Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

21 February 2018*

(Appeal — Action for annulment — Sixth paragraph of Article 263 TFEU — Admissibility — Time limit for instituting proceedings — Calculation — Former Member of the European Parliament — Decision relating to the recovery of parliamentary assistance allowances — Implementing Measures for the Statute for Members of the European Parliament — Article 72 — Complaint procedure within the European Parliament — Notification of the decision adversely affecting a Member of the European Parliament — Registered letter not collected by its addressee)

In Case C-326/16 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 9 June 2016,

**LL**, represented by J. Petrulionis, advokatas,

appellant,

the other party to the proceedings being:

**European Parliament**, represented by G. Corstens and S. Toliušis, acting as Agents,

defendant at first instance,

THE COURT (Fifth Chamber),

composed of J.L. da Cruz Vilaça, President of the Chamber, E. Levits, A. Borg Barthet, M. Berger (Rapporteur), and F. Biltgen, Judges,

Advocate General: M. Szpunar,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 17 May 2017,

after hearing the Opinion of the Advocate General at the sitting on 26 July 2017,

gives the following

* Language of the case: Lithuanian.

## Judgment

1 By his appeal, the appellant, Mr LL, a former Member of the European Parliament, seeks to have set aside the order of the General Court of the European Union of 19 April 2016, *LL* v *Parliament* (T-615/15, not published, EU:T:2016:432) ('the order under appeal') by which that court dismissed as manifestly inadmissible, on the ground that it was bought out of time, his action seeking, inter alia, annulment of the Parliament's decision of 17 April 2014 to recover a parliamentary assistance allowance paid to the appellant during his parliamentary term of office ('the decision at issue').

## Legal context

2 Article 68(1) of the Decision of the Bureau of the European Parliament of 19 May and 9 July 2008 concerning implementing measures for the Statute for Members of the European Parliament (OJ 2009 C 159, p. 1), in the version in force after 21 October 2010 (OJ 2010 C 283, p. 9) ('the Implementing Measures for the Statute'), that article being entitled 'Recovery of undue payments', provides:

'Any sum unduly paid pursuant to these implementing measures shall be recovered. The Secretary-General shall issue instructions with a view to recovery of the sums in question from the Member concerned.'

3 Article 72 of the Implementing Measures for the Statute, entitled 'Complaints', states:

'1. A Member who takes the view that these implementing measures have not been correctly applied to him or her by the competent service may address a written complaint to the Secretary-General.

The decision of the Secretary-General on the complaint shall state the reasons on which it is based.

2. A Member who does not agree with the decision of the Secretary-General may, within two months after notification of the Secretary-General's decision, request that the matter be referred to the Quaestors, who shall take a decision after consulting the Secretary-General.

3. If a party to the complaint procedure does not agree with the decision adopted by the Quaestors, he or she may, within two months after notification of that decision, request that the matter be referred to the Bureau, which shall take the final decision.

4. This Article shall also apply to a Member's legal successor as well as to former Members and their legal successors.'

## Background to the dispute and the decision at issue

4 The appellant was a Member of the European Parliament from 1 May to 19 July 2004.

5 Following an investigation by the European Anti-Fraud Office (OLAF), which found that a parliamentary assistance allowance in the amount of EUR 37 728 had been wrongly paid to the appellant, the Secretary-General of the Parliament, on 17 April 2014, adopted the decision at issue concerning the recovery that sum. On 22 May 2014, that decision and the debit note of 5 May 2014, setting out the recovery arrangements, were notified to the appellant.

6 Disagreeing with the decision at issue, the appellant, in accordance with Article 72(2) of the Implementing Measures for the Statute, made a request to the Quaestors.

7 The appellant was informed of the rejection of his complaint by a letter from the Quaestors of 3 December 2014 ('the decision of the Quaestors'), which the appellant stated he knew of the following day.

8 On 2 February 2015, the appellant, pursuant to Article 72(3) of the Implementing Measures for the Statute, lodged a complaint with the Bureau of the Parliament against the decision of the Quaestors and against the decision at issue.

