Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

25 June 2020*

(Appeal — Staff of the European Union Satellite Centre (SatCen) — Member of SatCen's contract staff — Complaints of psychological harassment — Administrative investigation — Request for assistance — Suspension of the staff member — Disciplinary proceedings — Removal of the staff member — SatCen's Appeals Board — Conferral of exclusive jurisdiction in relation to SatCen staff disputes — Action for annulment — First and fifth paragraphs of Article 263 TFEU — Action for damages — Article 268 TFEU — Jurisdiction of the EU judicature — Admissibility — Acts open to challenge — Contractual nature of the dispute — Articles 272 and 274 TFEU — Effective judicial protection — Final sentence of the second subparagraph of Article 24(1) TEU — First paragraph of Article 275 TFEU — Principle of equal treatment — General Court's obligation to state reasons — Distortion of the facts and evidence — Rights of the defence — Principle of sound administration)

In Case C-14/19 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 10 January 2019,

European Union Satellite Centre (SatCen), represented by A. Guillerme, avocate,

appellant,

the other parties to the proceedings being:

KF, represented by N. Macaulay, Barrister, and A. Kunst, Rechtsanwältin,

applicant at first instance,

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

intervener at first instance,

THE COURT (Second Chamber),

composed of A. Arabadjiev (Rapporteur), President of the Chamber, P.G. Xuereb and T. von Danwitz, Judges,

Advocate General: M. Bobek,

Registrar: M. Longar, Administrator,

having regard to the written procedure and further to the hearing on 4 December 2019,

* Language of the case: English.

after hearing the Opinion of the Advocate General at the sitting on 19 March 2020,

gives the following

Judgment

1 By its appeal, the European Union Satellite Centre (SatCen) seeks to have set aside the judgment of the General Court of the European Union of 25 October 2018, *KF* v *SatCen* (T-286/15, EU:T:2018:718; 'the judgment under appeal'), by which the General Court upheld in part the action brought by KF in so far as it, first, annulled two decisions of the Director of SatCen, concerning the suspension and removal of KF, respectively, and the decision of SatCen's Appeals Board in the same dispute, and, second, ordered SatCen to pay KF the sum of EUR 10 000 by way of compensation for the non-material damage she suffered.

Legal context

2 On 27 June 1991, the Council of Ministers of the Western European Union (WEU) took a decision to set up a satellite data operating centre on the basis of its decision of 10 December 1990 on space cooperation within the WEU.

3 By its declaration made in Marseille (France) on 13 November 2000, the Council of Ministers of the WEU noted the agreement in principle of the Council of the European Union, dated 10 November 2000, regarding the creation, in the form of an agency of the European Union, of a satellite centre incorporating the relevant features of the centre set up within the WEU.

4 By Council Joint Action 2001/555/CFSP of 20 July 2001 on the establishment of a European Union Satellite Centre (OJ 2001 L 200, p. 5), SatCen was established and became operational from 1 January 2002.

Decision 2014/401/CFSP

5 Council Decision 2014/401/CFSP of 26 June 2014 on the European Union Satellite Centre and repealing Joint Action 2001/555 (OJ 2014 L 188, p. 73) provides, in Article 2(1) and (3) thereof, that SatCen's core tasks are to support the decision making and actions of the Union in the field of the common foreign and security policy (CFSP) and in particular the common security and defence policy (CSDP), including European Union crisis management missions and operations, by providing, at the request of the Council or the High Representative of the Union for Foreign Affairs and Security Policy, products and services resulting from the exploitation of relevant space assets and collateral data, including satellite and aerial imagery, and related services.

6 As provided in Article 7(3) of Decision 2014/401, the Director of SatCen is the legal representative of that body. Under Article 7(4) and (6)(e) of Decision 2014/401, the Director is (i) responsible for recruiting all other SatCen staff and (ii) competent for all personnel matters.

7 Article 8 of Decision 2014/401 provides:

'1. The staff of SatCen, including the Director, shall consist of contract staff recruited on the broadest possible basis from among nationals of the Member States, and of seconded experts.

2. The contract staff shall be appointed by the Director on the basis of merit and through fair and transparent competition procedures.

…

5. The Board shall draw up, on a proposal from the Director, SatCen staff rules which shall be adopted by the Council.

…'

The SatCen Staff Regulations

8 By its Decision 2009/747/CFSP of 14 September 2009 concerning the Staff Regulations of the European Union Satellite Centre (OJ 2009 L 276, p. 1) the Council adopted the Staff Regulations of the European Union Satellite Centre ('the SatCen Staff Regulations'), of which Article 2, headed 'Provisions applicable to all employees', provides, in paragraph 1 thereof:

'Employees shall be subject to the authority of the Director and responsible to him for the performance of their duties, which they shall undertake to carry out as scrupulously and conscientiously as possible.'

9 Under Article 27 of the SatCen Staff Regulations:

'1. Any failure by a staff member or former staff member 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 Director becomes aware of evidence of failure within the meaning of paragraph 1, he may launch administrative investigations to verify whether such failure has occurred.

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

10 Article 28 of the SatCen Staff Regulations, headed 'Appeals', is in Chapter VIII of those regulations, entitled 'Appeals and Appeals Board'. That article is worded as follows:

'1. Any person to whom these Staff Regulations apply may submit to the Director a request that he take a decision relating to him in matters covered by these Staff Regulations. The Director shall notify the person concerned of his reasoned decision within two months from the date on which the request was made. If at the end of that period no reply to the request has been received, this shall be deemed to constitute an implied decision rejecting it, against which a complaint may be lodged in accordance with the following paragraphs.

