Reports of Cases

JUDGMENT OF THE GENERAL COURT (Eighth Chamber)

23 September 2020*

(Civil service – Temporary members of staff – Health problems alleged to be caused by working conditions – Request for recognition of an occupational disease – Article 73 of the Staff Regulations – Right to be heard – Article 41 of the Charter of Fundamental Rights – Obligation for the person concerned to be heard before the original decision)

In Case T-338/19,

UE, represented by S. Rodrigues and A. Champetier, lawyers,

applicant,

v

European Commission, represented by T. Bohr and L. Vernier, acting as Agents,

defendant,

ACTION pursuant to Article 270 TFEU seeking the annulment of the decision of the Office for Administration and Payment of Individual Entitlements (PMO) of the Commission, of 1 August 2018, by which the applicant's request for recognition of an occupational disease, pursuant to Article 73 of the Staff Regulations, was dismissed as inadmissible.

THE GENERAL COURT (Eighth Chamber),

composed of J. Svenningsen, President, R. Barents and T. Pynnä (Rapporteur), Judges,

Registrar: E. Coulon,

gives the following

Judgment

Background to the dispute

1 The applicant worked as a temporary member of staff at the European Agency for Reconstruction (EAR) for 8 years, from 1 October 2000 to 31 December 2008.

* Language of the case: English.

2 According to the information provided in the application, owing to the extremely toxic working environment within EAR in those 8 years of service, the applicant began to suffer from several diseases and, in particular, psychological symptoms that she considers may be defined, taken together, as burn-out. The documents annexed to the application provide evidence that the applicant consulted doctors in Ireland and at her place of work from the beginning of 2004. She then consulted a psychiatrist in October 2007 and A, another psychiatrist, from March 2009.

3 On 14 October 2013, the applicant submitted a request for assistance pursuant to Article 24 and Article 90(1) of the Staff Regulations of Officials of the European Union ('the Staff Regulations'), which applies by analogy to members of the contract staff under Articles 81 and 117 respectively of the Conditions of Employment of Other Servants of the European Union ('the CEOS'), in which she alleged having to face a situation of harassment that was damaging to her health ('the request for assistance'). She also sought compensation for loss alleged to have been suffered as a result of the alleged harassment, including in particular reimbursement of medical costs ('the request for compensation').

4 By decision of 4 October 2016, the authority empowered to conclude contracts of employment ('the AECE'), dismissed those requests. As regards the medical costs, the AECE considered that the medical certificates produced by the applicant did not prove that the illnesses had been caused necessarily by the alleged psychological harassment. The AECE also informed the applicant that it was for her to lodge an application for recognition of the occupational disease alleged, in accordance with the requirements laid down in Article 73 of the Staff Regulations, which applies by analogy pursuant to Articles 28 and 95 of the CEOS and the common rules on the insurance of officials of the European Communities against the risk of accident and of occupational disease, adopted on 13 December 2005 by the institutions of the European Union pursuant to Article 73 of the Staff Regulations ('the Insurance rules'). According to the AECE it was possible for the applicant subsequently to claim, if necessary, compensation for material and non-material loss that was not covered by the scheme governed by the Staff Regulations.

5 On 5 January 2017, pursuant to Article 90(2) of the Staff Regulations, the applicant brought a complaint against the dismissal by the AECE of the requests for assistance and for compensation, alleging inter alia that the loss that she alleged she had suffered was not only related to the occupational disease alleged. By decision of 26 April 2017, the AECE rejected that claim by observing once again that compensation for some losses should first have been sought pursuant to Article 73 of the Staff Regulations and to the Insurance rules.

6 In the same letter of 5 January 2017, the applicant also asked the AECE, pursuant to Article 90(1) of the Staff Regulations, for compensation for loss she considered she had suffered owing to a breach, by the AECE, of the reasonable time requirement as regards the duration of the administrative inquiry into the harassment alleged. By decision of 27 April 2017 the AECE rejected that complaint, finding that the time taken for the conduct of that inquiry was justified by the fact that the request for assistance had been lodged in 2013, and that it concerned events that took place between 2003 and 2008 in an agency that had not existed since 2008. It thus rejected the claim for compensation connected with the alleged infringement of the reasonable time requirement.

