



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

21 October 2021 *

(Appeal – Civil service – Officials – Disciplinary proceedings – Disciplinary penalty – Administrative investigation – Article 41(1) of the Charter of Fundamental Rights of the European Union – Requirement of objective impartiality – Cross-appeal – Rejection of a request for assistance – Article 41(2) of the Charter of Fundamental Rights – Right to be heard)

In Case C-894/19 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union brought on 3 December 2019,

European Parliament, represented by V. Montebello-Demogeot and I. Lázaro Betancor, acting as Agents,

applicant,

the other party to the proceedings being:

UZ, represented by J.-N. Louis, avocat,

applicant at first instance,

THE COURT (Second Chamber),

composed of A. Arabadjiev, President of the First Chamber, acting as President of the Second Chamber, I. Ziemele, T. von Danwitz, P.G. Xuereb and A. Kumin (Rapporteur), Judges,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 17 June 2021,

gives the following

* Language of the case: French.

Judgment

- 1 By its appeal, the European Parliament seeks to have set aside the judgment of the General Court of the European Union of 20 September 2019, *UZ v Parliament* (T-47/18, EU:T:2019:650; ‘the judgment under appeal’), by which the General Court, on the one hand, annulled the decision of the Secretary-General of the Parliament of 27 February 2017 imposing on UZ the disciplinary penalty of downgrading from grade AD 13, step 3, to grade AD 12, step 3 and resetting the promotion points acquired in grade AD 13 to zero (‘the decision to downgrade and reset promotion points to zero’) and, on the other hand, dismissed the action as to the remainder.
- 2 By her cross-appeal, UZ requests the Court of Justice to set aside the judgment under appeal in so far as the General Court rejected her application for annulment of the decision rejecting her request for assistance.

Legal framework

- 3 Article 24 of the Staff Regulations of Officials of the European Union, in the version applicable to the proceedings (‘the Staff Regulations’), provides:

‘The Union shall assist any official, in particular in proceedings against any person perpetrating threats, insulting or defamatory acts or utterances, or any attack to person or property to which he or a member of his family is subjected by reason of his position or duties.

It shall jointly and severally compensate the official for damage suffered in such cases, in so far as the official did not either intentionally or through grave negligence cause damage and has been unable to obtain compensation from the person who did cause it.’

- 4 Article 86 of the Staff Regulations provides:

‘1. Any failure by an official or former official to comply with his obligations under these Staff Regulations, whether intentionally or through negligence on his part, shall make him liable to disciplinary action.

2. Where the Appointing Authority or OLAF [European Anti-Fraud Office] becomes aware of evidence of failure within the meaning of paragraph 1, they may launch administrative investigations to verify whether such failure has occurred.

3. Disciplinary rules, procedures and measures and the rules and procedures covering administrative investigations are laid down in Annex IX.’

- 5 Article 16(1) and (2) of Annex IX to the Staff Regulations states:

‘1. The official concerned shall be heard by the [Disciplinary] Board; at the hearing, he may submit observations in writing or orally, whether in person or through a representative. He may call witnesses.

2. The institution shall be represented before the Board by an official mandated by the Appointing Authority to this effect and having rights equivalent to those of the official concerned.’

6 According to Article 22 of Annex IX:

‘1. After hearing the official, the Appointing Authority shall take its decision as provided for in Articles 9 and 10 of this Annex within two months of receipt of the opinion of the Board. Reasons must be given for the decision.

2. If the Appointing Authority decides to close the case without imposing any disciplinary penalty, it shall so inform the official concerned in writing without delay. The official concerned may request that this decision be inserted in his personal file.’

Background to the dispute

7 The background to the dispute is set out in paragraphs 1 to 27 of the judgment under appeal and, for the purposes of these proceedings, can be summarised as follows.

8 UZ held the position of Head of Unit at the Parliament from 1 January 2009 onwards. She was latterly classified as grade AD 13, step 3.

9 On 24 January 2014, 14 of the 15 members of her unit (‘the complainants’) sent a request for assistance to the Secretary-General of the Parliament, pursuant to Article 24 of the Staff Regulations, alleging that they had suffered psychological harassment by UZ.

10 Following that request, by letter of 17 February 2014, the Director-General of the Directorate-General for Personnel (‘DG PERS’) informed the complainants that interim measures had been taken. Those measures included passing the management of the staff of the unit concerned to another person and the opening of an administrative investigation.

11 By letter of 19 March 2014, the Secretary-General of the Parliament informed UZ of the opening of an administrative investigation. UZ was heard on 20 November 2014 by the Director-General of DG PERS.

12 Two investigators, one having replaced the other due to retirement, drew up two reports, dated 3 March and 17 November 2015. Following those reports, UZ was heard, on 17 June and 2 December 2015 respectively, by the Director-General of DG PERS.