2. Any person to whom these Staff Regulations apply may submit to the Director a complaint against an act adversely affecting him, either where the Director has taken a decision or where he has failed to adopt a measure prescribed by the Staff Regulations. The complaint must be lodged within three months. …

…

5. Having exhausted the possibilities of the first resort (an internal administrative appeal), staff members shall be at liberty to seek a settlement before [SatCen]'s Appeals Board.

The composition, operation and specific procedures of that body are given in Annex X.

6. Decisions of the Appeals Board shall be binding on both parties. There shall be no appeal from them. The Appeals Board may:

(a) annul, or confirm, the decisions complained of;

(b) order [SatCen] incidentally to compensate any material damage sustained by the staff member starting from the day the annulled decision began to have effect;

(c) rule further that [SatCen] shall reimburse, within limits to be fixed by the Appeals Board, justified expenses incurred by the claimant, as well as expenses relating to transport and subsistence incurred by witnesses who have been heard. These expenses shall be calculated on the basis of Article 18 and Annex VII of these Staff Regulations.'

11 Article 1(1) of Annex IX to the SatCen Staff Regulations provides:

'Whenever an internal investigation reveals the possibility of the personal involvement of a staff member, or a former staff member, that person shall rapidly be informed, provided this is not harmful to the investigation. In any event, conclusions referring by name to a staff member may not be drawn once the investigation has been completed without that staff member having been given the opportunity to comment on facts concerning him. The conclusions shall make reference to these comments.'

12 Article 2 of Annex IX to those staff regulations states:

'On the basis of the investigation report, after having notified the staff member concerned of all evidence in the files and after hearing the staff member concerned, the Director may:

…

(c) in the case of failure to comply with obligations within the meaning of Article 27 of the Staff Regulations:
(i) decide to initiate the disciplinary proceedings provided for in Section 4 of this Annex; or
(ii) decide to initiate disciplinary proceedings before the Disciplinary Board.'

13 Paragraph 1 of Annex X to the SatCen Staff Regulations provides:

'The Appeals Board shall have authority to settle disputes arising out of violations of these Staff Regulations or of the contracts provided for in Article 7 of the Staff Regulations. To that end it shall have jurisdiction with regard to appeals brought by serving or former staff members, or by their heirs and/or their representatives, against a decision of the Director.'

14 Paragraph 4(b) of Annex X to those staff regulations provides that 'the appellant [before the Appeals Board] shall have a period of 20 days from notification of the decision complained of … in which to submit a written request that such decision be withdrawn or modified by the Appeals Board' and that 'that request shall be addressed to the [SatCen]'s Head of Administration and Personnel, who shall acknowledge receipt of it and initiate the procedure for convening the Appeals Board'.

15 Under Paragraph 2(a), (b), (d) and (e) of Annex X to the SatCen Staff Regulations, the Appeals Board is to be composed of a Chairman and two members, appointed by the Board of SatCen for a period of two years, from outside the staff of SatCen, the members are to be fully independent in the exercise of their duties, and the emoluments of the Chairman and members are to be fixed by the Board of SatCen.

Background to the dispute

16 The background to the dispute was set out in paragraphs 17 to 46 of the judgment under appeal. For the purposes of the present proceedings, it may be summarised as follows.

17 KF was recruited by SatCen as a member of the contract staff from 1 August 2009 to occupy the position of Head of the Administration Division.

18 During the annual appraisals for 2010 and 2011, shortcomings as regards human relations within that Administration Division were identified by the Deputy Director of SatCen, which led to KF being awarded the lowest rating for 2010. In connection with each of those appraisals, which were contested by KF, KF was given the opportunity to comment.

19 By internal memorandum of 17 October 2012, as part of the annual appraisal for the same year, the Director of SatCen instructed the Deputy Director to gather information from staff on propriety and human relations within SatCen. The Director of SatCen indicated in that memorandum that particular attention should be given to the situation of staff with management responsibilities, especially Heads of Division, by identifying, if applicable, potential situations involving psychological pressure or bullying within those staff members' teams.

20 On 14 November 2012, 12 staff members lodged a complaint with the Director and Deputy Director of SatCen, condemning 'the difficult situation [to] which [they had] been subject for more than the last three years to carry out [their] professional activity in a normal way', stating that that situation 'stem[med] from the behaviour and conduct of the Head of Administration Division, [KF]'.

21 At the beginning of 2013, the Deputy Director of SatCen followed up on the internal memorandum of 17 October 2012 by sending 40 SatCen staff members, from several divisions, a multiple-choice questionnaire asking them to evaluate human relations with their respective Heads of Division. By internal memorandum dated 7 March 2013, the Deputy Director of SatCen informed the Director that, in the light of the responses to the questionnaire, 'it clearly appear[ed] that there [was] a real problem of human relations with the Head of Administration Division, [KF], with a negative general feedback from the Administration Division personnel'.

22 By internal memorandum sent the following day, the Director of SatCen asked the Deputy Director, on the basis of Article 27 of the SatCen Staff Regulations, to launch an administrative investigation in respect of KF.

23 The administrative investigation consisted in sending a multiple-choice questionnaire to 24 SatCen staff members on 12 June 2013, aimed at ascertaining whether or not they had experienced certain types of behaviour by KF and whether they had themselves suffered the effects of such behaviour or had noticed such effects as regards their colleagues. That questionnaire also asked those staff members to provide any testimonies or evidence to corroborate their responses. Of the 24 staff members consulted in this way, 18 responded.

24 At the same time, following her annual appraisal for 2012, in which her overall performance was again considered to be insufficient, KF, by letter of 20 March 2013, first, challenged that appraisal and, second, asked the Director of SatCen to take the necessary measures to put an end to the harassment of which she considered herself to be a victim.