7 On 25 July 2017, the applicant lodged a new complaint, pursuant to Article 90(2) of the Staff Regulations, against the dismissal of the claim referred to in paragraph 6 above alleging an infringement of the reasonable time requirement. The AECE rejected that complaint by a decision dated 20 November 2017.

8 By application lodged with the General Court Registry on 3 August 2017, the applicant brought an action, pursuant to Article 270 TFEU, seeking the annulment of the decision of 4 October 2016 rejecting the requests for assistance and for compensation, and, if necessary, the decision of 26 April 2017 dismissing the complaints relating to the requests for assistance and for compensation (T-487/17).

9 By application lodged at the Court Registry on 2 March 2018, the applicant brought another action, this time against the decision of the AECE of 20 November 2017 rejecting the complaint that the applicant had brought against the refusal by that authority to uphold the claim for compensation due to the alleged infringement of the reasonable time requirement for the conduct of the administrative inquiry (T-148/18).

10 Following the Court's decision, pursuant to Article 125*a* of its Rules of Procedure, to examine the possibilities of an amicable settlement of those disputes, the parties reached agreement on the basis of the terms of the proposal made by the Judge-Rapporteur, with the result that, noting the parties' agreement, including as to costs, those cases were removed from the register of the General Court (orders of 19 June 2018, *UE* v *Commission*, T-487/17, not published, EU:T:2018:376, and of 19 June 2018, *UE* v *Commission*, T-148/18, not published, EU:T:2018:377).

11 On 3 May 2017, the applicant's lawyers sent to the office responsible for finances, accidents and occupational diseases of the Commission Office for the administration and payment of individual entitlements (PMO) a letter requesting recognition, in accordance with Article 73 of the Staff Regulations, that the applicant's illness was an occupational disease. That letter stated that, following her eight year career at EAR, the applicant had started suffering from several diseases and in particular psychological symptoms which, taken together, could be defined as burn-out.

12 On 15 June 2017, the applicant's lawyers sent a complementary request, attached to which was the form for an application for the recognition of an occupational disease dated 10 June 2017 and signed by the applicant (together with the application of 3 May 2017, 'the request for the recognition of an occupational disease'). In that form, the applicant stated that she suffered from 'post-traumatic stress disorder with increased anxiety levels[,] with bulimic episodes'.

13 By a letter of 20 June 2017, the PMO acknowledged receipt of the request for recognition of an occupational disease and informed the applicant that that request would be processed in accordance with Article 16 of the Insurance rules, which provides:

'1. Insured parties who request application of these rules on grounds of an occupational disease shall submit a statement to the administration of the institution to which they belong within a reasonable period following the onset of the disease or the date on which it is diagnosed for the first time. The statement may be submitted by the insured party or, where the symptoms of the disease allegedly caused by his occupation become apparent after the termination of his service, the former insured party …

2. The Administration shall hold an inquiry in order to obtain all the particulars necessary to determine the nature of the disease, whether it has resulted from the insured party's occupation and also the circumstances in which it has arisen. …'

14 In the letter of 20 June 2017, the PMO stated that an inquiry would take place 'in order to obtain all the particulars necessary to determine the nature of the disease, whether its origin is work-related and also the circumstances in which it has arisen' and that the information would be forwarded to the doctor nominated by the AECE, who would then examine the applicant and present his or her conclusions to her in accordance with Article 18 of the Insurance rules.

15 Article 18 of those Insurance rules describes the procedure for the adoption of decisions as follows:

'Decisions recognising the accidental cause of an occurrence … or decisions recognising the occupational nature of a disease … shall be taken by [the AECE] in accordance with the procedure laid down in Article 20:

– on the basis of the findings of the doctor(s) appointed by the institutions;

and

– where the insured party so requests, after consulting the Medical Committee referred to in Article 22.'

16 Article 20(1) of the Insurance rules states that, 'before taking a decision pursuant to Article 18, [the AECE] shall notify the official or those entitled under him of the draft decision and of the findings of the doctor(s) appointed by the institution …'.