9 The Bureau of the Parliament rejected the appellant's complaint by decision of 26 June 2015 ('the decision of the Bureau').

10 According to the Parliament, that decision was sent by registered letter on 30 June 2015 to the address provided by the appellant in his complaint before the Bureau. After a retention period of 15 days, that letter was returned by the Belgian postal service without having been collected by the appellant.

11 On 10 September 2015, the appellant received an email from a Parliament official to which was attached, inter alia, the decision of the Bureau.

## The proceedings before the General Court and the order under appeal

12 By application lodged at the Registry of the General Court on 4 November 2015, the appellant brought an action for annulment of the decision at issue and of the debit note of 5 May 2014, as well as an order for the Parliament to pay the costs.

13 In support of his action, the appellant relied on, in essence, two pleas in law alleging, first, that the decision at issue, the decision of the Quaestors, the decision of the Bureau and the debit note were unlawful and unfounded and, second, failure to observe the limitation period and the principles that action must be taken within a reasonable period, of legal certainty and of the protection of legitimate expectations in the adoption of the decision at issue and of the debit note.

14 By the order under appeal, the General Court recalled that, under the sixth paragraph of Article 263 TFEU, an action for annulment must be instituted within two months of the publication of the contested measure, or of its notification to the applicant, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be. After pointing out that the time limit for instituting proceedings was a matter of public policy, it held, in paragraphs 7 and 8 of the order under appeal, that the contested acts had been adopted on 17 April 2014 and 5 May 2014 respectively and had been notified to the appellant on 22 May 2014, whereas the action had been brought more than 17 months after the date of notification, no plea having been raised by the appellant as to the existence of unforeseeable circumstances or *force majeure*. Consequently, the General Court dismissed the action as being manifestly inadmissible on the ground that it was brought out of time.

## Forms of order sought by the parties

15 By his appeal, the appellant claims that the Court should:

– set aside the order under appeal; and

– refer the case back to the General Court for a fresh review.

16 The Parliament contends that the Court should:

– dismiss the appeal as being manifestly unfounded;

– order the appellant to pay the costs of the appeal.

## The appeal

17 In support of his appeal, the appellant puts forward four grounds of appeal. By his first ground of appeal, the appellant claims an inadequate examination of the case-file by the General Court and an error of law concerning the application of the sixth paragraph of Article 263 TFEU and Article 72 of the Implementing Measures for the Statute. By the second ground of appeal, the appellant takes the view that the General Court infringed Article 126 of its Rules of Procedure. The third ground of appeal alleges infringement by the General Court of Article 47(1) and (2) of the Charter of Fundamental Rights of the European Union. Finally, by its fourth ground of appeal, the appellant complains that the General Court decided, in breach of Article 133 and Article 134(1) of the Rules of Procedure of the General Court, that the appellant had to bear his own costs.

### *The first ground of appeal*

*Arguments of the parties*

18 The first ground of appeal is divided into two parts.

19 By the first part of the first ground of appeal, the appellant complains, in essence, that the General Court did not exhaustively examine all the evidence provided in support of the application, in that it failed to take into account the fact that the appellant had initiated the complaint procedure provided for in Article 72 of the Implementing Measures for the Statute.

20 By the second part of the first ground of appeal, the appellant complains that the General Court infringed the sixth paragraph of Article 263 TFEU, and Article 72 of the Implementing Measures for the Statute, too, in that it follows implicitly from the order under appeal that invoking the complaint procedure laid down in Article 72 of the Implementing Measures for the Statute has no effect on the calculation of the period for instituting proceedings provided for in Article 263 TFEU, despite the fact that, according to the appellant, that procedure is a mandatory pre-litigation procedure.

21 The Parliament submits, in particular, that the procedure in question, in contrast to the complaint procedure set out in Articles 90 and 91 of the Staff Regulations of Officials of the European Union, is optional. Moreover, the Parliament argues that, once the appellant had opted for the procedure laid down in Article 72 of the Implementing Measures for the Statute, he was no longer in a position to bring legal proceedings against the decision at issue, but was obliged to await the conclusion of the complaint procedure and, if appropriate, to challenge the decision of the Bureau.