13 By letter of 6 January 2016, UZ was informed by the Secretary-General of the Parliament that her failure to comply with obligations under the Staff Regulations had been referred to the Disciplinary Board. She was heard by the Disciplinary Board on 17 February, 9 March, 8 April and 26 May 2016.

14 On 25 July 2016, the Disciplinary Board unanimously adopted its opinion, the findings of which read as follows:

‘28 In view of the foregoing, the Disciplinary Board proposes that [the Appointing Authority] should penalise all the wrongful acts committed by [UZ] with an overall penalty consisting of a downgrading by one grade in the same function group.

- 29 In the light of [UZ]'s serious shortcomings in the management of staff and in view of the institution's duty of care to [UZ] and other persons who may be affected by her conduct, the Disciplinary Board finds that the [Appointing Authority] should, to the extent afforded it under the Staff Regulations, seriously consider reassigning UZ to a different type of post within the Secretariat-General and in any event, as requested by UZ herself, in a different [Directorate-General] ...'.
- 15 By letter of 7 September 2016, the Disciplinary Board forwarded its opinion to UZ.
- 16 By decision of 20 September 2016, the Secretary-General of the Parliament authorised the Director-General of DG PERS to represent him at the hearing of UZ provided for in Article 22 of Annex IX to the Staff Regulations and instructed the Director-General to forward to him any observations which UZ might have on the opinion issued by the Disciplinary Board.
- 17 By email of 4 October 2016, the Director-General of DG PERS invited UZ to attend a hearing on 20 October 2016, in accordance with Article 22(1) of Annex IX to the Staff Regulations, so that she could make known her observations on the opinion of the Disciplinary Board. By letter of 11 November 2016, UZ sent her observations to the Director-General of DG PERS.
- 18 On 14 November 2016, UZ was heard by the Director-General of DG PERS. At that hearing, she submitted a note and requested the assistance of the Parliament on account of alleged threats made against her by members of her unit. On a proposal from the Director-General of DG PERS, UZ was then temporarily assigned to another unit.
- 19 On 27 February 2017, the Secretary-General of the Parliament adopted the decision to downgrade and reset promotion points to zero. By letter of 2 March 2017, he informed UZ of that decision and proposed to her that she be reassigned to a position as administrator in a different unit.
- 20 By letter of 6 June 2017, UZ submitted a complaint against that decision to the Appointing Authority of the Parliament.
- 21 By letter of 14 June 2017, UZ submitted a complaint to the Secretary-General of the Parliament against the implied rejection of her request for assistance referred to in paragraph 18 of this judgment. By letter of 20 July 2017, the Director-General of DG PERS rejected that request for assistance.
- 22 By letter of 6 October 2017, the President of the Parliament rejected UZ's complaints made in the letters of 6 and 14 June 2017.

The proceedings before the General Court and the judgment under appeal

- 23 By application lodged at the Registry of the General Court on 29 January 2018, UZ brought an action seeking, first, annulment of the decision to downgrade and reset promotion points to zero and, secondly, annulment of the decision rejecting her request for assistance.

- 24 In support of her application for annulment of the decision to downgrade and reset promotion points to zero, UZ relied on two pleas in law, the first alleging that there were irregularities in the administrative investigation and the second alleging that there were irregularities in the proceedings of the Disciplinary Board and a failure by the competent authority to hold a hearing before making that decision.
- 25 Under the first plea, UZ argued, in particular, that two of the investigators entrusted with the administrative investigation, namely one of the investigators entrusted with the ‘disciplinary’ component and the investigator entrusted with the ‘harassment’ component, did not have the impartiality necessary to take part in that investigation.
- 26 In paragraph 65 of the judgment under appeal, the General Court accepted UZ’s reasoning concerning the lack of impartiality on the part of the two investigators in question and, accordingly, upheld her application for annulment of the decision to downgrade and reset promotion points to zero. However, for reasons relating to the sound administration of justice, the General Court considered it useful to examine the second plea.
- 27 In relation to the second plea, UZ argued, *inter alia*, first, that at one of the six meetings of the Disciplinary Board, the Parliament was represented by two members and that, on conclusion of that meeting, UZ and her counsel were invited to leave the room whereas the two representatives of the Parliament remained to deliberate with the members of the Disciplinary Board. That situation gave rise to an infringement of Article 16(2) of Annex IX to the Staff Regulations.
- 28 Secondly, according to UZ, only the Secretary-General of the Parliament, in his capacity as the Appointing Authority, was competent to hold the hearing under Article 22(1) of Annex IX to the Staff Regulations. However, she was heard by the Director-General of DG PERS, not by the Secretary-General of the Parliament.
- 29 The General Court found in that respect that, under Article 16(2) of Annex IX to the Staff Regulations, it was not permissible for the Parliament to be represented, at one of the six meetings of the Disciplinary Board, by two officials, since UZ was defended at that meeting only by a single representative and was thereby placed in a situation that was, in principle, disadvantageous. The General Court stated moreover that the Parliament’s representatives should not have remained in the meeting room to deliberate with the members of the Disciplinary Board when the applicant and her counsel had been requested to leave the room. The General Court, in paragraph 72 of the judgment under appeal, concluded from the foregoing that, on that point too, the proceedings were vitiated by a procedural irregularity.
- 30 Furthermore, the General Court noted, in paragraph 89 of the judgment under appeal, that the decision to downgrade and reset the promotion points to zero had been adopted in breach of the condition set out in Article 22(1) of Annex IX to the Staff Regulations according to which the Appointing Authority itself must hear the official concerned. As a result, in paragraph 102 of that judgment, the General Court upheld UZ’s plea alleging that the competent authority failed to hear her on completion of the proceedings of the Disciplinary Board.
- 31 In relation to the forms of order seeking annulment of the decision rejecting her request for assistance, after noting that the administration cannot be required to assist an official suspected, in the light of precise and relevant evidence, of having seriously breached his or her professional obligations and who is therefore liable to disciplinary proceedings, even where that breach has allegedly been caused by the unlawful actions of third parties, the General Court found, in

