



Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

3 March 2022*

(Appeal – Civil service – Officials – Staff Regulations of Officials of the European Union – Article 60, first paragraph – Unauthorised absence – Scope – Deduction from annual leave – Withholding of salary – Official who has failed to fulfil his or her obligations under Articles 21 and 55 of the Staff Regulations)

In Case C-162/20 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 8 April 2020,

WV, represented by É. Boigelot, lawyer,

appellant,

the other party to the proceedings being:

European External Action Service (EEAS), represented by S. Marquardt and R. Spáč, acting as Agents, and M. Troncoso Ferrer, abogado, and F.-M. Hislaire, avocat,

defendant at first instance,

THE COURT (Seventh Chamber),

composed of I. Ziemele (Rapporteur), President of the Sixth Chamber, acting as President of the Seventh Chamber, T. von Danwitz and A. Kumin, Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 3 June 2021,

gives the following

* Language of the case: French.

Judgment

- 1 By her appeal, WV seeks to have set aside the order of the General Court of the European Union of 29 January 2020, *WV v EEAS* (T-471/18, not published, ‘the order under appeal’, EU:T:2020:26), by which the General Court dismissed her application under Article 270 TFEU seeking annulment, first, of the decision of the European External Action Service (EEAS) of 27 November 2017 imposing a salary deduction amounting to 72 calendar days (‘the contested decision’) and, second, in so far as necessary, of the EEAS’s decision of 2 May 2018 rejecting the appellant’s complaint of 3 January 2018 (‘the decision rejecting the complaint’).

Legal framework

- 2 Article 1e(2) of the Staff Regulations of Officials of the European Union, in the version applicable to the dispute giving rise to the present appeal (‘the Staff Regulations’), provides:

‘Officials in active employment shall be accorded working conditions complying with appropriate health and safety standards at least equivalent to the minimum requirements applicable under measures adopted in these areas pursuant to the Treaties.’

- 3 Article 12a(1) of the Staff Regulations provides that officials must refrain from any form of psychological or sexual harassment. Article 12a(3) and (4) defines psychological harassment and sexual harassment.

- 4 Under Article 21 of the Staff Regulations:

‘An official, whatever his rank, shall assist and tender advice to his superiors; he shall be responsible for the performance of the duties assigned to him.

An official in charge of any branch of the service shall be responsible to his superiors in respect of the authority conferred on him and for the carrying out of instructions given by him. The responsibility of his subordinates shall in no way release him from his own responsibilities.’

- 5 Article 55 of the Staff Regulations provides:

‘1. Officials in active employment shall at all times be at the disposal of their institution.

2. The normal working week shall range from 40 to 42 hours, the hours of the working day to be determined by the appointing authority. Within the same limits, the appointing authority may, after consulting the Staff Committee, determine the hours to be worked by certain groups of officials engaged on particular duties.

3. An official may, moreover, be required because of the exigencies of the service or safety rules to remain on standby duty at his place of work or at home outside normal working hours. The appointing authority of each institution shall lay down detailed rules for the application of this paragraph after consulting the Staff Committee.

...’

6 The first paragraph of Article 60 of the Staff Regulations provides:

‘Except in case of sickness or accident, an official may not be absent without prior permission from his immediate superior. Without prejudice to any disciplinary measures that may apply, any unauthorised absence which is duly established shall be deducted from the annual leave of the official concerned. If he has used up his annual leave, the official is to forfeit his remuneration for an equivalent period.’

7 Article 86 of the Staff Regulations is worded as follows:

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

8 Annex IX to the Staff Regulations, entitled ‘Disciplinary proceedings’, provides, in Article 9(1):

‘The Appointing Authority may impose one of the following penalties:

(a) a written warning;

(b) a reprimand;

(c) deferment of advancement to a higher step for a period of between one and 23 months;

(d) relegation in step;

(e) temporary downgrading for a period of between 15 days and one year;

(f) downgrading in the same function group;

(g) classification in a lower function group, with or without downgrading;

(h) removal from post and, where appropriate, reduction *pro tempore* of a pension or withholding, for a fixed period, of an amount from an invalidity allowance; the effects of this measure shall not extend to the official’s dependants. ...’

Background to the dispute

9 For the purposes of the present appeal, the background to the dispute, as set out in paragraphs 1 to 48 of the order under appeal, may be summarised as follows.

- 10 The appellant, WV, is an official of the European Union. She has been assigned to the EEAS since 1 January 2011 and, since that date, has performed her duties in a number of divisions of the EEAS. In particular, from 1 February 2015 to 30 September 2016, the appellant worked for the EURCA.West.3 Division of the EEAS.
- 11 From 1 October to 15 November 2016, the appellant was transferred in the interests of the service to the Americas.2 Division and then, on 16 November 2016, to the PRISM Division of the EEAS. The appellant states that she has applied to the administration on numerous occasions in order to ascertain the reasons for her exclusion from the EURCA.West.3 Division.
- 12 On 16 January 2017, the appellant was informed that her absences were regarded as being 'unauthorised'. She was also informed, with regard to her presence, that she had not yet been seen in her office.
- 13 On 10 February 2017, the appellant was questioned by her superiors with regard to her absences.
- 14 By email of 3 April 2017, the appellant sent a medical certificate to justify her absences of 30 and 31 March 2017 and 3 April 2017.
- 15 By email of 10 April 2017, the appellant informed her superiors that her absences, including some for future dates, had been wrongly recorded on the staff administration IT system 'Sysper'.
- 16 On 11 April 2017, an exchange of emails took place between the appellant and her superiors regarding the alleged unjustified absences.
- 17 On 25 and 26 April 2017, the appellant exchanged emails with her Head of Unit regarding the fact that her Head of Division took the view that her presence in her office was considered by the administration to be an unjustified absence. The appellant's Head of Unit explained to her *inter alia* the conditions to be met in order to be considered 'present' at work.
- 18 On 12 September 2017, the appellant's Head of Unit sent her a note in which it was stated that, in respect of the period from 1 January to 14 July 2017, she had 85 days' unjustified absences which would be deducted from her remuneration in accordance with Article 60 of the Staff Regulations.
- 19 By email of 15 September 2017, the appellant replied to that note and requested *inter alia* that she be sent information extracted from the system for clocking in and out of the building.
- 20 On 25 September 2017, the Head of Division HR 3 informed the appellant that, for reasons of data protection, she could not be provided with those extracts.
- 21 By the contested decision, the EEAS informed the appellant that the calculation of her unjustified absences had been revised, namely that 9 days would be converted into annual leave and that the equivalent of 72 days would be deducted from her salary.
- 22 On 7 December 2017, the appellant was informed of the amount that would be deducted from her salary from February 2018.
- 23 On 3 January 2018, the appellant lodged a complaint, pursuant to Article 90(2) of the Staff Regulations, against the contested decision.