17 On 29 January 2018, the applicant, at the AECE's request, was invited to a medical examination conducted by B, the institution's medical officer appointed by the AECE in accordance with Article 16 of the Insurance rules, and an additional medical examination conducted on the same day by C, a medical specialist in psychiatry, whose opinion had been sought by B.

18 On 13 February 2018, the medical specialist delivered a report in which he concluded, inter alia, that the applicant had developed psychiatric symptoms 'following burnout syndrome closely linked to an experience of psychological harassment at work'.

19 The institution's medical officer, B, took note of the medical specialist's report, referred to an examination date of 24 February 2018 and concluded, on 26 February 2018, that the request for recognition of an occupational disease should be accepted, considering the injury to be a 'persistent slight adjustment disorder following burnout syndrome'. In that regard, he specified that the applicant '[had] been diagnosed as having a persistent slight adjustment disorder involving anxiety, associated with a certain level of dysphoria, indicating a narcissistic disturbance' and that 'this [could] be related to the exercise of her functions in the EU institutions'.

20 Following that report, on 12 July 2018 the AECE sent an email to the medical officer in order to verify whether, on the basis of the information available in the applicant's medical file, there could have been medical reasons to justify the late submission of the applicant's request.

21 On 15 July 2016, B replied to that request by stating that, during his medical examination, the applicant had said that her problems had started when she was working for EAR, in 2004. He referred to several indications of excessive work and to a diagnosis of burnout that appeared in the documents originating from the doctors consulted by the applicant in 2004, 2006 and 2017. He ended his note with the following sentence: 'there are no medical reasons to explain the late declaration'.

22 By registered letter of 1 August 2018 sent to the applicant's lawyers (the contested decision), the Office for the administration and payment of individual entitlements (PMO) of the European Commission, in the capacity of the AECE, rejected the request for recognition of the occupational disease for being late and therefore inadmissible. The AECE considered that, almost 10 years after the onset of the health problems referred to, that request had not been submitted within the 'reasonable period' required by Article 16(1) of the Insurance rules. The PMO also observed that, when the applicant submitted a request for assistance in 2013, she could also have requested, at the same time, the recognition of an occupational disease, which would have allowed the institution to have retained the necessary data for the handling of the file, especially given that EAR closed in December 2008. The AECE explained that, notwithstanding those reasons, it had nevertheless decided to invite the applicant to a medical

examination by its medical officer given that there remained the possibility that there was a medical reason for the late submission of the request for recognition of an occupational disease. According to the AECE, the doctor appointed by the institution had concluded on 15 July 2018 that 'there [was] no medical reason to justify the length of time taken to submit the request'.

23 Next, at the applicant's request, several medical documents were sent to A, her psychiatrist, at the end of October 2018.

24 On 2 November 2018, the applicant, pursuant to Article 90(2) of the Staff Regulations, lodged a complaint against the contested decision in which she submitted, in the first place, that the Commission had committed a manifest error of interpretation as to the reasonableness of the period of time taken by her to lodge the request for recognition of an occupational disease having regard to the fact that she was very weak in 2013 and 2014, in particular due to the deaths of her parents, that it 'made sense' for her first to lodge a request for assistance in order to consider the way in which her disease would be treated, and that she had been invited to medical examinations which showed that the admissibility stage had passed and that her request must consequently be processed. In the second place, she complained that the Commission had misused its powers in that it referred to the examinations alleged to have been conducted on 24 February 2018 and 15 July 2018 in order to establish the inadmissibility of the request for recognition of an occupational disease, whereas the applicant disputes having been examined on those dates. In the third place, she submitted that her rights of defence had been infringed as she should have been heard before B adopted his report on 15 July 2018. By depriving her of her right to be heard by the medical officer, she did not have the possibility of explaining to him, and ultimately to the AECE, the reasons why she had not been able to lodge her request for recognition of an occupational disease earlier. According to the applicant, the medical documents sent to A show that no question was addressed to her on that subject. In addition, she submits that the medical report by B did not contain reasons.