paragraph 109 of the judgment under appeal, that, at the time that UZ submitted her request for assistance, an administrative investigation relating to her was already underway in respect of matters which, if established, would be liable to lead to disciplinary proceedings. According to the General Court, the Parliament was therefore entitled to reject the request for assistance without a prior hearing.

- 32 In consequence, in paragraph 111 of that judgment, the General Court rejected the application for annulment of the decision rejecting UZ's request for assistance.
- 33 By the judgment under appeal, the General Court accordingly, first, annulled the decision to downgrade and reset promotion points to zero and, secondly, dismissed the action as to the remainder.

Forms of order sought by the parties

Forms of order sought in the appeal

- 34 By its appeal, the Parliament claims that the Court of Justice should:
- set aside the judgment under appeal;
 - dismiss the action at first instance;
 - order each party to pay its own costs relating to the appeal; and
 - order UZ to pay the costs of the proceedings at first instance.

- 35 UZ claims that the Court should:
- dismiss the appeal; and
 - order the Parliament to pay the costs of the proceedings at first instance and on appeal.

Forms of order sought in the cross-appeal

- 36 By her cross-appeal, UZ claims that the Court should:
- set aside the judgment under appeal in so far as it dismissed the application for annulment of the decision rejecting her request for assistance;
 - annul the decision of the Parliament dismissing that request for assistance; and
 - order the Parliament to pay the costs of the proceedings at first instance and on appeal.
- 37 The Parliament claims that the Court of Justice should:
- declare the cross-appeal partially inadmissible as regards the second ground of appeal and unfounded in its entirety; and

- order UZ to pay the costs.

The main appeal

- 38 The Parliament relies on three grounds in support of its appeal. The first alleges an error of law, distortion of the facts and a failure to state reasons in so far as the General Court found that the administrative investigation was vitiated by a lack of objective impartiality. The second ground alleges an error of law, distortion of the facts and a failure to state reasons in so far as the General Court held that the principle of equality of arms had been infringed during the proceedings of the Disciplinary Board. The third alleges an error of law, distortion of the facts and a failure to state reasons in so far as the General Court held that UZ’s right to be heard had been infringed.

The first ground of appeal

- 39 The first ground of appeal has four parts.

The first to third parts of the first ground of appeal

– Arguments of the parties

- 40 By the first to third parts of the first ground of appeal, the Parliament contends that, by finding, in paragraphs 52, 58 and 59 of the judgment under appeal, that it had not offered sufficient guarantees to exclude any legitimate doubt as to the impartiality of the two investigators at issue, entrusted with conducting the administrative investigation, the General Court distorted the facts and evidence and relied on erroneous legal criteria in the context of its assessment of the concept of ‘objective impartiality’, thereby infringing Article 41 of the Charter of Fundamental Rights of the European Union (‘the Charter’).
- 41 In particular, according to the Parliament, the mere fact that one of the two investigators entrusted with the ‘disciplinary’ component of the administrative investigation had, before being appointed to that role, acquired knowledge of the facts of the case – albeit limited and isolated and possibly even incomplete knowledge – could not, in itself, automatically give rise to a ‘legitimate’ doubt which would have justified the Parliament selecting another person who had no prior knowledge of the facts.
- 42 Moreover, the General Court did not sufficiently examine whether UZ’s apprehensions were actually capable of constituting a legitimate doubt as to the impartiality of the investigators. According to the Parliament, those apprehensions were not in fact capable of justifying the appointment of other investigators, in particular in the light of, first, the absence of any conflict of interest between the investigators concerned and UZ and, secondly, the fact that those investigators were assisted in their work by other persons. On that point, the Parliament claims that it adduced before the General Court the fact that there were several investigators, stating that two investigators had been appointed for the ‘disciplinary’ component. Similarly, according to the Parliament, it is sufficiently clear from the evidence put before the General Court that the ‘harassment’ component of the investigation had been entrusted to several persons.