- 24 On 6 February 2018, the European Commission Office for the ‘Administration and Payment of Individual Entitlements’ (PMO) made the deductions from the appellant’s salary on the basis of that decision.
- 25 On 27 April 2018, the appellant obtained the information extracted from the system for clocking in and out of the building for the period from 1 January to 8 February 2017.
- 26 On 2 May 2018, the appointing authority adopted the decision rejecting the complaint.

The proceedings before the General Court and the order under appeal

- 27 By application lodged at the Registry of the General Court on 2 August 2018, the appellant brought an action seeking, first, annulment of the contested decision and, in so far as necessary, of the decision rejecting the complaint and, second, a ruling by the General Court that the amounts to be repaid to her be increased by default interest.
- 28 In addition, pursuant to Article 89(3)(d) of the Rules of Procedure of the General Court, the appellant asked that Court to order the EEAS to produce various documents and exhibits.
- 29 In support of her action before the General Court, the appellant raised a single plea in law alleging infringement of Article 1e(2) and Articles 12, 12a, 21, 25, 26, 55 and 60 of the Staff Regulations, of Articles 1 and 2 of Annex IX to the Staff Regulations, of the duty of care, of the principle of good administration, of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1), of Articles 41, 47 and 52 of the Charter of Fundamental Rights of the European Union, of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, of the right to a fair hearing and of Article 296 TFEU.
- 30 By her single plea in law, the appellant also alleged abuse of rights, abuse of process, a flagrant breach of the principle of legitimate expectations and of equality of arms and breach of the principle which requires the authorities to hand down decisions only on the basis of legally permissible grounds, breach of the principles of proportionality, *audi alteram partem* and legal certainty, and infringement of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).
- 31 By the order under appeal, the General Court dismissed the appellant’s action as being, in part, manifestly inadmissible and, in part, manifestly unfounded in law.
- 32 With regard to the application for annulment of the contested decision and the decision rejecting the complaint, the General Court, first of all, took the view that only the arguments alleging infringement of Articles 21, 55 and 60 of the Staff Regulations and of the obligation to state reasons had been presented in a form that met the minimum requirements laid down in Article 76(d) of the Rules of Procedure of the General Court and rejected the other arguments as manifestly inadmissible.
- 33 The General Court then rejected the arguments alleging infringement of Articles 21, 55 and 60 of the Staff Regulations and of the obligation to state reasons as manifestly lacking any foundation.

- 34 In the first place, with regard to the alleged infringement of Articles 21, 55 and 60 of the Staff Regulations, the General Court held *inter alia*, in paragraph 79 of the order under appeal, that, even if it were established that the appellant was actually present in EEAS office buildings as claimed, the fact remains that, by clearly stating her intention not to work within the PRISM Division on the ground that she wanted to focus solely on the administrative issues related to her transfer, the appellant failed to comply with the conditions laid down by Articles 21 and 55 of the Staff Regulations. According to the General Court, the EEAS cannot therefore be criticised for considering the applicant to be in a situation of unjustified absences. Moreover, the General Court noted that, since the absences invoked by the EEAS had not been authorised in advance by her superiors, the deduction from her pay of up to 72 calendar days was merely the consequence of non-compliance with the requirements provided for in Article 60 of the Staff Regulations.
- 35 In the second place, with regard to the alleged failure to state the reasons for the decision rejecting the complaint, after having recalled, first, that it is possible to consider that a decision contains sufficient reasoning where it has been adopted in circumstances known to the official concerned, which enable him or her to understand its scope and, second, that the person concerned's knowledge of those circumstances may constitute a statement of reasons for the decision in question, the General Court took the view, in paragraph 85 of the order under appeal, that it was apparent from the decision rejecting the complaint that the appellant was very well acquainted with the context in which the contested decision was taken. In that regard, it stated that the appellant herself had attached to her complaint several exchanges of letters and emails with the EEAS concerning the deduction from her salary of days considered to be unjustified absences.
- 36 In the third place, as a consequence of the rejection of the claims for annulment of the contested decision and the decision rejecting the complaint, and for the same reasons, in paragraph 87 of the order under appeal, the General Court rejected the appellant's claim that it should rule that the amounts to be repaid to her be increased by default interest.
- 37 Finally, in view of the dismissal of those claims for annulment as being, in part, manifestly inadmissible and, in part, manifestly unfounded, in paragraphs 88 and 89 of the order under appeal, the General Court held that the application made by the appellant under Article 89(3)(d) of its Rules of Procedure also had to be dismissed. According to the General Court, nothing in the application suggests that the documents the production of which had been requested would have been capable of invalidating the finding in paragraphs 74 to 80 of the order under appeal that the appellant had failed to assist her superiors by performing the tasks entrusted to her or making herself available to the EEAS at all times, in accordance with the obligations arising from Articles 21 and 55 of the Staff Regulations, or that those documents were able to establish that the decision rejecting the complaint was insufficiently reasoned. In any event, the appellant was not said to have identified with a sufficient degree of precision the documents which she requested be produced or to have provided the General Court with the minimum amount of information justifying the usefulness of those documents for the purposes of the proceedings, in accordance with Article 88(2) of its Rules of Procedure.