25 By decision of 5 March 2019 of the AECE, the complaint of 2 November 2018 was rejected ('the decision rejecting the complaint'). As regards the manifest error of interpretation, the AECE examined the applicant's three complaints. It found that the applicant's health problems, including those alleged in support of the request for recognition of an occupational disease, had started in 2004; that the applicant had initiated several administrative proceedings in relation to the illness that was the subject of that request; that a request for recognition of an occupational disease consists in filling in a form of two pages which required little effort; and, that B had found that, in the applicant's case, there was no medical reason to explain the late submission of that request. Thus, the AECE confirmed that it regarded the request for recognition of an occupational disease, which had been lodged more than 12 years after the onset of the first symptoms and more than 8 years after the applicant ended her service at EAR, as being late.

26 Next, the AECE considered that a request for recognition of an occupational disease, pursuant to Article 73 of the Staff Regulations, was independent from the procedure under Article 24 of those regulations and that the procedures for those two distinct types of request involved different authorities. Thus, according to the AECE, the applicant should have submitted the request for recognition of an occupational disease earlier and, at the very least, at the same time as the request for assistance. Finally, the AECE emphasised that the fact that it had invited the applicant to submit to medical examinations by its medical officer had not prejudged the result of the final decision that it would be required to adopt on completion of the administrative procedure.

27 As regards the misuse of powers, the AECE observed throughout the decision dismissing the complaint that the applicant had only been examined in person on 29 January 2018. The 'examinations' of 24 February 2018 and of 15 July 2018 to which the applicant referred were merely analyses of the applicant's file which did not prejudge the outcome of the final decision that would be taken by the AECE.

28 In reply to the third complaint, the AECE considered, with reference to the judgments of 29 April 2004, *Parliament* v *Reynolds* (C-111/02 P, EU:C:2004:265, paragraph 57), and of 12 May 2010, *Bui Van* v *Commission* (T-491/08 P, EU:T:2010:191, paragraph 75), that the fact that a decision adversely affects an official or a temporary member of staff does not lead to the conclusion that the authority making the decision was under an obligation to give the person concerned a proper hearing before adopting that decision. Thus, in the case-law, the right to be heard was recognised in specific administrative procedures, namely only those initiated against the person concerned. In the present case the AECE was not required to hear the applicant before adopting the contested decision since that decision was adopted in response to a request made by the applicant of her own initiative and, in fact, in this type of procedure 'on request' of the person concerned, it was for the applicant to provide the administration with all the relevant information to assess the request. Accordingly, the AECE considered that the applicant could not rely on a right to be heard before the contested decision was adopted. In any event, by bringing a complaint pursuant to Article 90(2) of the Staff Regulations, the applicant exercised her right to be heard by the AECE. Finally, it considered that the applicant had not shown that, if she had been heard before the contested decision was adopted, that hearing would have altered the outcome of the procedure.

29 As to the reasoning in the contested decision, the AECE observed that, in B's report to the AECE, B referred to the reports provided by the applicant's various doctors and had examined the development of her state of health from 2004 onwards in order to determine whether there was any medical reason to justify the late lodging, in June 2017, of the request for recognition of an occupational disease. There was therefore a link between the medical findings of several doctors and B's conclusion. Lastly, the AECE recalled that the statement of reasons for a decision contested pursuant to Article 90(2) of the Staff Regulations might be completed, or provided, in any event no later than at the time the complaint is rejected.

Procedure and forms of order sought

30 By application received at the Court Registry on 6 June 2019, the applicant brought the present action.

31 In order to protect the personal data of the applicant and of other persons referred to in the context of the proceedings, the Court decided of its own motion, pursuant to Article 66 of the Rules of Procedure, to omit their names.

32 Following two exchanges of pleadings, the written part of the procedure was closed on 5 December 2019, the applicant having been invited to produce at a later date a version of the application that had been put in order, which was sent to the Commission. In the absence of a request by one of the parties within the time prescribed under Article 106(2) of the Rules of Procedure and considering that it had sufficient information available to it from the material in the file, the Court decided to rule on the action without an oral part of the procedure in accordance with Article 106(3) of its Rules of Procedure.

33 The applicant claims that the Court should:

– annul the contested decision;

– if necessary, annul the decision rejecting the complaint;

– order her costs to be reimbursed.

34 The Commission contends that the Court should:

– dismiss the action;

– order the applicant to pay the costs.