22 As regards the calculation of the time limit for instituting proceedings, the Parliament notes that the appellant, both before the General Court and in his appeal, sought the annulment, not of the decision of the Bureau, but rather of the decision at issue and of the debit note. It infers from this that, in so far as the time limit for instituting proceedings within the meaning of the sixth paragraph of Article 263 TFEU, calculated from the day of notification of the decision at issue and of the debit note, was exceeded by more than 17 months, the General Court was obliged to dismiss the action as being brought out of time.

*Findings of the Court*

23 The second part of the first ground of appeal, which it is appropriate to examine first, alleges an error of law with regard to the application of the sixth paragraph of Article 263 TFEU and Article 72 of the Implementing Measures for the Statute in so far as the order under appeal implies that the initiation of the procedure laid down in Article 72 of the Implementing Measures for the Statute has no effect on the calculation of the time limit for instituting proceedings under the sixth paragraph of Article 263 TFEU.

24 With regard to the complaint procedure set out in Article 72 of the Implementing Measures for the Statute, it should be noted first of all that it is clear from the wording of that article that the procedure set out therein is optional.

25 In that regard, it should be recalled that the object of an administrative remedy, whether optional or not, is to enable and encourage the amicable settlement of differences arising between the person concerned and the administration in order to avoid litigation (see, by analogy, judgments of 23 January 1986, *Rasmussen* v *Commission*, 173/84, EU:C:1986:29, paragraph 12, and of 7 May 1986, *Rihoux and Others* v *Commission*, 52/85, EU:C:1986:199, paragraph 12 and the case-law cited), as the Advocate General noted in points 35 and 36 of his Opinion.

26 It follows, in particular, that whether an administrative remedy is optional or obligatory has no effect on the fact that a preliminary administrative procedure constitutes a pre-litigation remedy. As the Advocate General noted in point 42 of his Opinion, as regards the argument put forward by the Parliament to the effect that no period is prescribed within which the Parliament's administration must reply, whereas such a period is prescribed in the case of a complaint under the Staff Regulations of Officials of the European Union, it is sufficient to note that the latter procedure contains a necessary guarantee in the case of a mandatory administrative appeal in order to avoid delays, and to prevent it being made impossible for the person concerned to bring legal proceedings following failure to act by the administration. By contrast, the lack of such a time limit in the context of an optional administrative procedure would not restrict access to the courts, in so far as the person concerned may, at any moment, withdraw from that preliminary administrative procedure and institute legal proceedings.

27 In that regard, it should be pointed out that the complaint procedure would be deprived of effectiveness if the Member of the European Parliament, after availing of that option for the purposes of an amicable settlement, had to institute legal proceedings against the decision at issue before the conclusion of that administrative procedure in order to observe the time limit for initiating proceedings.

28 Accordingly, by finding that the action was brought out of time without taking account of the complaint procedure initiated by the appellant, the General Court erred in law.

29 In consequence, without it being necessary to rule on the first part of the first ground of appeal, or on the other grounds of appeal, the first ground of appeal must be upheld and the order under appeal be set aside.

***Admissibility of the action at first instance***

30 In accordance with the second sentence of the first paragraph of Article 61 of the Statute of the Court of Justice, if the decision of the General Court is set aside, the Court of Justice may itself give final judgment in the matter where the state of the proceedings so permits.

31 The Court of Justice is not in a position, at the present stage of the proceedings, to give judgment on the merits of the action brought before the General Court, which involves the consideration of questions of fact based on evidence which were not assessed before the General Court or argued before the Court of Justice (see, to that effect, judgment of 17 July 2008, *Athinaïki Techniki* v *Commission*, C-521/06 P, EU:C:2008:422, paragraph 66).

32 By contrast, the Court of Justice does have the information necessary to give final judgment on the admissibility of that action against the decision at issue (judgment of 27 February 2014, *Stichting Woonpunt and Others* v *Commission*, C-132/12 P, EU:C:2014:100, paragraph 66).