Forms of order sought

- 38 By her appeal, WV claims that the Court should:
- set aside the order under appeal;

- order the EEAS to pay all of the costs, including the costs before the General Court; and
- refer the case back to the General Court in order for it to rule on the action.

39 The EEAS contends that the Court should:

- declare the appeal inadmissible, or at least unfounded; and
- order WV to pay the costs and expenses of the proceedings.

The appeal

- 40 In support of her appeal, the appellant relies on a single ground of appeal, alleging a failure to have regard to the principle of unfettered evaluation of evidence and the concept of a body of consistent evidence and, therefore, a failure to have regard to the rules relating to the burden of proof, a denial of justice, discrimination, distortion of the facts and manifest errors of assessment resulting in imprecise legal reasoning in the order under appeal. That ground of appeal is divided into six parts.
- 41 The EEAS considers that that ground of appeal must be dismissed as inadmissible on the ground that it fails to comply with the requirements of the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union and Article 168(1)(d) of the Rules of Procedure of the Court of Justice, or, at the very least, as unfounded.

Admissibility of the appeal

Arguments of the parties

- 42 The EEAS takes the view that the appeal is inadmissible on the ground that the single ground of appeal lacks clarity. Thus, first of all, the complaint relating to a manifest error of assessment of the evidence by the General Court is said to be developed in a disorganised manner, without explaining how that alleged error should lead to the annulment of the contested decision. Next, the complaint relating to an alleged denial of justice in fact concerns an infringement of the right to an effective remedy. The EEAS states that the appeal does not clearly explain how the General Court infringed that right or breached the principle of non-discrimination which was also invoked. Finally, the wording of the single ground of appeal does not mention an alleged infringement of Article 60 of the Staff Regulations.
- 43 The appellant submits that the appeal is admissible.

Findings of the Court

- 44 It follows from the second subparagraph of Article 256(1) TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union, as well as from Article 168(1)(d) of the Rules of Procedure of the Court of Justice, that an 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 appeal, failing which

the appeal or the ground of appeal in question will be dismissed as inadmissible (see judgments of 2 March 2021, *Commission v Italy and Others*, C-425/19 P, EU:C:2021:154, paragraph 55 and the case-law cited, and of 20 May 2021, *Dickmanns v EUIPO*, C-63/20 P, not published, EU:C:2021:406, paragraph 49 and the case-law cited).

- 45 A ground of appeal which is supported by an argument that is not sufficiently clear and precise to enable the Court to exercise its powers of judicial review, in particular because essential elements on which the ground of appeal is based are not indicated sufficiently coherently and intelligibly in the text of the appeal, which is worded in a vague and ambiguous manner in that regard, does not satisfy those requirements and must be declared inadmissible. The Court has also held that an appeal lacking any coherent structure which simply makes general statements and contains no specific indications as to the points of the contested decision which may be vitiated by an error of law must be dismissed as manifestly inadmissible (judgment of 4 October 2018, *Staelen v European Ombudsman*, C-45/18 P, not published, EU:C:2018:814, paragraph 15 and the case-law cited).
- 46 In the present case, although the presentation of some of the arguments in the present appeal could indeed have been clearer in order to facilitate understanding, the fact remains that that appeal contains a series of legal arguments relating specifically to clearly identified elements of the order under appeal. Consequently, the EEAS's arguments cannot result in that appeal being declared inadmissible in its entirety, but must be assessed in the context of the examination of each of the six parts of the single ground of appeal.
- 47 In those circumstances, the present appeal must be declared admissible.

The appellant's preliminary observation

Arguments of the parties

- 48 In the part of her appeal entitled 'Facts and background to the proceedings', the appellant states that, in its statement of the facts and the background to the dispute, the General Court failed to cite and take into account certain factual elements on which her analysis was based.
- 49 The EEAS submits that the appellant does not indicate the actual consequences such an omission had on her action before the General Court.

Findings of the Court

- 50 It must be observed in that regard that the appellant merely lists the factual elements which the General Court allegedly failed to take into account and refers, in general, to the complaint alleging failure to have regard to the principle of unfettered evaluation of evidence and the concept of a body of consistent evidence and, therefore, a failure to have regard to the rules relating to the burden of proof, without indicating specifically which paragraphs of the order under appeal are vitiated by an error of law as a result of that alleged omission.
- 51 Consequently, such allegations do not satisfy the requirements set out in paragraphs 44 and 45 of the present judgment and must therefore be dismissed as inadmissible.

Substance

- 52 The first and second parts of the appellant's single ground of appeal concern the grounds of the order under appeal on which the General Court rejected some of the appellant's claims as manifestly inadmissible. The third to fifth parts of that ground of appeal concern the grounds of the order under appeal on which the General Court rejected as manifestly unfounded in law the appellant's arguments relating to an infringement of Articles 21, 55 and 60 of the Staff Regulations and breach of the obligation to state reasons. The sixth part of that ground of appeal concerns the rejection, by the General Court, of the request for the adoption of a measure of organisation of procedure under Article 89(3)(d) of the Rules of Procedure of the General Court.

