact, directly concerned by the contested provisions, that she has not shown that she has *locus standi* in respect of those provisions.

56 Thus the applicant's application for annulment of the contested provisions must be dismissed as clearly inadmissible without it being necessary to examine whether the applicant has standing in respect of Article 1(65)(b) and (67)(d) of Regulation No 1023/2013.

The action for damages

57 It should be noted at the outset that although the applicant is an official of the Council her claims for damages are not directed at the Council as the institution by which she is employed, but rather at the Parliament and Council as co-authors of Regulation No 1023/2103, which, according to the applicant, caused the harm she has allegedly suffered.

58 It must also be observed that the applicant invokes Articles 268 and 340 TFEU, and not Article 270 TFEU, as the basis for her claims for damages.

59 In these circumstances the General Court deems itself competent to rule on the applicant's claims for damages.

60 In that regard, it should be recalled that it is settled case-law that in order for the Union to incur non-contractual liability under the second paragraph of Article 340 TFEU for unlawful conduct of its institutions, a number of cumulative conditions must be satisfied: the institution's conduct must be unlawful, actual damage must have been suffered and there must be a causal link between the alleged conduct and the damage pleaded (judgments of 29 September 1982 in *Oleifici Mediterranei* v *EEC*, 26/81, ECR, EU:C:1982:318, paragraph 16 and of 14 December 2005 in *Beamglow* v *Parliament and Others*, T-383/00, ECR, EU:T:2005:453, paragraph 95).

61 If any one of the three conditions required for the Union to incur non-contractual liability is not satisfied, the damages claims must be dismissed without there being any further need to consider whether the other two conditions are met (see, to that effect, judgments of 15 September 1994 in *KYDEP* v *Council and Commission*, C-146/91, ECR, EU:C:1994:329, paragraph 81, and of 20 February 2002 in *Förde-Reederei* v *Council and Commission*, T-170/00, ECR, EU:T:2002:34, paragraph 37). Furthermore, the Court is not obliged to examine those conditions in any particular order (judgment of 9 September 1999 in *Lucaccioni* v *Commission*, C-257/98 P, ECR, EU:C:1999:402, paragraph 13).

62 With regard to the condition relating to the existence of a causal link between the alleged conduct and the damage invoked, the case-law requires a certain and direct link of cause and effect between the fault committed by the institution concerned and the alleged damage, the existence of which the applicant must prove. Moreover, the alleged damage must be a sufficiently direct consequence of the conduct complained of, and that conduct must be the determining cause of the damage (see order of 4 June 2012 in *Azienda Agricola Bracesco* v *Commission*, T-440/09, EU:T:2012:269, paragraphs 37 and 38 and the case-law cited).

63 It is clear from the applicant's submissions that she considers the provisions of Regulation No 1023/2103, which, in her application for annulment, she claims are illegal, to be the cause of the material and non-material damage that she claims to have suffered.

64 It is clear, however, that there is no direct and certain link between the contested provisions and the alleged damage suffered. That damage could only, where appropriate, be the consequence of a decision, in accordance with those provisions, of the institution to which the applicant belongs, namely the Council, granting her a number of leave days for travelling inferior to the number granted to her under the Staff Regulations applicable until 31 December 2013 and refusing the reimbursement of her annual travel expenses.

65 Therefore the condition relating to the existence of a causal link between the alleged conduct of the Parliament and the Council, as co-authors of the contested act, and the damage invoked is clearly not fulfilled.

66 It follows that the applicant's claims for damages must be dismissed as clearly unfounded.

67 Consequently, the appeal must be dismissed as in part clearly inadmissible and in part clearly unfounded.

68 In those circumstances there is no need to rule on the Commission's request, lodged on 16 April 2014, to intervene in support of the arguments of the Parliament and the Council.

Costs

69 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Council has applied for costs and the applicant has been unsuccessful, the latter must be ordered to bear her own costs and to pay those incurred by the Parliament and the Council in accordance with the form of order sought by them.

On those grounds,

THE GENERAL COURT (Eighth Chamber)

hereby orders:

1. **The action is dismissed.**

2. **Ms Huynh Duong Vi Nguyen shall bear the costs incurred by the European Parliament and the Council of the European Union as well as her own costs.**

3. **It is not necessary to rule on the Commission's request to intervene.**

Luxembourg, 11 November 2014.

E. Coulon
Registrar

D. Gratsias
President