- 43 By disregarding the fact that the two components of the investigation at issue were the responsibility of several investigators, the General Court therefore based its view on incomplete information and committed a manifest error of assessment when it found that a lack of impartiality on the part of the two investigators concerned could invalidate the entire disciplinary proceedings. According to the Parliament, the existence of several investigators neutralised any doubt as to the impartiality of any one of them.
- 44 Moreover, the Parliament alleges that the General Court distorted the evidence by stating, in paragraphs 57 and 58 of the judgment under appeal, that the investigator of the ‘harassment’ component, before being appointed as an investigator, when he was chairing the Advisory Committee on Harassment and its Prevention at the Workplace, had concluded that the management of the unit of which UZ was the head should be passed to another person. According to the Parliament, it can be seen from the decision of 17 February 2014 of the Director-General of DG PERS, a document which that institution had nevertheless submitted to the General Court, that it was the Director-General, as the Appointing Authority competent to determine the request for assistance under Article 24 of the Staff Regulations, rather than the Chair of the Advisory Committee, who had decided on the measures removing UZ from post.
- 45 UZ claims that the Parliament’s reasoning should be rejected as unfounded.

– *Assessment by the Court*

- 46 As regards the alleged distortion of the facts, it is clear from Article 256 TFEU and from the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union that appeals are limited to points of law. The General Court, therefore, has exclusive jurisdiction to make findings in respect of the relevant facts and to assess those facts and the evidence. Accordingly, the assessment of those facts and that evidence does not therefore, save where it distorts those facts and evidence, constitute a point of law which is, as such, subject on appeal to review by the Court of Justice. Such distortion must be clearly apparent from the documents in the case file, without there being any need to carry out a new assessment of the facts and the evidence (judgment of 1 October 2020, *CC v Parliament*, C-612/19 P, not published, EU:C:2020:776, paragraph 51 and the case-law cited).
- 47 In the present case, the Parliament submits that the General Court manifestly distorted the facts by finding that the Parliament did not offer sufficient guarantees to exclude any legitimate doubt as to the impartiality of the investigators. Specifically, the General Court, it submits, ignored the fact that the administrative investigation had been conducted by several investigators.
- 48 However, the argument to the effect that the facts were distorted arises from an incomplete reading of the judgment under appeal. It is clear from paragraphs 41 to 47 of the judgment under appeal that the General Court took due account of the fact that the administrative investigation was conducted by several investigators, but that fact did not affect its finding that there was a legitimate doubt as to the impartiality of some of those investigators.
- 49 Moreover, it is not obvious from the documents in the case file that the General Court distorted the facts when it found that the ‘harassment’ component of the investigation was conducted by a single investigator. Such a finding does not in fact preclude the fact that the investigator in question, in the context of the investigation, may have been assisted by other persons. That reasoning is therefore inadmissible since the Parliament is thereby, in actual fact, seeking a fresh

assessment of the facts by the Court of Justice, without however establishing that they have been distorted. As can be seen from the case-law cited in paragraph 46 of the present judgment, such an assessment is not subject to review by the Court of Justice on appeal.