The first and second parts of the single ground of appeal

– Arguments of the parties

- 53 By the first part of her single ground of appeal, which relates to paragraphs 63 and 64 of the order under appeal, the appellant claims that the General Court wrongly held that the alleged infringement of Article 1e(2) and Article 12a of the Staff Regulations had not been expanded on at all in the application. First, the appellant states that she relied on Article 1e of the Staff Regulations since, in paragraph 54 of her application before the General Court, she stated, on one hand, that it was for the appointing authority to ensure, under its obligation to achieve a result, that the official could exercise her profession in an appropriate and healthy environment that was free from incessant attacks, defamation and/or harassment and, on the other, that her health had deteriorated at work as a result of the defamatory, nasty and harassing behaviour which had been denounced and demonstrated. Second, in that application before the General Court, the appellant is also said to have stated that she had been subjected to psychological harassment and to have referred, in paragraph 53 of that application, to the precise wording of Article 12a(3) of the Staff Regulations.
- 54 By the second part of her single ground of appeal, the appellant criticises the General Court for the outcome of her complaint alleging an abuse of process and a breach of the duty to have regard for the welfare of staff and the obligation to achieve a result to ensure that an official is able to exercise his or her profession in an appropriate and healthy environment that is free from attacks, defamation or harassment.
- 55 In the first place, the General Court is said to have given confused and therefore legally flawed reasons for the refusal to examine that complaint since, after having set it out in paragraph 65 of the order under appeal, the General Court neither rejected that complaint as inadmissible nor examined its substance.
- 56 In the second place, the appellant disputes the findings of the General Court in paragraph 65 of the order under appeal and claims that, to reach those findings, the General Court did not take into account the entire file and did not fully examine the evidence. The General Court is thus said to have disregarded the principle of unfettered evaluation of evidence and the concept of a body of consistent evidence and, therefore, to have infringed the rules relating to the burden of proof, which led to a denial of justice. In particular, the appellant submits that that complaint is supported by Annexes A.4, A.8, A.10, A.16, A.21, A.24, A.25, A.26 and A.30 to her application before the General Court.

- 57 The EEAS submits, with regard to the second part of the single ground of appeal, that, on account of the complete absence in the application before the General Court of any reference to evidence, the appellant cannot criticise the General Court for not having taken into account the documents which are said to have supported her claims, namely Annexes A.4, A.8, A.10 and A.16, mentioned for the first time at the appeal stage. The principle that the subject matter of an action is delimited by the parties, which governs the procedure before the General Court, requires the applicant to identify precisely the evidence to which the pleas in law relate without the General Court having to search the file *ex officio* for the evidence corresponding to the applicant's complaints.

Findings of the Court

- 58 As regards the first part of the single ground of appeal, by which the appellant claims that the General Court distorted her arguments by wrongly considering that the alleged infringement of Article 1e(2) and Article 12a of the Staff Regulations had not been expanded on at all in the application, it should be recalled that, in the context of an appeal, the purpose of review by the Court of Justice is, *inter alia*, to consider whether the General Court responded to the requisite legal standard to all the arguments raised by the appellant (judgment of 25 June 2020, *Commission v CX*, C-131/19 P, not published, EU:C:2020:502, paragraph 33 and the case-law cited).
- 59 Moreover, the ground of appeal alleging that the General Court failed to address the arguments raised at first instance amounts, in essence, to pleading a breach of the obligation to state reasons arising from Article 36 of the Statute of the Court of Justice of the European Union, applicable to the General Court by virtue of the first paragraph of Article 53 of that statute, and Article 119 of the Rules of Procedure of the General Court (judgment of 25 June 2020, *Commission v CX*, C-131/19 P, not published, EU:C:2020:502, paragraph 34 and the case-law cited).
- 60 However, as the Court of Justice has consistently held, the requirement that the General Court give reasons for its decisions cannot be interpreted as meaning that it is obliged to respond in detail to every single argument advanced by the appellant, particularly if the argument is not sufficiently clear and precise (judgment of 15 April 2010, *Gualtieri v Commission*, C-485/08 P, EU:C:2010:188, paragraph 41 and the case-law cited).
- 61 Thus, the General Court cannot be criticised for considering, in the light of general statements and indications, such as those contained in paragraphs 53 and 54 of the application at first instance, that the alleged infringement of Articles 1e and 12a of the Staff Regulations has not been the subject of any legal argument.
- 62 The first part of the single ground of appeal must therefore be dismissed as unfounded.
- 63 With regard to the second part of the single ground of appeal, it should be noted, first, that the appellant's argument that the General Court did not state the reasons for its refusal to examine that complaint, since it did not declare it inadmissible or examine its substance, is based on a misreading of the order under appeal.
- 64 It follows from the anonymised version of the order under appeal, annexed to the appellant's appeal, that, after having stated, in paragraph 64 of that order, that 'the claims referred to in paragraph 63 [of that order] do not meet the minimum requirements of clarity and consistency of Article 76(d) of the Rules of Procedure', the General Court stipulated, in paragraph 65 of that order, that that was 'also the case with regard to the complaint alleging an abuse of process and a

breach of the duty to have regard for the welfare of staff and the obligation to achieve a result to ensure that an official is able to exercise his or her profession in an appropriate and healthy environment that is free from attacks, defamation or harassment'. The General Court went on to state, in particular, in paragraph 65 of the order under appeal, that, 'in support of that complaint, the applicant [merely] invoked, in a general and unsubstantiated manner, if not a general reference to the "facts as set out in the present action" and to "irrefutable evidence", an "environment turned against [her] for sinister purposes and within a context of obvious professional exclusion"', and a number of other factors.