33 As regards, in the first place, the calculation of the time limit for instituting proceedings, the Parliament, in the present case, considered that, if a Member of the European Parliament opts, in order to challenge a decision, to make use of the complaint procedure under Article 72 of the Implementation Measures for the Statute, he or she may no longer bring legal proceedings against that decision, but must appeal against the decision of the Bureau rejecting that complaint.

34 As is clear from paragraph 26 above, whether an administrative remedy is optional or obligatory has no effect either on the fact that a preliminary administrative procedure constitutes a pre-litigation remedy or on the right of the person concerned to institute, at any moment, legal proceedings.

35 Accordingly, it cannot be found, in particular with regard to the right to an effective legal remedy enshrined in Article 47 of the Charter of Fundamental Rights of the European Union, that instituting a complaint procedure within the meaning of Article 72 of the Implementation Measures for the Statute prejudices the right to bring legal proceedings against the decision at issue.

36 Moreover, it should be noted that the Court of Justice has previously held, in the context of the complaint procedure set out in Articles 90 and 91 of the Staff Regulations of Officials of the European Union, that an administrative complaint and its rejection, whether express or implied, constitute an integral part of a complex procedure. In those circumstances, the legal proceedings, even if formally directed against the rejection of the complaint, have the effect of bringing before the Court of Justice the act adversely affecting the person concerned, against which the complaint was submitted (judgment of 17 January 1989, *Vainker* v *Parliament*, 293/87, EU:C:1989:8, paragraphs 7 and 8).

37 Furthermore, the Court of Justice has held, concerning the Staff Regulations of Officials of the European Union, that the action is admissible whether it is directed against the initial decision alone, the decision rejecting the complaint or both, provided that the complaint and the appeal were lodged within the periods prescribed by Articles 90 and 91 thereof (judgments of 26 January 1989, *Koutchoumoff* v *Commission*, 224/87, EU:C:1989:38, paragraph 7, and of 10 March 1989, *Del Plato* v *Commission*, 126/87, EU:C:1989:115, paragraph 9).

38 However, in accordance with the principle of economy of procedure, the judicature may decide that it is not appropriate to rule specifically on the claims directed against the decision rejecting the complaint where it finds that those claims have no independent content and are, in reality, the same as those directed against the decision against which the complaint has been made (see, to that effect, judgment of 17 January 1989, *Vainker* v *Parliament*, 293/87, EU:C:1989:8, paragraphs 7 to 9).

39 That may, in particular, be the case when it finds that the decision rejecting the complaint, including when that decision is implied, is purely confirmatory of the decision which was the subject of the complaint and that, therefore, the annulment of the decision rejecting that complaint has no effect on the legal position of the person concerned distinct from that which follows from the annulment of the decision which was the subject of the same complaint.

40 As the Advocate General noted in point 40 of his Opinion, the same considerations are applicable to the complaint procedure laid down for the benefit of Members of the European Parliament under Article 72 of the Implementing Measures for the Statute.

41 Consequently, the General Court was wrong to dismiss Mr LL's action as being manifestly inadmissible on the grounds that it was brought out of time, by finding that the decision at issue, and not the decision of the Bureau, was the point at which the period for bringing an action for annulment began to run.

42 On the one hand, as is apparent from the material submitted to the Court, in particular at the hearing, the appellant was only summarily informed of the rejection of his complaints by the decision of the Quaestors and the decision of the Bureau, those decisions, purely confirmatory of the decision at issue, not bringing about a change in his legal situation as regards the legal situation resulting from the decision at issue.

43 On the other hand, taking into account the findings set out in paragraphs 34 and 35 above, it must be stated that the period for bringing an action for annulment was set in motion as regards the appellant only on the day of the notification of the decision of the Bureau closing the complaint procedure set out in Article 72 of the Implementing Measures for the Statute.

44 In any case, it follows from the application initiating the proceedings before the General Court that the appellant also referred to the decisions of the Quaestors and of the Bureau.

45 In the second place, with regard to the notification of the decision of the Bureau, it should be noted, first, that, pursuant to the third subparagraph of Article 297(2) TFEU, decisions which specify to whom they are addressed must be notified to those to whom they are addressed and take effect upon such notification, although that provision does not define the concept of 'notification'.