25 On 2 July 2013, the Deputy Director of SatCen finalised his investigation, concluding that KF did commit the offences alleged against her. According to the investigation report drawn up by the Deputy Director, KF engaged in 'intentional, repetitive, sustained or systematic' behaviour 'intended to

discredit or undermine the people concerned', and '[since this behaviour alleged against KF was] confirmed and [in view of its] nature, frequency and effect on certain staff members, [it] constitute[d] moral harassment'.

26 The following day, the Director of SatCen, by means of an email to which the investigation report, without its annexes, was attached, informed KF of the conclusions of that report. By that email, KF was invited to an interview on 5 July 2013, with a view to following the procedure provided for in Article 2 of Annex IX to the SatCen Staff Regulations.

27 By decision of 5 July 2013, the Director of SatCen noted that the Deputy Director of SatCen, following his investigation, had reached the conclusion that KF's alleged behaviour was confirmed and constituted psychological harassment. On the basis of that conclusion and after hearing KF on the same day, the Director of SatCen decided to initiate disciplinary proceedings against KF ('the decision to initiate disciplinary proceedings') and to suspend KF from her duties, while agreeing that she should continue to receive her remuneration ('the suspension decision').

28 On 23 August 2013, the Director of SatCen decided on the composition of the Disciplinary Board and informed KF of this.

29 On 28 August 2013, KF lodged an administrative complaint with the Director of SatCen against, inter alia, the decision to initiate disciplinary proceedings, the suspension decision, and the decision by which the Director of SatCen, by implication, rejected her request for assistance in respect of the psychological harassment to which she considered she was subject. By decision of 4 October 2013, that complaint was rejected in its entirety by the Director. On 2 December 2013, KF challenged the latter decision before the Appeals Board.

30 On 11 September 2013, the composition of the Disciplinary Board was definitively decided upon.

31 On 25 October 2013, the Director of SatCen submitted to the Disciplinary Board a report, which he also sent to KF, in accordance with Article 10 of Annex IX to the SatCen Staff Regulations.

32 By letter of 28 November 2013, the President of the Disciplinary Board informed KF that her hearing before that board would take place on 13 or 14 January 2014. In that letter, KF was also asked to submit her written observations to the Disciplinary Board at least one week before the hearing. After KF's request to postpone the hearing on account of the short period of time granted to her for that purpose was rejected by the President of the Disciplinary Board, KF provided her written observations on 21 December 2013.

33 Following that hearing, which ultimately took place on 13 January 2014, the Disciplinary Board gave a reasoned opinion on 4 February 2014, in which it, first, concluded unanimously that KF had failed to comply with her professional obligations and, second, recommended that she be demoted by at least two grades so that she would no longer be able to hold a position with managerial responsibilities.

34 After hearing KF on 25 February 2014, the Director of SatCen took the decision, on 28 February 2014, to remove her from her post for disciplinary reasons ('the removal decision'), with effect from one month after the adoption of that decision.

35 The removal decision was the subject of an administrative complaint lodged by KF on 17 April 2014, which was rejected by the Director of SatCen by decision of 4 June 2014. On 12 June 2014 KF contested the removal decision before the Appeals Board.

36 By decision of 26 January 2015 ('the decision of the Appeals Board'), which was served on KF on 23 March 2015, the Appeals Board, first, rejected the claims for annulment of (i) the decision to initiate disciplinary proceedings and (ii) the suspension decision, made by KF in her request of

2 December 2013, as referred to in paragraph 29 above, and, second, rejected all the submissions raised by KF against the removal decision, annulling that decision only to the extent that its effective date had been incorrectly set.

The procedure before the General Court and the judgment under appeal

37 By application lodged at the General Court Registry on 28 May 2015, KF brought an action consisting of, first, an application under Article 263 TFEU for annulment of (i) the alleged implicit rejection of her request for assistance, (ii) the decision to initiate disciplinary proceedings, (iii) the suspension decision, (iv) the removal decision, (v) the decision rejecting her complaint against the alleged implicit rejection of her request for assistance, and (vi) the Appeals Board's decision ('the contested decisions'), and, second, a claim under Article 268 TFEU for compensation from SatCen in the amount of her unpaid salary for the material harm she suffered as a result of those decisions, plus EUR 500 000 for the non-material harm she also suffered.

38 First of all, in support of her action, KF claimed, in particular, that the decisions of SatCen authorities ought to be subject to judicial review by the General Court under Article 263 TFEU, given that they are purely acts of staff management originating from a body of the European Union and that, otherwise, they would escape all judicial review, contrary to the fundamental principles of the European Union, since the control exercised by the Appeals Board cannot be deemed equivalent to judicial review.

39 Next, in support of her claim for annulment of the decision rejecting her request for assistance, the decision to initiate disciplinary proceedings, the suspension decision and the removal decision, KF invoked pleas in law alleging, inter alia, breach of the principle of sound administration, the principle of impartiality and the principle of respect for the rights of the defence.

40 Lastly, in support of her claim for annulment of the Appeals Board's decision, KF alleged failure to take account of her right to an effective remedy, particularly on account of the composition of the Appeals Board, which did not satisfy the requirements that a tribunal should be impartial and independent. In addition, she raised, under Article 277 TFEU, a plea of illegality against Article 28(6) of the SatCen Staff Regulations, on the ground that, in essence, that provision makes the Appeals Board the only body with jurisdiction to review the legality of the decisions of the Director of SatCen, thus exempting those decisions from any judicial review.

41 By the judgment under appeal, the General Court upheld in part the action brought before it by KF, in so far as it annulled the suspension decision, the removal decision and the decision of the Appeals Board, and ordered SatCen to pay to KF the amount of EUR 10 000 in compensation of the non-material damage suffered by her, dismissing the action as to the remainder.

Forms of order sought

42 SatCen claims, in essence, that the Court should:

– set aside the judgment under appeal;

– dismiss the action brought by KF; and

– order KF to pay the costs.