- 65 The General Court then concluded, in paragraph 66 of the anonymised version of the order under appeal, annexed to the appellant's appeal, that the claims referred to in paragraphs 62 to 65 thereof had to be dismissed as manifestly inadmissible.
- 66 Consequently, the claim that the General Court did not state the reasons for its refusal to examine the complaint alleging an abuse of process and a breach of the duty to have regard for the welfare of staff and the obligation to achieve a result to ensure that an official is able to exercise his or her profession in an appropriate and healthy environment that is free from attacks, defamation or harassment is unfounded.
- 67 As regards, second, the second complaint of the second part of the single ground of appeal, referred to in paragraph 56 of the present judgment, it must be recalled that, as is clear from the case-law of the Court of Justice, the 'brief statement of the pleas in law' which must be stated in any application, within the meaning of Article 21 of the Statute of the Court of Justice of the European Union, applicable to the General Court by virtue of the first paragraph of Article 53 of that statute, and Article 76(1) of the Rules of Procedure of the General Court, means that the application must specify the nature of the grounds on which the application is based (judgment of 11 September 2014, *MasterCard and Others v Commission*, C-382/12 P, EU:C:2014:2201, paragraph 39 and the case-law cited, and order of 21 January 2016, *Internationaler Hilfsfonds v Commission*, C-103/15 P, not published, EU:C:2016:51, paragraph 31).
- 68 Thus, it is necessary, in particular, for an action before the General Court to be admissible, that the basic matters of law and fact relied on be indicated, at least in summary form, coherently and intelligibly in the application itself. Whilst the body of the application may certainly be supported and supplemented on specific points by references to extracts from documents annexed thereto, a general reference to other documents, even those annexed to the application, cannot make up for the absence of the essential arguments in law which, in accordance with the provisions referred to in the preceding paragraph of the present judgment, must appear in the application (judgment of 11 September 2014, *MasterCard and Others v Commission*, C-382/12 P, EU:C:2014:2201, paragraph 40, and order of 21 January 2016, *Internationaler Hilfsfonds v Commission*, C-103/15 P, not published, EU:C:2016:51, paragraph 32).
- 69 The purely probative and instrumental purposes of the annexes means that, in so far as these contain elements of law on which certain grounds expressed in the appeal are based, those elements must be set out in the actual body of that appeal or, at the very least, be sufficiently identified in the appeal (see judgment of 2 October 2019, *Crédit mutuel Arkéa v ECB*, C-152/18 P and C-153/18 P, EU:C:2019:810, paragraph 39 and the case-law cited).

- 70 Consequently, it is not for the General Court to seek and identify in the annexes the pleas and arguments on which it may consider the action to be based, since the annexes have a purely evidential and instrumental function (see, to that effect, judgment of 16 September 2020, *BP v FRA*, C-669/19 P, not published, EU:C:2020:713, paragraph 54).
- 71 The second complaint of the second part of the single ground of appeal is, consequently, unfounded.
- 72 Therefore, the first and second parts of that ground of appeal must be dismissed as unfounded.

The fifth part of the single ground of appeal

– Arguments of the parties

- 73 By the fifth part of the single ground of appeal, which must be examined first, the appellant claims that the General Court misapplied Article 60 of the Staff Regulations and disregarded the legal basis for the contested decision. According to the appellant, by considering that that decision, based on Article 60 of the Staff Regulations, was valid, the General Court erred in law in its analysis of Article 60 and, in addition, distorted the facts by considering that the appellant's absence was unauthorised even though she was physically present.
- 74 In the first place, the General Court is said to have analysed the so-called fact of the unjustified absences in the light not of Article 60 of the Staff Regulations, which constitutes the legal basis for the contested decision, but on the basis of Articles 21 and 55 of the Staff Regulations.
- 75 By confirming the appointing authority's analysis contained in the contested decision, treating the appellant's presence in the buildings of the institution, which did not meet the latter's expectations in terms of availability and attendance, as an unjustified absence, the General Court is said to have infringed Article 60 of the Staff Regulations, which covers absences without prior permission, except in case of sickness or accident. Since the appellant was present on those premises, she states that Article 60 of the Staff Regulations does not apply.
- 76 According to the appellant, if the appointing authority considered that she did not meet those expectations, it should have initiated disciplinary proceedings. An infringement of Articles 21 and 55 of the Staff Regulations cannot be penalised by a salary deduction or a deduction of leave since such measures are not provided for in Article 9 of Annex IX to the Staff Regulations. Thus, a salary deduction cannot constitute a disguised or alternative disciplinary sanction.
- 77 In the second place and in any event, the EEAS is said not to have provided a description of the post, or to have stated the objectives to be achieved and the specific tasks entrusted to the appellant, or proved that the appellant refused to perform them. In that regard, the General Court is said to have committed a manifest error of assessment by referring, in paragraph 74 of the order under appeal, to the appellant's response to her appraisal report for 2016, whereas her alleged unjustified absences, as established by the General Court, related to 2017.
- 78 The EEAS submits that the fifth part of the single ground of appeal, in so far as it concerns an alleged infringement of Article 60 of the Staff Regulations, is not contained in the wording of the single ground of appeal. It states that, in any event, that part is unfounded. In that regard the General Court is said to have rightly noted that the official must at all times be at the disposal of

the institution, that Article 60 of the Staff Regulations penalises any unauthorised absence and that it therefore requires an effective presence in the workplace, which is subject to the official's compliance with two cumulative conditions, referred to in Articles 21 and 55 of the Staff Regulations, namely to assist his or her superiors by performing the tasks entrusted to him or her and, to that end, to make himself or herself available to the institution at all times. Consequently, contrary to what the appellant claims, the General Court and the appointing authority relied on Articles 21, 55 and 60 of the Staff Regulations, taken together, and not solely on Article 60 thereof.