46 As the Advocate General noted in point 59 of his Opinion, that provision enshrines a principle of legal certainty from which it follows that the rights and obligations arising from an individual administrative act may not be relied upon against the addressee of that act until that act has been duly made known to him.

47 Secondly, it is clear from the sixth paragraph of Article 263 TFEU that, in the case of a measure requiring notification, an action for annulment must be brought within two months of its notification to the applicant, or, failing notification, of the date on which it came to the knowledge of the applicant. As with the third subparagraph of Article 297(2) TFEU, the concept of 'notification' is not defined in that provision. Under Article 60 of the Rules of Procedure of the General Court, that period is to be extended on account of distance by a single period of 10 days.

48 With regard to the regularity of the notification of EU acts, the Court of Justice has already made it clear that a decision is properly notified, within the meaning of the sixth paragraph of Article 263 TFEU and the third subparagraph of Article 297(2) TFEU, provided that it is communicated to the person to whom it is addressed and the latter is put in a position to become acquainted with it (see, to that effect, judgment of 13 July 1989, *Olbrechts* v *Commission*, 58/88, EU:C:1989:323, paragraph 10, and order of 2 October 2014, *Page Protective Services* v *EEAS*, C-501/13 P, not published, EU:C:2014:2259, paragraph 30 and the case-law cited).

49 It should also be noted that it is for the party seeking to rely upon the lateness of an application to demonstrate from what day the period for the filing of that application should run (see, to that effect, judgments of 5 June 1980, *Belfiore* v *Commission*, 108/79, EU:C:1980:146, paragraph 7, and of 17 July 2008, *Athinaïki Techniki* v *Commission*, C-521/06 P, EU:C:2008:422, paragraph 70 and the case-law cited).

50 In the present case, the Parliament asserts that the appellant was informed of the decision of the Bureau by letter of 26 June 2015, sent by registered mail with acknowledgement of receipt, a notice of the attempted delivery of which was left by the Belgian postal service on 30 June 2015. According to the Parliament, that letter must be regarded, in accordance with the national rules governing the delivery of mail, as having been duly notified to its addressee on the date on which the standard holding period of 15 days applied by the Belgian postal service expired, given that the appellant did not collect the letter within that period.

51 In that context, it is not in dispute that the appellant did not receive the letter in question, given that it was returned to its sender without having been collected by the appellant.

52 However, in addition to his postal address, the appellant indicated, in his complaint, his email address, where he received, on 10 September 2015, an email from a Parliament official to which was attached, inter alia, the decision of the Bureau. The appellant acknowledged receipt of the email without delay.

53 Therefore, the Parliament was wrong to argue that, in the present case, the notification was carried out solely by sending the registered letter, even though that letter was not collected within the period given by the Belgian postal services.

54 Similarly, the fact put forward by the Parliament that the letter in question was sent to the Belgian address indicated in the appellant's complaint is irrelevant, as is the fact that the appellant neither informed the Parliament that he had moved back to his country of origin nor had the letter forwarded to his new address, in particular since, even if there is an obligation to communicate that change of address, the legal consequences attached to the failure to do so have not been established.

55 In the present case, it must be found that the Parliament also notified the decision at issue by email of 10 September 2015, with the result that the period of two months and 10 days could begin to run as regards the appellant only from the day on which that decision came to his knowledge.

56 Given that the Parliament puts forward no evidence that the appellant became fully aware of the decision at issue before the receipt of that email, the period of two months and 10 days began to run only on 10 September 2015. Consequently, the action at first instance, lodged on 4 November 2015, was not brought out of time.

## Costs

57 Since the case has been referred back to the General Court, the costs relating to the present appeal proceedings must be reserved.

On those grounds, the Court (Fifth Chamber) hereby:

1. **Sets aside the order of the General Court of the European Union of 19 April 2016, *LL* v *Parliament* (T-615/15, not published, EU:T:2016:432);**

2. **Refers the case back to the General Court of the European Union for a decision on the merits;**

3. **The costs are reserved.**

[Signatures]