Law

1. Subject matter of the action

35 Although the applicant submits claims for the annulment of the contested decision and, if necessary, the annulment of the decision rejecting her complaint, it must be observed that, in the decision rejecting the complaint, the AECE supplemented the reasoning for the contested decision, in particular by responding to the arguments that the applicant had advanced in her complaint. Thus, having regard to the developments within the pre-litigation procedure, the reasoning contained in the decision rejecting the complaint must also be taken into account in the assessment of the original act giving rise to the claim, namely the contested decision, as that reasoning is deemed to be the same as that of the contested decision (see judgments of 21 May 2014, *Mocová* v *Commission*, T-347/12 P, EU:T:2014:268, paragraph 34 and the case-law cited, and of 10 June 2016, *HI* v *Commission*, F-133/15, EU:F:2016:127, paragraph 87 and the case-law cited).

36 In the present case, the decision rejecting the complaint merely confirmed the contested decision. In those circumstances, it must be considered that the only act adversely affecting the applicant is the contested decision, the lawfulness of which must be examined taking into account the statement of reasons contained in the decision rejecting the complaint (see, to that effect, the judgment of 19 September 2019, *WI* v *Commission*, T-379/18, not published, EU:T:2019:617, paragraph 19 and the case-law cited).

2. The claim for annulment

37 In support of her action, the applicant puts forward three pleas in law, claiming, respectively:

– a manifest error of interpretation of the reasonableness of the period of time within which the request for recognition of an occupational disease was lodged;

– misuse of powers;

– infringement of the rights of the defence and of the duty to state reasons.

38 The Court considers it appropriate to start by examining the third plea in law since it concerns the conduct of the administrative procedure and the interpretation of the decision.

The third plea in law, alleging infringement of the rights of the defence and of the obligation to state reasons

39 In the first branch of her third plea in law, the applicant relies on the fundamental nature of the right to be heard, as enshrined in Article 41(2)(a) of the Charter of Fundamental Rights of the European Union ('the Charter').

40 According to the applicant, the contested decision is based only on a medical report prepared without a proper examination. The applicant states that she was not given the opportunity to explain the reasons why she did not lodge her request earlier. That question was not put to her during the medical examination of 29 January 2018 nor before the medical report of 15 July 2018 was adopted by B. According to her, the decision would have been different if she had been heard during the

examination of 29 January 2018 and before the report of 15 July 2018. The applicant submits that by depriving her of that opportunity, the contested decision is in breach of the principle of the right to be heard.

41 In the second branch of the third plea in law, the applicant submits that the duty to state reasons was not complied with in that the conclusion of the medical report of 15 July 2018 that 'there are no medical reasons to explain the late declaration' is not supported by any medical explanation, whereas the contested decision states that the conclusion of the medical report in question took into account the reports of Doctors D, E and F and, consequently, took into account the developments in the applicant's state of health since 2004.

42 The Commission contends that the plea should be rejected as unfounded. It repeats, in essence, the reasoning given by the AECE in its decision dismissing the complaint.

43 In that regard, it should be pointed out that Article 41(2)(a), of the Charter, which since 1 December 2009 has the same legal value as the Treaties, recognises 'the right of every person to be heard, before any individual measure which would affect him or her adversely is taken' in respect of him or her.

44 Contrary to the Commission's submissions, the right to be heard is of general application (see judgment of 11 September 2013, *L* v *Parliament*, T-317/10 P, EU:T:2013:413, paragraph 81 and the case-law cited).

45 Thus, that principle applies, irrespective of the nature of the administrative procedure leading to the adoption of an individual measure, where, in respect of a person, the administration proposes to take, according to the wording of that provision, 'a decision which would affect him or her adversely'. The right to be heard, which must be safeguarded even where there are no applicable rules, requires that the person concerned must have been afforded beforehand the opportunity effectively to make known his or her views on any information against him or her which might have been taken into account in the act to be adopted (judgment of 24 April 2017, *HF* v *Parliament*, T-584/16, EU:T:2017:282, paragraph 150).

46 More specifically, observance of the right to be heard involves the person concerned being put in a position, prior to the adoption of the decision adversely affecting him or her, effectively to make known his or her views on the truth and relevance of the facts and circumstances on the basis of which that decision will be adopted (see, to that effect, judgment of 11 September 2013, *L* v *Parliament*, T-317/10 P, EU:T:2013:413, paragraphs 80 and 81, and order of 17 June 2019, *BS* v *Parliament*, T-593/18, not published, EU:T:2019:425, paragraphs 76 and 77).