– *Findings of the Court*

- 79 As regards the alleged inadmissibility of the fifth part of the single ground of appeal, it should be noted that, first, although the wording of that ground of appeal contains an allegation relating to 'manifest errors of assessment resulting in imprecise legal reasoning' in the order under appeal, the arguments set out in that fifth part clearly state that, by it, the appellant is criticising the General Court for having erred in law in applying Article 60 of the Staff Regulations.
- 80 Second, that fifth part indicates precisely the contested elements of the order under appeal and the legal arguments specifically advanced in support of the request to have that order set aside, in accordance with the requirements set out in paragraph 44 of the present judgment.
- 81 The fifth part of the single ground of appeal is therefore admissible.
- 82 As regards the first complaint of the fifth part of the single ground of appeal, by which the appellant alleges that the General Court misapplied Article 60 of the Staff Regulations, it should be noted that, in paragraphs 70 to 80 of the order under appeal, the General Court verified whether the contested decision and the decision rejecting the complaint were consistent with Articles 21, 55 and 60 of the Staff Regulations.
- 83 After recalling, in paragraphs 71 and 72 of the order under appeal, the wording of those articles and that of point B of the introduction to Commission Decision C (2013) 9051 final of 16 December 2013 on leave, applicable to the EEAS by virtue of EEAS Decision DEC (2014) 009 of 13 February 2014, the General Court found, in paragraph 73 of that order, that the appellant had failed to comply with the requirements laid down by those provisions.
- 84 Thus, in paragraphs 74 and 75 of that order, the General Court first of all stated, with regard to the conditions laid down in Articles 21 and 55 of the Staff Regulations, that the appointing authority rightly held that it was apparent from the file, and in particular from the appellant's response to her appraisal report for 2016, that, since her transfer within the PRISM Division and despite various warnings and reminders from her superiors, she had made clear her intention not to work within that division.
- 85 Next, the General Court noted, in paragraph 76 of the order under appeal, that the appellant's desire not to assist her superiors and not to carry out the tasks entrusted to her was also apparent from an email from the appellant dated 11 April 2017 in which she stated that she had been present every day at the EEAS in order to attempt to resolve the situation in which she found herself following her unlawful exclusion from the EURCA.West.3 Division and her improper transfer to the PRISM Division. In her email, the appellant also stated that she was not necessarily sitting at her desk all day.

- 86 Lastly, the General Court added, in paragraph 77 of the order under appeal, that, even if the appellant considered that her transfer was not suitable, she could request another assignment, but that did not exempt her, pending such assignment, from working within the PRISM Division to carry out tasks related to her post and from making herself available to the EEAS at all times. In paragraph 78 of that order, the General Court stipulated that, if the appellant considered that her transfer was vitiated in some way, she could avail herself of the remedies available to her, but her fundamental duties of loyalty and cooperation prevented her, however, from refusing to comply with the obligations arising from that transfer.
- 87 The General Court concluded, in paragraph 79 of the order under appeal, that, even if it were established that the appellant was actually present in EEAS office buildings as claimed, the fact remains that, by clearly stating her intention not to work within the PRISM Division on the ground that she wanted to focus solely on the administrative issues related to her transfer, the appellant manifestly failed to comply with the conditions laid down by Articles 21 and 55 of the Staff Regulations. The General Court went on to state that the EEAS cannot therefore be criticised for considering the appellant to be in a situation of unjustified absences and that, since the absences invoked by the EEAS had not been authorised in advance by her superiors, the deduction from her pay of up to 72 calendar days was merely the consequence of non-compliance with the requirements provided for in Article 60 of the Staff Regulations.
- 88 Lastly, the General Court stated, in paragraph 80 of the order under appeal, that the conclusion it reached in paragraph 79 thereof cannot be called into question by the appellant's claim that she had submitted numerous items of evidence attesting to her presence in the office and within the PRISM Division. In that regard, the General Court took the view, in essence, that that evidence did not make it possible, despite its date of dispatch, to demonstrate either that the appellant had assisted her superiors by performing the tasks entrusted to her or that she had made herself available to the EEAS at all times in accordance with her obligations under Articles 21 and 55 of the Staff Regulations.
- 89 It follows from the foregoing considerations that the General Court, in essence, took the view that, since, by having clearly stated her intention not to work within the division to which she had been transferred, the appellant had failed to comply with the conditions laid down by Articles 21 and 55 of the Staff Regulations, the EEAS cannot be criticised for considering her to be in a situation of unjustified absences and, consequently, in accordance with Article 60 of the Staff Regulations, the EEAS could legitimately make a deduction from her pay of up to 72 calendar days, even if it were established that the appellant was actually present in EEAS office buildings.
- 90 As a preliminary point, it must be observed that, although, in the order under appeal, the General Court refers to the appellant's 'unjustified absences', it is clear from paragraph 70 of that order that the General Court examined whether the contested decision and the decision rejecting the complaint were consistent, *inter alia*, with Article 60 of the Staff Regulations, which refers to cases of 'unauthorised absence'.
- 91 It is therefore necessary to determine whether the fact, were it to be established, that an official does not comply with the obligations imposed on him or her by Articles 21 and 55 of the Staff Regulations, namely to assist and tender advice to his or her superiors, to be responsible for the duties assigned to him or her and at all times to be at the disposal of the institution, may be classified as an 'unauthorised absence' within the meaning of the first paragraph of Article 60 of the Staff Regulations and, therefore, enable the measures laid down in that provision to be applied to that official.