43 The Council claims, in essence, that the Court should:

– set aside the judgment under appeal;

– dismiss the action brought by KF; and

– decide upon the costs in accordance with the Rules of Procedure of the Court.

44 KF contends that the Court should:

– dismiss the appeal; and

– order SatCen to pay the costs.

The appeal

45 SatCen raises four grounds in support of its appeal, alleging, first, that the General Court did not have jurisdiction to hear the action at first instance, second, that that action was inadmissible, third, distortion of facts and, fourth, failure to comply with the principle of sound administration and the principle of respect for the rights of the defence.

The first and second grounds of appeal

Arguments of the parties

46 By the first ground of appeal, which is divided into three parts, SatCen takes issue with the General Court for finding that it had jurisdiction to rule on the action brought by KF.

47 In the first part of the first ground of appeal, SatCen claims, first of all, that, the jurisdiction of the EU judicature presupposes, under the principle of conferral of powers enshrined in Article 5 TEU, that it is expressly provided for in a provision of the Treaties. However, that is not the case here.

48 Next, SatCen claims that it follows from the judgment of 12 November 2015, *Elitaliana* v *Eulex Kosovo* (C-439/13 P, EU:C:2015:753), that the EU courts are not 'automatically' competent when the decision at issue does not involve funds from the EU budget; SatCen's income is made up of contributions from the Member States.

49 Lastly, it claims that the General Court committed an error in law by finding, in paragraph 107 of the judgment under appeal, that the fifth paragraph of Article 263 TFEU does not allow the Council to exempt disputes involving a body, office or agency of the European Union from the jurisdiction of the EU judicature, as in Article 28(6) of the SatCen Staff Regulations.

50 By the second part of its first ground of appeal, SatCen claims that the General Court misinterpreted the principle of equal treatment by, in essence, affording the officials and servants referred to in Article 270 TFEU, on the one hand, and members of the contract staff recruited by SatCen, on the other, the same judicial protection, while those two categories of staff of EU institutions, bodies, offices and agencies are in fundamentally different situations. In any event, the principle of equal treatment is applicable only to identical situations, and not to comparable situations, to which the General Court wrongly referred.

51 Thus, it does not follow from the principle of equal treatment that all staff members of the institutions, bodies, offices and agencies of the European Union should benefit from the same judicial remedies in the event of a dispute with their employer. In particular, local staff employed by the EU institutions and certain members of the contract staff whose contracts provide for an arbitration clause giving jurisdiction to national courts may not bring an action before the EU courts.

52 Accordingly, in contrast with what the General Court held in paragraph 96 of the judgment under appeal, the case-law resulting from the judgment of 19 July 2016, *H* v *Council and Others* (C-455/14 P, EU:C:2016:569) cannot be applied by analogy in the present case, since KF is neither a staff member seconded by a Member State nor a staff member seconded by an institution of the European Union, but a member of the contract staff recruited by SatCen. Given her status, KF cannot be compared to a staff member seconded by an institution of the European Union.

53 In the third part of the first ground of appeal, SatCen claims that the General Court cannot, in any event, find that it has jurisdiction to hear the case at first instance on the basis of a principle such as the principle of equal treatment alone. Disputes of a contractual nature, such as that in the present case, come within the jurisdiction of the EU courts only if there is an arbitration clause expressly stipulating that jurisdiction, in accordance with Article 272 TFEU. In the present case no provision was made for an arbitration clause giving jurisdiction to the EU courts.

54 By the second ground of appeal, SatCen contests the General Court's finding that Articles 263 and 268 TFEU provide it with the legal basis for its conclusion that the action brought by KF is admissible. It claims that, by relying exclusively on the application by analogy of the judgment of 19 July 2016, *H* v *Council and Others* (C-455/14 P, EU:C:2016:569), to arrive at that conclusion, the General Court failed to fulfil its duty to state reasons and, in any event, erred in law.

55 In particular, the General Court failed to explain how an application by analogy of that judgment made it possible to consider the action brought by KF to be admissible, given that her status as a staff member of SatCen prevents her being classified as a 'third party', within the meaning of the case-law, in relation to SatCen. Unlike the circumstances at issue in the case giving rise to that judgment, KF had not been seconded to SatCen.

56 The Council supports SatCen's arguments.

57 KF contests SatCen's arguments.

Findings of the Court

58 In the first place, as regards the argument, raised in the first part of the first ground of appeal, that the General Court erred in law by finding, in paragraph 107 of the judgment under appeal, that the fifth paragraph of Article 263 TFEU does not allow the Council to exempt disputes involving a body, office or agency of the European Union from the jurisdiction of the EU judicature, as in Article 28(6) of the SatCen Staff Regulations, it must be borne in mind that, as is apparent from Article 2 TEU, the Union is founded, inter alia, on the values of equality and the rule of law. The very existence of effective judicial review designed to ensure compliance with provisions of EU law is inherent in the existence of the rule of law (judgment of 19 July 2016, *H* v *Council and Others*, C-455/14 P, EU:C:2016:569, paragraph 41).

59 Article 19 TEU, which gives concrete expression to the value of the rule of law stated in Article 2 TEU, entrusts the responsibility for ensuring the full application of EU law in all Member States and effective judicial protection of the rights of individuals under that law to national courts and tribunals and to the Court, while the Court has exclusive jurisdiction to give the definitive interpretation of that law

(Opinion 1/17 of 30 April 2019, EU:C:2019:341, point 111, and judgment of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraph 167).

60 The judicial system of the European Union is therefore a complete system of legal remedies and procedures designed to ensure review of the legality of acts of the institutions, bodies, offices and agencies of the European Union (see, to that effect, Opinion 1/09 of 8 March 2011, EU:C:2011:123, point 70).