- 50 It follows that the reasoning concerning the alleged distortion of the facts must be dismissed as in part inadmissible and in part unfounded.
- 51 As regards the General Court's allegedly erroneous assessment of the concept of objective impartiality, it must be recalled that EU institutions and bodies are required to respect the fundamental rights of the European Union, which include the right to good administration enshrined in Article 41 of the Charter (judgment of 27 March 2019, *August Wolff and Remedía v Commission*, C-680/16 P, EU:C:2019:257, paragraph 24 and the case-law cited).
- 52 Article 41(1) of the Charter states, inter alia, that every person has the right to have his or her affairs handled impartially by the institutions and bodies of the European Union.
- 53 In that regard, the need for impartiality, required of institutions and bodies in carrying out their missions, is intended to guarantee equality of treatment, which is at the heart of the European Union. That requirement is intended, inter alia, to avoid a situation where there could be a conflict of interest on the part of officials or agents acting on behalf of those institutions and bodies. Having regard to the fundamental importance of ensuring the independence and probity of EU institutions and bodies as regards both their internal functioning and external reputation, the requirement of impartiality covers all circumstances in which an official or agent who is called upon to decide on an issue must reasonably consider that issue as being of such a nature as to be viewed by third parties as a possible source of impairment of his or her independence in that matter (judgment of 27 March 2019, *August Wolff and Remedía v Commission*, C-680/16 P, EU:C:2019:257, paragraph 26 and the case-law cited).
- 54 In addition, as the General Court noted in paragraph 38 of the judgment under appeal, it is incumbent upon those institutions and bodies to comply with both components of the requirement of impartiality, which are, on the one hand, subjective impartiality, by virtue of which no member of the institution concerned may show bias or personal prejudice and, on the other, objective impartiality, under which there must be sufficient guarantees to exclude any legitimate doubt as to possible bias on the part of the institution concerned (judgment of 25 February 2021, *Dalli v Commission*, C-615/19 P, EU:C:2021:133, paragraph 112 and the case-law cited). The Court of Justice has clarified in that respect that, in order to show that the organisation of an administrative procedure does not ensure sufficient guarantees to exclude any legitimate doubt as to possible bias, it is not necessary to prove lack of impartiality. It is sufficient for a legitimate doubt to arise which cannot be dispelled (see, to that effect, judgment of 27 March 2019, *August Wolff and Remedía v Commission*, C-680/16 P, EU:C:2019:257, paragraph 37).
- 55 It also emerges from the case-law of the Court of Justice that prior knowledge of the facts by those called upon to participate in the adoption of a judicial or administrative decision is not, in itself, capable of vitiating that decision with a procedural defect of lack of impartiality. As the Advocate General noted in point 106 of his Opinion, such prior knowledge is sometimes inevitable in the light of a professional activity carried out previously or in parallel by the persons concerned. It is therefore necessary to establish whether, in a particular case, there is an objective factor, such as a

conflict of interest on the part of officials or agents acting on behalf of those institutions and bodies, capable of giving rise to a legitimate doubt in the minds of third parties as to the impartiality of that procedure.

- 56 The foregoing considerations must be taken into account in determining whether, as the Parliament claims, the General Court misconstrued the concept of ‘objective impartiality’ when it held that the circumstance that one of the two investigators responsible for the ‘disciplinary’ component of the administrative investigation had prior knowledge of the facts was sufficient to justify a finding that the Parliament had not offered sufficient guarantees to exclude any legitimate doubt as to the impartiality of that investigator.
- 57 On that point, the General Court noted, in paragraph 51 of the judgment under appeal, that a member of DG PERS had met with one of the complainants prior to the launch of the investigation and, during that meeting, that complainant had told that member of DG PERS, who was later appointed as an investigator, that he had been denounced to OLAF by UZ or, more specifically, through the intermediary of her husband, ‘as an act of revenge’, in relation to alleged irregularities.
- 58 The General Court found, in paragraph 52 of that judgment, that such a circumstance could have given UZ legitimate cause to doubt the impartiality of the investigator, who could have been influenced by the particularly malicious nature of the alleged conduct reported to him.
- 59 Accordingly, first of all, in contrast to the Parliament’s contention, when it found that there was a legitimate doubt as to the impartiality of the investigator responsible for the ‘disciplinary’ component at issue, the General Court did not rely only on that investigator’s prior knowledge of the facts of the case, but also on the circumstance that, as a result of that knowledge, he may have had a negative preconception regarding UZ’s conduct. That circumstance was indeed capable of causing a legitimate doubt as to the impartiality of the investigator in question according to the case-law cited in paragraph 54 of the present judgment, which, moreover, has not been disputed by the Parliament.
- 60 Next, according to the case-law cited in paragraph 54, the General Court was not required to verify whether the investigator was in fact biased against UZ. It was sufficient for a legitimate doubt to arise which could not be dispelled.
- 61 Lastly, as the Advocate General stated in point 130 of his Opinion, in so far as the Parliament was required to offer sufficient guarantees to exclude any legitimate doubt, the General Court was right to find, in paragraph 54 of the judgment under appeal, that there was no indication that it would have been difficult for the Parliament to select, from among its officials, a person who had no prior knowledge of the facts of the case and who therefore did not give rise to any legitimate doubt as to his or her impartiality on the part of UZ.
- 62 In the light of the foregoing, the General Court did not err in law when it found, in paragraph 59 of the judgment under appeal, that, by appointing a member of DG PERS who had already met one of the complainants as an investigator responsible for the ‘disciplinary’ component of the administrative investigation, the Parliament failed to discharge its obligation of objective impartiality.