- 92 In accordance with settled case-law, in interpreting a provision of EU law, it is necessary to consider not only its wording but also its context and the objectives pursued by the rules of which it forms part (see, *inter alia*, judgment of 28 January 2020, *Commission v Italy (Directive combating late payment)*, C-122/18, EU:C:2020:41, paragraph 39 and the case-law cited).
- 93 In the first place, it should be noted that the first paragraph of Article 60 of the Staff Regulations, which is in Chapter 2 of Title IV thereof, entitled ‘Leave’, provides that, ‘except in case of sickness or accident, an official may not be absent without prior permission from his immediate superior’, that, ‘without prejudice to any disciplinary measures that may apply, any unauthorised absence which is duly established shall be deducted from the annual leave of the official concerned’ and that, ‘if he has used up his annual leave, he shall forfeit his remuneration for an equivalent period’.
- 94 Although that provision does not define the concept of ‘unauthorised absence’, it follows that the absence of an official is unauthorised when the official has not complied with the prohibition on being absent without prior permission from his or her immediate superior, except in case of sickness or accident.
- 95 For the purposes of applying the first paragraph of Article 60 of the Staff Regulations, the duly established absence of the official concerned and the lack of prior permission from his or her superior to that effect are decisive. It follows from that provision that the principal reason for forfeiture of remuneration is the absence of an official without authorisation under the regulations or from the appointing authority (order of 30 November 1972, *Perinciolo v Council*, 75/72 R, EU:C:1972:110, paragraph 10).
- 96 As the Advocate General stated in point 44 of his Opinion, in everyday language, the concept of ‘absence’ refers to the fact that someone or something is not where it is expected to be, which implies a physical absence.
- 97 There is nothing in the wording of the first paragraph of Article 60 of the Staff Regulations to suggest that, for the purposes of applying that provision, that concept must be understood in a sense that is different from its ordinary meaning. In particular, there is nothing whatsoever in that wording to suggest that the ‘unauthorised absence’ of an official, within the meaning of that provision, may be inferred from a failure to comply with his or her professional obligations under Articles 21 and 55 of the Staff Regulations, irrespective of whether or not the official is physically present at his or her place of work.
- 98 As the Advocate General observed, in essence, in point 46 of his Opinion, the first paragraph of Article 60 of the Staff Regulations makes no reference to any failure on the part of the official to comply with his or her professional obligations.
- 99 In the second place, it should be recalled that Chapter 2 of Title IV of the Staff Regulations, entitled ‘Leave’, which includes Article 60 of the Staff Regulations, lays down provisions relating to the various forms of leave available to officials, namely annual leave and special leave, governed by Articles 57 and 59a of the Staff Regulations, maternity leave, governed by Article 58 of the Staff Regulations, and sick leave, governed by Article 59 of the Staff Regulations. As the Advocate General noted in point 54 of his Opinion, all of those articles concern situations in which an official has entered a period of occupational inactivity and, consequently, does not have to be physically present at his or her place of work.

- 100 While Articles 57 to 59a of the Staff Regulations concern situations in which the official's absence is justified by reason of one of the types of leave governed by those articles, the first paragraph of Article 60 of the Staff Regulations covers situations in which the official is absent without falling under one of the situations covered by Articles 57 to 59a and without having obtained permission from his or her superior.
- 101 The fact that the first paragraph of Article 60 of the Staff Regulations falls within Chapter 2 of Title IV thereof tends to confirm that the applicability of that provision presupposes that the official concerned is physically absent from his or her place of work.
- 102 In the third place, an official who is in a situation of 'unauthorised absence which is duly established', within the meaning of the first paragraph of Article 60 of the Staff Regulations, is liable, without prejudice to any disciplinary measures that may apply, to having that unauthorised absence deducted from his or her annual leave or, if that leave has been used up, to forfeiting his or her remuneration for a period equivalent to that unauthorised absence.
- 103 In that regard, the Court has held that any unauthorised absence which is duly established on the part of an official who has used up his annual leave results in his automatically forfeiting his remuneration (judgment of 6 July 1983, *Geist v Commission*, 285/81, EU:C:1983:192, paragraph 21).
- 104 The forfeiture of remuneration, provided for in the first paragraph of Article 60 of the Staff Regulations, is neither a disciplinary measure nor an equivalent measure (judgment of 6 July 1983, *Geist v Commission*, 285/81, EU:C:1983:192, paragraph 21).
- 105 It follows that, first, the deduction of an unauthorised absence from annual leave or, if that leave has been used up, the forfeiture of remuneration for a period equivalent to that absence, provided for in the first paragraph of Article 60 of the Staff Regulations, are measures which, by reason of their nature and effect, are intended not to reprimand an official for his or her misconduct, incompetence or unavailability during the period of work, but to compensate for the physical absence of that official. In so far as the absence is calculated as a number of days or half days, those measures involve deducting the number of days or half days from the number of days' leave remaining or, where appropriate, from the remuneration of the official concerned.
- 106 As the Advocate General observed in point 63 of his Opinion, unlike the situations in which an official is absent from his or her place of work, it is not possible to quantify a possible breach of professional obligations by that official.
- 107 Second, the measures referred to in paragraph 105 of the present judgment are not intended to replace a disciplinary penalty on account of such a breach.
- 108 Consequently, the objective of the measures provided for in the first paragraph of Article 60 of the Staff Regulations confirms the interpretation that that provision covers situations where an official is physically absent from his or her place of work.
- 109 Therefore, as the Advocate General noted in point 64 of his Opinion, to consider an official who is present at his or her place of work but who performs his or her duties badly, or is even guilty of insubordination, to be in a situation of 'unauthorised absence', within the meaning of the first paragraph of Article 60 of the Staff Regulations, and, accordingly, that deductions may be made from his or her salary or number of days' leave constitutes misapplication of disciplinary

measures. Such an incorrect classification of ‘unauthorised absence’ results in the imposition on the official of disciplinary measures not provided for by the Staff Regulations, without the benefit of the necessary safeguards provided by disciplinary proceedings conducted in accordance with the law.