61 The tasks attributed to the national courts and to the Court of Justice, respectively, are indispensable to the preservation of the very nature of the law established by the Treaties (Opinion 1/09 of 8 March 2011, EU:C:2011:123, point 85).

62 It follows that, although, in the present case, the 'specific conditions and arrangements' referred to in the fifth paragraph of Article 263 TFEU do indeed allow a body, office or agency of the European Union to draw up internal terms and conditions which are prerequisites to legal proceedings and govern, inter alia, the operation of a self-monitoring mechanism or the course of an out-of-court settlement, as the General Court stated in paragraph 107 of the judgment under appeal, those conditions and arrangements cannot, contrary to what SatCen contends, be interpreted as allowing an institution of the European Union to shield disputes involving the interpretation or application of EU law from the jurisdiction of both the courts of the Member States and the EU courts.

63 It is apparent from point 1 of Annex X to the SatCen Staff Regulations that the Appeals Board is required to apply and interpret those staff regulations, which were adopted by a Council Decision and therefore constitute provisions of EU law. In addition, according to the wording of the second sentence of Article 28(6) of those staff regulations, 'there shall be no appeal' from the decisions of that board.

64 Accordingly, without there being any need to determine whether that board fulfils the criteria of a court or tribunal, it must be found that granting it exclusive jurisdiction to interpret and apply the SatCen Staff Regulations, as provided for in the second sentence of Article 28(6) of those regulations, is, in any event, contrary to the case-law referred to in paragraphs 58 to 61 above.

65 It follows that the General Court did not err in law when it ruled, in paragraph 107 of the judgment under appeal, that the fifth paragraph of Article 263 TFEU cannot be interpreted as allowing the Council to adopt a provision such as the second sentence of Article 28(6) of the SatCen Staff Regulations.

66 It should be added that it is, admittedly, true that, as regards, in the present case, provisions relating to the CFSP and acts adopted on the basis of those provisions, the last sentence of the second subparagraph of Article 24(1) TEU and the first paragraph of Article 275 TFEU introduce a derogation from the rule of general jurisdiction which Article 19 TEU confers on the Court to ensure that the law is observed in the interpretation and application of the Treaties. However, those provisions must be interpreted restrictively and the scope of the derogation which they establish cannot be considered so extensive as to exclude the jurisdiction of the EU judicature to review acts of staff management, such as contested decisions, as the General Court correctly found in paragraph 96 of the judgment under appeal and is not contested by SatCen (see, to that effect, judgment of 19 July 2016, *H* v *Council and Others*, C-455/14 P, EU:C:2016:569, paragraphs 39, 40, 54 and 55).

67 In the second place, in so far as SatCen criticises the General Court, by various arguments in the first part of the first ground of appeal and in the second ground of appeal, for having ruled, in the judgment under appeal, that the conditions for the application of Article 263 TFEU were, in that case, satisfied, it must be borne in mind that it follows from the first paragraph of Article 263 TFEU that the Court is to review the legality of acts of the institutions and of bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties.

68 The objective of an action for annulment is to ensure observance of the law in the interpretation and application of the FEU Treaty and it would therefore be inconsistent with that objective to interpret the conditions under which the action is admissible so restrictively as to limit the availability of this procedure merely to the categories of measures referred to by Article 288 TFEU (judgment of 9 September 2015, *Lito Maieftiko Gynaikologiko kai Cheirourgiko Kentro* v *Commission*, C-506/13 P, EU:C:2015:562, paragraph 17 and the case-law cited).

69 Therefore, all acts adopted by the institutions, bodies, offices or agencies of the European Union, whatever their nature or form, which are intended to produce binding legal effects such as to affect the applicant's interests by bringing about a distinct change in his or her legal position, may be the subject of an action for annulment (see, to that effect, judgments of 9 December 2014, *Schönberger* v *Parliament*, C-261/13 P, EU:C:2014:2423, paragraph 13, and of 9 September 2015, *Lito Maieftiko Gynaikologiko kai Cheirourgiko Kentro* v *Commission*, C-506/13 P, EU:C:2015:562, paragraph 16).

70 It is also apparent from settled case-law concerning the admissibility of actions for annulment that it is necessary to look to the substance of the contested acts, as well as the intention of those who drafted them, in order to classify those acts. In that regard, it is, in principle, acts which definitively determine the position of the institutions, bodies, offices or agencies of the European Union upon the conclusion of an administrative procedure, and which are intended to have legal effects capable of affecting the interests of the applicant, which are open to challenge, and not intermediate measures whose purpose is to prepare for the definitive decision or measures which are mere confirmation of an earlier measure which was not challenged within the prescribed period (judgment of 26 January 2010, *Internationaler Hilfsfonds* v *Commission*, C-362/08 P, EU:C:2010:40, paragraph 52).

71 In the present case, it is common ground that all the contested decisions definitively determined, upon the conclusion of administrative procedures, the position of SatCen. Moreover, it is clear as much from their substance as from the intention of those who drafted them that they are intended to have legal effects capable of affecting KF's interests by bringing about a distinct change in her legal position.

72 In those circumstances, it must be found that the General Court did not err in law by holding that those decisions satisfied the necessary conditions for them to be considered acts open to review for the purposes of Article 263 TFEU.

73 In particular, as the Advocate General noted in points 110 and 111 of his Opinion, although the first paragraph of Article 263 TFEU restricts the Court's jurisdiction to acts intended to have legal effects vis-à-vis 'third parties', it is settled case-law that that qualification is meant to exclude acts that do not adversely affect any person, in so far as they relate exclusively to the internal organisation of an administration and produce effects only within that sphere, without creating any right or obligation vis-à-vis third parties (see, to that effect, judgment of 25 February 1988, *Les Verts* v *Parliament*, 190/84, EU:C:1988:94, paragraph 8, of 6 April 2000, *Spain* v *Commission*, C-443/97, EU:C:2000:190, paragraph 28, and of 2 October 2018, *France* v *Parliament (Exercise of budgetary powers)*, C-73/17, EU:C:2018:787, paragraph 15).