- 63 As regards the Parliament's reasoning to the effect that the General Court's finding of partiality in respect of the investigator responsible for the 'harassment' component of the administrative investigation was based on a distortion of the evidence, that reasoning arises from a misreading of the judgment under appeal. In paragraph 57 of that judgment, the General Court in fact found that, before being appointed as an investigator, the investigator responsible for the 'harassment' component of the administrative investigation chaired the Advisory Committee that had concluded that management of UZ's unit should be passed to a different person. In contrast to the Parliament's assertion, the General Court did not in any respect indicate that the provisional measures removing UZ from her duties as head of unit had been decided upon by the investigator concerned. On the contrary, the General Court noted, in paragraph 3 of the judgment under appeal, that it was the Director-General of DG PERS who informed the complainants that provisional measures had been put in place and, in paragraph 57 of that judgment, that it was the Advisory Committee as a whole, rather than its Chair alone, that had recommended, pursuant to the complainants' request for assistance, that management of the unit of which UZ was head should be passed to a different person. It is apparent from the case file before the Court of Justice that such a recommendation is among those that the Advisory Committee in question, including its Chair, may have reason to make as to the choice of the provisional measures to adopt under Article 24 of the Staff Regulations.
- 64 It is clear from the foregoing that the alleged distortion of the facts and evidence has not been established.
- 65 In consequence, the first to third parts of the first ground of appeal must be rejected as in part inadmissible and in part unfounded.

Fourth part of the first ground of appeal

– Arguments of the parties

- 66 By the fourth part of the first ground of appeal, the Parliament claims that, even if it were possible to identify procedural irregularities, the General Court should have had regard to all the circumstances of the case, including the significant number of complainants, the seriousness of the failures committed by UZ and the fact that she had the benefit of a large number of safeguards, such as having her lawyer present at all stages of the proceedings. Therefore, as a result of the finding, in paragraph 64 of the judgment under appeal, that an administrative investigation conducted with care and impartiality might have resulted in a different initial assessment of the facts and led to different consequences, the judgment under appeal is vitiated by a failure to state reasons.
- 67 Furthermore, according to the Parliament, the reasons stated in the judgment under appeal are also contradictory, since the General Court, on the one hand, found a different assessment of the facts to be possible and, therefore, that an outcome other than that adopted by the Appointing Authority was conceivable and, on the other hand, found, in paragraphs 106 to 109 of that judgment, that the failures alleged against UZ appeared to be sufficiently serious and well founded to result in her request for assistance being rejected and to justify her being ordered to pay the costs.
- 68 According to UZ, the Parliament's arguments should be rejected as unfounded.

– *Assessment by the Court*

- 69 In the first place, as regards the Parliament's line of argument to the effect that the judgment under appeal is vitiated by a failure to state reasons because the General Court failed to take account of factual circumstances of the case, including the seriousness of the failures attributable to UZ, the number of complainants and the safeguards given to UZ during the disciplinary proceedings, such as having her lawyer present at all stages, it must be observed that the obligation to state reasons under Article 296 TFEU is an essential procedural requirement, which must be distinguished from the question of whether the reasoning is well founded, which is concerned with the substantive legality of the measure at issue. The reasoning of a decision consists in a formal statement of the grounds on which that decision is based. If those grounds contain errors, those errors will affect the substantive legality of the decision, but not the statement of reasons, which may be adequate even though it sets out reasons which are incorrect. It follows that complaints and arguments disputing that a measure is well founded are irrelevant to a ground of appeal alleging a failure to state reasons or that reasons are inadequate (judgment of 22 October 2020, *EKETA v Commission*, C-274/19 P, not published, EU:C:2020:853, paragraph 79 and the case-law cited, and order of 14 January 2021, *Manea v CdT*, C-892/19 P, not published, EU:C:2021:30, paragraph 91).
- 70 It is therefore necessary to determine whether the judgment under appeal is vitiated by a failure to state reasons, before examining the alleged error of law by the General Court to the extent that it failed to take into account all the relevant factual circumstances.
- 71 The General Court did in fact, in paragraphs 60 and 61 of the judgment under appeal, first of all recall its settled case-law according to which, on the one hand, a procedural irregularity can justify the annulment of a measure only if, had it not been for such an irregularity, the outcome of the procedure might have been different and, on the other, in the context of that examination, it is important to take account of all the circumstances of the case and, in particular, of the nature of the allegations and the scale of the procedural irregularities committed in relation to the guarantees which the official may have been given.
- 72 Next, the General Court found, in paragraphs 62 and 63 of that judgment, that an impartial administrative investigation, which is the first stage of disciplinary proceedings, affects the exercise by the Appointing Authority of its discretion as to the action to be taken further to that investigation and that that action may result, *in fine*, in the imposition of a disciplinary penalty. The General Court clarified in that respect that it is on the basis of that investigation and of the hearing of the staff member concerned that the Appointing Authority assesses, first, whether or not it is necessary to initiate disciplinary proceedings proper, secondly, whether or not those proceedings must, as the case may be, consist in the matter being referred to the Disciplinary Board and, thirdly, where it initiates proceedings before that board, the facts referred to it.
- 73 Lastly, in paragraph 64 of the judgment under appeal, the General Court concluded that, since the powers of the Appointing Authority are not circumscribed, it could not be ruled out that, if the administrative investigation had been conducted with care and impartiality, that investigation might have resulted in a different initial assessment of the facts and, accordingly, led to different consequences.
- 74 It is clear from the foregoing that the General Court, in paragraphs 62 and 63 of the judgment under appeal, gave sufficient reasons for its finding in paragraph 64 of that judgment. The line of argument alleging a failure to state reasons must therefore be dismissed as unfounded.