47 As regards the Commission's arguments based on the judgments of 29 April 2004, *Parliament* v *Reynolds* (C-111/02 P, EU:C:2004:265, paragraph 57), and of 12 May 2010, *Bui Van* v *Commission* (T-491/08 P, EU:T:2010:191, paragraph 75), it is clear from that case-law that the fact that a decision is a measure with adverse effects does not automatically give rise to the conclusion, without regard to the nature of the procedure instituted against the person concerned, that the AECE or the appointing authority, as the case may be, is obliged to give the person concerned an effective hearing prior to adopting that decision.

48 However, the facts of those cases predated the entry into force of the Charter and Article 41(2)(a) thereof, which requires observance of the right of every person to be heard, before any individual measure which would affect him or her adversely is taken. Thus, as already stated in paragraph 44 above, that right is to be observed irrespective of the nature of the administrative procedure leading to the adoption of an individual measure, even where the applicable rules do not provide for it (see, to that effect, the judgment of 3 July 2019, *PT* v *EIB*, T-573/16, EU:T:2019:481, paragraph 265 (not published)).

49 In that regard, the Commission submits that, in so far as the AECE was to adopt a decision in response to a request by the person concerned, in the present case in response to the request for recognition of an occupational disease, it was for the applicant to provide the AECE with all the relevant information to show that the conditions laid down in the applicable rules were satisfied, including, as Article 16(1) of the Insurance rules provides, the evidence to show that that request had been lodged within a reasonable period of time following the onset of the disease or the date on which it was diagnosed for the first time.

50 In the first place, it must be held that such an exception does not appear anywhere in the wording of Article 41(2)(a) of the Charter and must be rejected as being manifestly unfounded. As has been pointed out in paragraphs 44 and 48 above, the right to be heard is of general application. That is the case, inter alia, when the administration proposes to take a decision in response to a request lodged by a person of his or her own initiative.

51 In the second place, it must be recalled that Article 16 of the Insurance rules provide that it is for the administration to hold an inquiry in order to obtain all the particulars necessary to determine the nature of the disease, whether it has resulted from the official's occupation and also the circumstances in which it arose. Thus, it is clear from that provision that it is not only on the basis of information provided by the person making the request that the AECE is to take the decision. Furthermore, Article 20(1) of those rules provides that, before taking a decision pursuant to Article 18, the AECE is to notify the official or those entitled under him of the draft decision and of the findings of the doctor or doctors appointed by the institution.

52 In the present case, it must be observed that the contested decision, by rejecting on grounds of lateness a request for recognition of an occupational disease, affected the applicant just as adversely as a rejection decision on the ground that it was not well founded. Thus, contrary to the statements made by the AECE in the decision rejecting the complaint and by the Commission in the defence, such a decision of inadmissibility could not be adopted without the applicant's right to be heard, guaranteed by Article 41(2)(a) of the Charter, being complied with beforehand.

53 The Commission also submitted that the applicant had the opportunity of bringing a complaint against the decision adopted by the AECE, such that she would have had, in fact and in law, the opportunity of asserting her rights by submitting to the AECE arguments to support the reasonableness of the period of time within which the request for recognition of an occupational disease was lodged.

54 However, it must be recalled in that regard, as the Civil Service Tribunal has already held, that to allow such an argument would render meaningless the fundamental right to be heard enshrined in Article 41(2)(a) of the Charter, since the very content of that right implies that the person concerned have the possibility of influencing the decision-making process at issue, in the present case at the stage when the original decision was adopted, namely the contested decision, and not only at the time of lodging a complaint pursuant to Article 90(2) of the Staff Regulations (see the judgment of 5 February 2016, *GV* v *EEAS*, F-137/14, EU:F:2016:14, paragraph 79 and the case-law cited).

55 As is clear from the case-law, the question whether there is an infringement of the right to be heard must be examined in relation, inter alia, to the legal rules governing the matter concerned (judgment of 9 February 2017, *M.*, C-560/14, EU:C:2017:101, paragraph 33 and the case-law cited).