74 While it is true that the contested decisions concern the internal organisation of SatCen, the fact remains that those decisions are addressed to KF, within the meaning of the fourth paragraph of Article 263 TFEU, and adversely affect her, within the meaning of the case-law referred to in paragraphs 69, 70 and 73 above.

75 In addition, since those decisions relate to reciprocal obligations arising from the conclusion of an employment contract between SatCen and KF and led to the termination of the contractual relationship connecting those two parties, it cannot be concluded that the present dispute is not between SatCen and a 'third party', within the meaning of the first paragraph of Article 263 TFEU.

76 Moreover, it is common ground, that, as is apparent from paragraph 122 of the judgment under appeal, Article 270 TFEU does not apply to KF's situation, since neither Decision 2014/401 nor the SatCen Staff Regulations provide for the applicability of the Staff Regulations and the Conditions of Employment of Other Servants of the European Union.

77 It follows that the General Court did err in law when it ruled, in essence, in paragraph 123 of the judgment under appeal, that the employment relationship between KF and SatCen did not exclude the present dispute from the scope of the first paragraph of Article 263 TFEU.

78 In the third place, as regards SatCen's argument based on the contractual nature of the relationship between itself and KF, it is apparent from settled case-law that, where the applicant's legal position falls within the contractual relationships whose legal status is governed by the national law agreed to by the contracting parties, the power to interpret and apply the provisions of the FEU Treaty enjoyed by the EU judicature in an action for annulment is not applicable, since such a situation, in principle and in accordance with Article 274 TFEU, comes within the jurisdiction of the national courts. Therefore, where there is a contract between the applicant and one of the institutions, bodies, offices or agencies of the European Union, an action may be brought before the EU judicature on the basis of Article 263 TFEU only where the contested measure aims to produce binding legal effects falling outside of the contractual relationship between the parties and involving the exercise of the prerogatives of a public authority conferred on the contracting institution, body, office or agency acting in its capacity as an administrative authority (see, to that effect, judgments of 9 September 2015, *Lito Maieftiko Gynaikologiko kai Cheirourgiko Kentro* v *Commission*, C-506/13 P, EU:C:2015:562, paragraphs 18 and 20, and of 28 February 2019, *Alfamicro* v *Commission*, C-14/18 P, EU:C:2019:159, paragraphs 48 and 50).

79 If the EU judicature were to hold that it had jurisdiction to adjudicate on the annulment of acts falling within purely contractual relationships, not only would it risk rendering Article 272 TFEU — which grants the Courts of the European Union jurisdiction pursuant to an arbitration clause — meaningless, but it would also risk, where the contract does not contain such a clause, extending its jurisdiction beyond the limits laid down by Article 274 TFEU, which specifically gives national courts or tribunals ordinary jurisdiction over disputes to which the European Union is a party (judgments of 9 September 2015, *Lito Maieftiko Gynaikologiko kai Cheirourgiko Kentro* v *Commission*, C-506/13 P, EU:C:2015:562, paragraph 19, and of 28 February 2019, *Alfamicro* v *Commission*, C-14/18 P, EU:C:2019:159, paragraph 49 and the case-law cited).

80 Relinquishment by the EU judicature of the jurisdiction conferred on it by Article 263 TFEU where the applicant's legal situation falls within a contractual relationship thus aims to ensure that Articles 263, 272 and 274 TFEU are interpreted consistently and, accordingly, to preserve the coherence of the judicial system of the European Union which is, as noted in paragraph 60 above, a complete system of legal remedies and procedures designed to ensure review of the legality of acts of the institutions, bodies, offices and agencies of the European Union.

81 Similarly, the Court has held, in a dispute concerning the non-contractual liability of the European Union, that, in order to determine which court has jurisdiction to hear a specific action, brought against the Union, seeking compensation for damage, it must be assessed whether the action in question concerns the Union's contractual liability or its non-contractual liability, and that the mere invocation of rules of law not flowing from a contract relevant in the case, but which are binding on the parties, cannot have the consequence of altering the contractual nature of the dispute and thus removing it from the jurisdiction of the competent court or tribunal. If it were otherwise, the nature of the dispute and, consequently, the court or tribunal with jurisdiction, could be changed at the whim of the rules invoked by the parties, which would go against the rules on the jurisdiction of the various courts *ratione materiae* (judgment of 18 April 2013, *Commission* v *Systran and Systran Luxembourg*, C-103/11 P, EU:C:2013:245, paragraphs 61 and 65).

82 Therefore, the concept of 'non-contractual liability', for the purposes of Article 268 TFEU and the second paragraph of Article 340 TFEU, which is of an autonomous character, must, in principle, be interpreted in the light of its purpose, namely that of allowing an allocation of jurisdiction between the EU judicature and the national courts (see, to that effect, judgment of 18 April 2013, *Commission* v *Systran and Systran Luxembourg*, C-103/11 P, EU:C:2013:245, paragraph 62).

83 However, in the present case it should be noted that, as is apparent from paragraph 63 above, the second sentence of Article 28(6) of the SatCen Staff Regulations expressly excludes any judicial review, by the national courts or by the EU judicature, of decisions of the Appeals Board and, as a result, the decisions of the Director of SatCen which are the subject matter of those decisions.

84 Accordingly, against such a background, if the Court and the General Court declined to exercise the jurisdiction conferred on them by Articles 263 and 268 TFEU, the result would be, as the Advocate General noted in point 112 of his Opinion, that such decisions would be exempt from any judicial review, either by the EU courts or the national courts, without that decision to decline jurisdiction being justified by a concern to respect the allocation of jurisdiction between the EU courts and the national courts required by the FEU Treaty.