- 110 It follows that the General Court erred in law in taking the view, in the order under appeal, that, even if it were established that the appellant was actually present in EEAS office buildings, she had failed to comply with the conditions laid down by Articles 21 and 55 of the Staff Regulations, on the ground that she had made clear her intention not to work within the division, that, therefore, the EEAS cannot be criticised for considering the applicant to be in a situation of unjustified absences and that, since the absences deducted by the EEAS had not been authorised in advance by the appellant’s superiors, the EEAS could, in accordance with Article 60 of the Staff Regulations, impose a salary deduction amounting to 72 calendar days.
- 111 It follows from the foregoing considerations that the first complaint of the fifth part of the single ground of appeal is well founded.
- 112 Consequently, the order under appeal must be set aside without there being any need to examine the second complaint of the fifth part of the single ground of appeal, or the other parts of that ground of appeal.

The action before the General Court

- 113 In accordance with the second sentence of the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, the Court may, after quashing the decision of the General Court, itself give final judgment in the matter, where the state of the proceedings so permits.
- 114 That is the case with the present proceedings.

The application for annulment of the contested decision and the decision rejecting the complaint

- 115 It should be noted that the error of law referred to in paragraph 110 of the present judgment also vitiates the contested decision and the decision rejecting the complaint.
- 116 It follows from the decision rejecting the complaint that the EEAS took the view that an official is present within that service when he or she satisfies the two cumulative conditions arising from Articles 21 and 55 of the Staff Regulations, namely to assist his or her superiors by performing the tasks entrusted to him or her and to make himself or herself available to the institution at all times. In that regard, the EEAS, first, took the view that an official who has declared his or her intention not to assist his or her superiors and not to perform the tasks entrusted to him or her did not satisfy the conditions for being actually present within the service and was in a situation of unjustified absence. Second, it rejected the evidence relied on by the appellant as not demonstrating an ‘effective presence’ for the purposes of the conditions laid down by Articles 21 and 55 of the Staff Regulations.
- 117 The EEAS inferred from an alleged failure to comply with the obligations imposed by Articles 21 and 55 of the Staff Regulations that the appellant was in a situation of ‘unauthorised absence’ within the meaning of Article 60 of the Staff Regulations. As was pointed out in paragraph 95 of

the present judgment, for the purposes of applying the first paragraph of Article 60 of the Staff Regulations, the duly established absence of the official concerned and the lack of prior permission from his or her superior to that effect are decisive, except in case of sickness or accident, and therefore that absence must be understood as being a physical absence from the official's place of work.

118 The contested decision and the decision rejecting the complaint must, therefore, be annulled.

The application for repayment

119 By her action before the General Court, the appellant also requested that the amounts to be repaid to her be increased by default interest at the rate of 5% per annum or a different rate, calculated on the day on which actual recovery takes place and according to the dates of the various deductions made.

120 In that regard, it should be recalled that, under the second sentence of Article 91(1) of the Staff Regulations, the General Court has, in disputes of a financial character, unlimited jurisdiction (judgment of 21 February 2008, *Commission v Girardot*, C-348/06 P, EU:C:2008:107, paragraph 58).

121 The unlimited jurisdiction conferred on the EU judicature by Article 91(1) of the Staff Regulations entrusts it with the task of providing a complete solution to the disputes brought before it, that is to say of ruling on all the rights and obligations of the staff member, save for leaving to the institution in question, under the control of the court, the implementation of such part of the judgment and under such precise conditions as the court shall determine (judgment of 18 December 2007, *Weißenfels v Parliament*, C-135/06 P, EU:C:2007:812, paragraph 67).

122 It is for the Courts of the European Union, in an appropriate case, to order an institution to pay a sum to which the applicant is entitled under the Staff Regulations or another legal measure (judgments of 18 December 2007, *Weißenfels v Parliament*, C-135/06 P, EU:C:2007:812, paragraph 68, and of 10 September 2015, *Réexamen Missir Mamachi di Lusignano v Commission*, C-417/14 RX-II, EU:C:2015:588, paragraph 40).

123 'Disputes of a financial character', within the meaning of Article 91(1) of the Staff Regulations, include not only actions brought by staff members seeking to have an institution held liable, but also all those seeking payment by an institution to a staff member of a sum which he considers to be due to him under the Staff Regulations or other measure governing their working relations (judgment of 18 December 2007, *Weißenfels v Parliament*, C-135/06 P, EU:C:2007:812, paragraph 65).

124 In the present case, the appellant's request that the EEAS reimburse her the amounts deducted from her salary and that those amounts be increased by default interest has a financial character, within the meaning of Article 91(1) of the Staff Regulations.

125 In the light of the annulment of the contested decision and the decision rejecting the complaint, that request must be upheld and the EEAS ordered to reimburse the appellant the amounts wrongly deducted from her salary, amounting to 71.5 days, since the decision rejecting the complaint upheld the applicant's request relating to one half day. Those amounts shall be increased, for reasons of equity, by interest at the rate of 5% per annum from the date of their deduction.

Costs

- 126 In accordance with Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to the costs.
- 127 Article 138(1) of those Rules of Procedure, which is applicable to appeal proceedings by virtue of Article 184(1) thereof, provides that the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since WV has applied for costs and the EEAS has been unsuccessful, the latter must be ordered to pay, in addition to its own costs, the costs incurred by WV both in the proceedings at first instance and in the present appeal.

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

- 1. Sets aside the order of the General Court of the European Union of 29 January 2020, *WV v EEAS* (T-471/18, not published, EU:T:2020:26);**
- 2. Annuls the decision of the European External Action Service (EEAS) of 27 November 2017 imposing a salary deduction amounting to 72 calendar days and the EEAS's decision of 2 May 2018 rejecting the appellant's complaint of 3 January 2018;**
- 3. Orders the EEAS to reimburse the appellant the amounts wrongly deducted from her salary, amounting to 71.5 days. Those amounts shall be increased by interest at the rate of 5% per annum from the date of their deduction;**
- 4. Orders the EEAS to bear its own costs and to pay the costs incurred by WV both in the proceedings at first instance and in the present appeal.**

[Signatures]