- 75 In the second place, as regards the Parliament's line of argument according to which, when assessing the consequences of the irregularities affecting the disciplinary proceedings, the General Court should have taken into account factual circumstances such as the seriousness of the breaches attributable to UZ, the number of complainants and the fact that UZ benefited from having a lawyer present at each stage of those proceedings, it must be observed that the reasoning in question is inadmissible since the Parliament is thereby, in actual fact, seeking a fresh assessment of the facts by the Court of Justice, although without alleging that the General Court distorted those facts. As can be seen from the case-law cited in paragraph 46 of the present judgment, such an assessment is not subject to review by the Court of Justice on appeal.
- 76 In the third place, in respect of the Parliament's claim that the General Court's conclusion set out in paragraph 64 of the judgment under appeal contradicts the findings it makes in paragraphs 106 to 109 of that judgment, merely as a result of finding those latter considerations to concern the examination of a procedure other than the disciplinary proceedings, that is to say, UZ's request for assistance under Article 24 of the Staff Regulations, it becomes impossible to establish any contradiction.
- 77 It is clear from the foregoing that the fourth part of the first ground of appeal must be dismissed as in part inadmissible and in part unfounded.
- 78 The first ground of appeal must therefore be dismissed in its entirety as in part inadmissible and in part unfounded.

The second and third grounds of appeal

- 79 The second and third grounds of appeal are directed against grounds in the judgment under appeal by which the General Court in part upheld UZ's second plea in law, alleging irregularities in the proceedings of the Disciplinary Board and a failure by the competent authority to hold a hearing at the conclusion of those proceedings.
- 80 It should be recalled in that respect that, according to settled case-law of the Court of Justice, on appeal, arguments directed against grounds included in a judgment of the General Court purely for the sake of completeness must be rejected as ineffective, since they cannot lead to that judgment being set aside (judgment of 12 November 2020, *Gollnisch v Parliament*, C-676/19 P, not published, EU:C:2020:916, paragraph 55 and the case-law cited).
- 81 The grounds of the judgment under appeal contested in the second and third grounds of appeal are indeed included purely for the sake of completeness. After upholding the first plea in law alleging irregularities in the administrative investigation and finding therefore that UZ's forms of order seeking annulment of the decision to downgrade and reset promotion points to zero should be granted, the General Court, as can be seen from paragraph 66 of the judgment under appeal, considered it appropriate for reasons connected with the sound administration of justice to examine the second plea adduced by UZ.
- 82 The second and third grounds of appeal must therefore be dismissed as ineffective.
- 83 It follows from all the foregoing that the main appeal must be dismissed.

The cross-appeal

84 UZ advances two grounds in support of the cross-appeal, the first alleging infringement of Article 41(2) of the Charter and the second infringement of Article 48 of the Charter.

The first ground

Arguments of the parties

85 By the first ground of the cross-appeal, UZ alleges that the General Court infringed Article 41(2) of the Charter. According to UZ, by virtue of that article, she should have been heard by the Parliament before it rejected her request for assistance under Article 24 of the Staff Regulations.

86 According to the Parliament, UZ's line of argument must be dismissed as unfounded.

Assessment by the Court

87 UZ contends that she should have been heard by the Parliament, in accordance with Article 41(2) of the Charter, before the Parliament decided to reject her request for assistance.

88 It should be recalled in that respect that, according to Article 41(2) of the Charter, the right to good administration includes the right of every person to be heard before any individual measure which would affect him or her adversely is taken.

89 The right to be heard guarantees every person the opportunity to make known their views effectively during an administrative procedure and before the adoption of any decision liable to affect their interests adversely (judgments of 4 June 2020, *EEAS v De Loecker*, C-187/19 P, EU:C:2020:444, paragraph 68, and of 25 June 2020, *HF v Parliament*, C-570/18 P, EU:C:2020:490, paragraph 58 and the case-law cited).