85 In such circumstances, it is for the Court of Justice and the General Court to exercise the jurisdiction conferred on them by the FEU Treaty, in order to ensure the existence of effective judicial review within the meaning of the case-law referred to in paragraphs 58 to 61 above.

86 It follows that, contrary to what SatCen claims, the General Court did not err in law by ruling, in paragraph 132 of the judgment under appeal, that, notwithstanding the contractual relationship between SatCen and KF, it had jurisdiction under Articles 263 and 268 TFEU to hear the dispute.

87 In the fourth place, in the light of the considerations set out in paragraphs 67 to 86 above, the argument raised by SatCen in the first part of the first ground of appeal, alleging failure to observe the principle of conferral of powers enshrined in Article 5 TEU and that the case does not involve funds from the EU budget, must also be rejected as unfounded.

88 In the fifth place, as regards the argument raised by SatCen in the second and third parts of the first ground of appeal and the second ground of appeal, alleging misinterpretation of the principle of equal treatment, it must be noted, first of all, that the claim that the General Court was wrong to find that it had jurisdiction on the basis of that principle alone follows from a misreading of the judgment under appeal.

89 While it is true that the General Court referred to that principle in the grounds of its decision, the fact remains that it is clear from, inter alia, paragraphs 99, 103 and 120 of the judgment under appeal that it is on the basis of Articles 263 and 268 TFEU that the General Court declared that it had jurisdiction to hear the action brought by KF.

90 Next, it must be noted that, in accordance with settled case-law, the principle of equal treatment requires that comparable situations must not be treated differently and that different situations must not be treated in the same way, unless such treatment is objectively justified (judgment of 3 December 2019, *Czech Republic* v *Parliament and Council*, C-482/17, EU:C:2019:1035, paragraph 164).

91 SatCen cannot, therefore, claim that that principle applies only to identical situations.

92 Lastly, as regards the comparison between the situation of members of the contract staff of SatCen, such as KF, on the one hand, and that of experts, officials and staff members seconded by the Member States or the European Union, on the other hand, it should be noted that the General Court found, in paragraphs 95 to 98 of the judgment under appeal, that the present dispute is comparable to

disputes between an institution, body, office or agency of the European Union not covered by the CFSP and one of their officials or staff members, and that it cannot be found that the derogation from the jurisdiction of the EU judicature provided for in the last sentence of the second subparagraph of Article 24(1) TEU and the first paragraph of Article 275 TFEU, which must be interpreted narrowly, is so extensive as to exclude the jurisdiction of the EU judicature to review acts such as the contested decisions.

93 In that regard, it must be noted that, as follows from the assessment in paragraphs 71, 72, 74 to 77 and 86 above, those situations are entirely comparable to one another.

94 Moreover, the General Court was also right to find, in paragraphs 102 and 103 of the judgment under appeal that, although the original link between SatCen and the WEU, which is an international inter-governmental organisation, had meant, in the past, that the situation of SatCen staff could not be treated in the same way as that of servants of the European Union, this is no longer the case since the entry into force of the Lisbon Treaty on 1 December 2009, disputes between SatCen and its staff members having been considered, since that date, comparable to disputes between EU servants and their employer.

95 As a result, the General Court did not disregard the principle of equal treatment when it stated that it had jurisdiction to review the lawfulness of acts of staff management, such as the contested decisions.

96 In the sixth and last place, as regards the alleged failure to state reasons in the judgment under appeal, invoked in the second ground of appeal, it is sufficient to note that it is settled case-law that the duty to state reasons does not require the General Court to provide an account which follows exhaustively and one by one all the arguments put forward by the parties to the case. The General Court's reasoning may thus be implicit, on condition that it enables the persons concerned to know why it has not upheld their arguments and provides the Court of Justice with sufficient material for it to exercise its power of review (judgment of 9 March 2017, *Ellinikos Chrysos* v *Commission*, C-100/16 P, EU:C:2017:194, paragraph 32).

97 In the present case, the reasoning set out in paragraphs 80 to 114, 119 to 123 and 125 to 131 of the judgment under appeal allows SatCen to understand why the General Court rejected its arguments alleging that the General Court did not have jurisdiction to hear the action at first instance and that the action was inadmissible, and allows the Court to exercise its power of review.

98 In the light of the foregoing, the first and second grounds of appeal must be rejected as unfounded.

The third ground of appeal

Arguments of the parties

99 SatCen claims that the General Court distorted the facts by finding that the use of a multiple-choice questionnaire in an administrative investigation constituted a manifestly inappropriate means of establishing whether the facts alleged were true and of assessing KF's behaviour, when bilateral meetings would have been more appropriate for that purpose. It claims that the persons who filled out that questionnaire had already been interviewed, between January and February 2013, during another enquiry into propriety and human relations within SatCen. Furthermore, bilateral meetings were also held during the administrative investigation itself.

100 SatCen also claims that the General Court distorted the facts by finding that the decisions were founded merely on accusations referring to general categories of conduct, no event or specific behaviour which could be classified as 'harassment' having been identified. It claims that detailed

written statements were attached to the investigation report of 2 July 2013. However, those statements were not taken into consideration by the General Court, with the result that the latter did not take into consideration all the documents on which the Deputy Director of SatCen relied in reaching his conclusions.

101 The Council supports SatCen's arguments.

102 KF contests SatCen's arguments.

Findings of the Court

103 In accordance with the Court's settled case-law, 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 that the General Court has exclusive jurisdiction, first, to establish the facts, except where the substantive inaccuracy of its findings is apparent from the documents submitted to it, and, second, to assess those facts (judgment of 8 March 2016, *Greece* v *Commission*, C-431/14 P, EU:C:2016:145, paragraph 30 and the case-law cited).