56 As regards decisions concerning the recognition of an occupational disease, Article 18 of the Insurance rules require that they be taken by the AECE following the procedure laid down in Article 20 of those rules, in particular on the basis of the findings of the doctor or doctors appointed by the institutions. According to Article 20(1) of the Insurance rules, before taking a decision pursuant to Article 18, the AECE is to notify the insured party, or those entitled under him or her, of the draft decision and of the findings of the doctor or doctors appointed by the institution.

57 It is clear from those provisions that their objective is to confer on medical experts the final assessment of all medical questions. In the present case, prior to the adoption of the decision of inadmissibility, the AECE considered it necessary to ask B's advice in order to assess whether there was a medical reason to explain the lateness of the request for recognition of an occupational disease. The AECE also referred to B's finding as constituting a ground for the inadmissibility of the request. Before adopting the contested decision, the AECE did not notify the applicant either of the draft decision or of the findings of the doctors appointed by the AECE or, in particular, of B's finding regarding the lateness of the request for recognition of an occupational disease. In fact, it was only upon the applicant's request that several medical documents were sent to A, her psychiatrist, at the end of October 2018, that is to say after the contested decision of 1 August 2018.

58 Lastly, the Commission submits that, under EU law an infringement of the rights of the defence, in particular the right to be heard, results in annulment only if, had it not been for such an irregularity, the outcome of the procedure might have been different. The Commission emphasises that, in the present case, the arguments submitted by the applicant already appeared in her medical file and were known to the administration in the context of other administrative procedures instituted by the applicant and recalled in paragraphs 3 to 7 above.

59 In that regard, it must be observed that, according to settled case-law, an infringement of the right to be heard results in the annulment of the decision adopted at the end of the administrative procedure at issue only if, had it not been for that irregularity, the outcome of the procedure might have been different (judgment of 10 January 2019, *RY* v *Commission*, T-160/17, EU:T:2019:1, paragraph 51).

60 However, in the circumstances of the present case in which the applicant did not even know that a medical opinion had been asked of the medical officer and existed, to hold that the AECE would necessarily have adopted an identical decision if the applicant had been given the opportunity to make known her views effectively during the administrative procedure would equally amount to rendering meaningless the fundamental right to be heard, enshrined in Article 41(2)(a) of the Charter, since the very content of that right implies that the person concerned must have the possibility of influencing the decision-making process at issue (judgment of 10 January 2019, *RY* v *Commission*, T-160/17, EU:T:2019:1, paragraph 56 and the case-law cited).

61 According to the applicant, compliance with the right to be heard would have afforded her the opportunity of explaining more precisely the consequences of her disease and the other circumstances that prevented her from lodging a request earlier by leaving her completely physically and mentally exhausted, as she submits in her application. She stresses that she herself could have given the reasons why the request for recognition of an occupational disease had not been lodged at an earlier stage.

62 It is clear from those elements that the applicant was not informed of the decision proposed by the administration and was not given a hearing with the purpose of allowing her to present arguments to defend her position. That is so, in the present case, at the stage when the original decision was adopted, namely the contested decision, and not only at the time when the complaint pursuant to Article 90(2) was lodged.

63 It follows from the foregoing that the first branch of the third plea in law alleging an infringement of the right to be heard, guaranteed by Article 41(2)(a) of the Charter, must be upheld. Consequently, the contested decision must be annulled, without it being necessary to examine the second branch of the third plea in law raised by applicant, which alleges a breach of the obligation to state reasons, or the first two pleas in law.

Costs

64 Under Article 134(1) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

65 Since the Commission has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the applicant.

On those grounds,

THE GENERAL COURT (Eighth Chamber)

hereby:

1. **Annuls the decision of the Office for administration and payment of individual entitlements (PMO) of the European Commission, of 1 August 2018, by which the request by UE for recognition of an occupational disease, pursuant to Article 73 of the Staff Regulations of Officials of the European Union, was dismissed as inadmissible;**

2. **Orders the Commission to pay the costs.**

Svenningsen Barents Pynnä

Delivered in open court in Luxembourg on 23 September 2020.

E. Coulon
Registrar

S. Papasavvas
President