90 Furthermore, according to settled case-law, the right to be heard pursues a dual objective: first, to enable the case to be examined and the facts to be established in as precise and correct a manner as possible, and, secondly, to ensure that the person concerned is in fact protected. The right to be heard is intended, inter alia, to guarantee that any decision adversely affecting a person is adopted in full knowledge of the facts, and its purpose is to enable the competent authority to correct an error or to enable the person concerned to submit such information relating to his or her personal circumstances as will argue in favour of the adoption or non-adoption of the decision, or in favour of its having a specific content (judgment of 4 June 2020, *EEAS v De Loecker*, C-187/19 P, EU:C:2020:444, paragraph 69 and the case-law cited).

91 Moreover, the Court of Justice has stated that a person who has lodged a request for assistance under Article 24 of the Staff Regulations on the ground that he or she has been the victim of threats may rely, by virtue of the principle of good administration, on the right to be heard regarding the facts concerning him or her (see, to that effect, judgment of 4 June 2020, *EEAS v De Loecker*, C-187/19 P, EU:C:2020:444, paragraph 66 and the case-law cited).

- 92 In the present case, the decision by which the Director-General of DG PERS rejected the request for assistance brought by UZ under Article 24 of the Staff Regulations constitutes an individual measure which concerns her and would affect her adversely, for the purposes of Article 41(2) of the Charter.
- 93 The General Court rejected the application for annulment of the decision rejecting UZ's request for assistance on the basis of the case-law cited in paragraph 107 of the judgment under appeal, according to which the administration cannot be required to assist an official suspected, in the light of precise and relevant evidence, of having seriously failed to fulfil his or her professional obligations and who is therefore liable to disciplinary proceedings, even where that failure has allegedly been caused by the unlawful actions of third parties, and on the basis of the facts referred to in paragraphs 108 and 109 of that judgment.
- 94 It must be observed in that respect that it is apparent from Article 177(1)(c) and Article 178(3) of the Rules of Procedure of the Court of Justice that a cross-appeal must indicate precisely the contested elements of the judgment or order which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the cross-appeal (see, by analogy, judgment of 6 May 2021, *Gollnisch v Parliament*, C-122/20 P, not published, EU:C:2021:370, paragraph 45 and the case-law cited).
- 95 In the present case, UZ does not indicate in what respects an infringement of Article 41(2) of the Charter allegedly invalidates the grounds set out by the General Court in paragraphs 106 to 109 of the judgment under appeal, on which that Court rejected the application for annulment of the decision rejecting her request for assistance.
- 96 Specifically, UZ has not clarified, by means of sufficient legal arguments, why the case-law referred to in paragraph 107 of the judgment under appeal cannot apply to the present case. Nor has UZ invoked any distortion of the facts referred to in paragraphs 108 and 109 of that judgment.
- 97 It is apparent from the foregoing that UZ's cross-appeal does not satisfy the requirements set out in paragraph 94 of the present judgment.
- 98 The first ground must therefore be dismissed as ineffective.

The second ground

Arguments of the parties

- 99 By the second ground of the cross-appeal, UZ claims that the General Court, when it refused the form of order seeking annulment of the decision of the Director-General of DG PERS rejecting her request for assistance, failed to take into account the Charter, and in particular Article 48 thereof. According to UZ, the Parliament assumed that she was guilty and, therefore, breached the principle of the presumption of innocence under that article.
- 100 According to the Parliament, UZ's line of argument should be dismissed as inadmissible and, in any event, unfounded.

Assessment by the Court

- 101 It must be observed that, according to consistent case-law, it is apparent from Article 256 TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union and Article 178(3) of the Rules of Procedure that an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal (see, by analogy, judgment of 25 June 2020, *Schneider v EUIPO*, C-116/19 P, not published, EU:C:2020:501, paragraph 71 and the case-law cited).
- 102 Nevertheless, by merely asserting in general terms that the General Court infringed Article 48 of the Charter without indicating to the requisite legal standard in what respects, in her view, it did so, UZ has, in her line of argument, failed to satisfy the requirements referred to in the preceding paragraph.
- 103 The second ground must therefore be dismissed as inadmissible.
- 104 In the light of the foregoing, the cross-appeal must be dismissed in its entirety.

Costs

- 105 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court shall make a decision as to costs. Under Article 138(1) of those rules, applicable to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.
- 106 Since the Parliament has been unsuccessful in its main appeal and UZ applied for it to be ordered to pay the costs, the Parliament must be ordered to pay the costs of the main appeal.
- 107 Since UZ has been unsuccessful in her cross-appeal and the Parliament applied for her to be ordered to pay the costs, UZ must be ordered to pay the costs of the cross-appeal.

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

- 1. Dismisses the main appeal and the cross-appeal;**
- 2. Orders the European Parliament to pay the costs relating to the main appeal;**
- 3. Orders UZ to pay the costs relating to the cross-appeal.**

[Signatures]