104 Therefore, the appraisal of the facts by the General Court does not constitute, save where the clear sense of the evidence produced before it is distorted, a question of law which is subject, as such, to review by the Court of Justice (judgment of 8 March 2016, *Greece* v *Commission*, C-431/14 P, EU:C:2016:145, paragraph 31 and the case-law cited).

105 Where an appellant alleges distortion of the evidence by the General Court, that person must, under Article 256 TFEU, 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, indicate precisely the evidence alleged to have been distorted by the General Court and show the errors of appraisal which, in that person's view, led to such distortion. In addition, according to the Court's settled case-law, that distortion must be obvious from the documents in the Court's file, without there being any need to carry out a new assessment of the facts and the evidence (judgment of 8 March 2016, *Greece* v *Commission*, C-431/14 P, EU:C:2016:145, paragraph 32 and the case-law cited).

106 In the present case, it must be borne in mind that, contrary to what SatCen claims, the investigation report of 2 July 2013 is not accompanied by any annexes supporting the responses of the persons consulted or any other evidence, those responses and evidence having been attached only to the report submitted to the Disciplinary Board on 25 October 2013.

107 Concerning the content of that investigation report, it is expressly and unequivocally apparent from that report (i) that the result of the interviews carried out in January and February 2013 contributed to the opening of the administrative investigation, but that they did not form part of that investigation, (ii) that that investigation report was based exclusively on the written and signed testimonies of persons who were questioned by means of a multi-choice questionnaire, and (ii) that the conclusions of that investigation report were based solely on considerations relating to general categories of behaviour ascribed to KF in that questionnaire, without any mention of specific evidence which might have emerged from the staff members' replies to the two open questions in that questionnaire, as the General Court noted in paragraph 204 of the judgment under appeal.

108 Moreover, it is apparent from paragraphs 200 to 206 of the judgment under appeal that the General Court did not, as SatCen suggests, ignore the detailed responses provided by the persons consulted in the questionnaire, but that it criticised the administrative investigation on account of the multiple-choice questionnaire, which it found to be inappropriate and which, in its view, must also necessarily have affected the content of the responses given by the persons consulted to the open questions in that questionnaire.

109 As a result, since no manifest distortion of the documents in the Court's file is apparent, the third ground of appeal must be rejected as unfounded.

The fourth ground of appeal

Arguments of the parties

110 SatCen claims, first of all, that the right of a person who is the subject of an administrative investigation for psychological harassment to submit his or her observations prior to the closure of that investigation may be limited in order to protect the interests of third parties involved, in particular in order to prevent retaliation. In the present case, limiting that right was necessary, particularly given the large number of complaints and the small size of SatCen. In any event, the various preliminary interviews, particularly those conducted in the course of the annual review, at which KF was able to submit her observations, should be considered sufficient to guarantee KF's right to be heard.

111 Next, SatCen claims that it follows neither from the SatCen Staff Regulations nor from case-law that a specific period of time must be allowed between the invitation to attend an interview, which must take place before the opening of disciplinary proceedings, and the holding of the interview. In any event, the time granted to KF to prepare for that interview should have been assessed in the light of the principle of proportionality, taking into account, inter alia, the serious facts alleged against KF and the ensuing need to react quickly. In addition, the decision to open disciplinary proceedings is not an act adversely affecting a person.

112 Lastly, according to SatCen, on account of his wide margin of discretion, its Director was entitled, when weighing up the interests involved, to give priority to the rights and interests of the persons who submitted complaints of harassment over KF's right to access the case documents before the decision to initiate disciplinary proceedings was adopted, since the risk of retaliation against those persons was too high and would have remained even after the closure of the administrative investigation.

113 The Council supports SatCen's arguments.

114 KF contests SatCen's arguments.

Findings of the Court

115 Article 41 of the Charter of Fundamental Rights of the European Union, entitled 'Right to good administration', provides, in paragraph 1 thereof, that every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.

116 Article 41(2) of the Charter of Fundamental Rights provides that the right to good administration includes, first, the right of every person to be heard before any individual measure which would affect him or her adversely is taken, second, the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy and, third, the obligation on the administration to give reasons for its decisions.

117 In particular, the right to be heard guarantees every person the opportunity to make known his or her views effectively during an administrative procedure and before the adoption of any decision liable to affect his or her interests adversely (judgment of 4 April 2019, *OZ* v *EIB*, C-558/17 P, EU:C:2019:289, paragraph 53).

118 In that regard, it is apparent from Article 1(1) of Annex IX to the SatCen Staff Regulations that, in any event, no conclusions referring by name to a staff member may be drawn on completion of an internal investigation unless that staff member has been given the opportunity to comment on facts concerning him or her.

119 Moreover, under Article 2 of Annex IX to those regulations, it is only after having notified the staff member concerned of all evidence in the file and after hearing him or her that the Director of SatCen may, on the basis of the investigation report, decide, inter alia, to initiate disciplinary proceedings.

120 In the present case, it follows that the Deputy Director of SatCen, before forwarding his recommendations to the Director, and, in any event, the Director, before adopting a decision that would adversely affect KF, were required to respect her right to be heard (see, by analogy, judgment of 4 April 2019, *OZ* v *EIB*, C-558/17 P, EU:C:2019:289, paragraph 56).

121 More specifically, KF was entitled, in order to be able effectively to submit her observations, to receive a summary — at the very least — of the statements made by the various persons consulted, since those statements were used by the Deputy Director of SatCen in his investigation report in order to make recommendations to the Director of SatCen, on the basis of which the latter decided to initiate disciplinary proceedings against KF, and such a summary should have been disclosed while respecting, if appropriate, legitimate expectations as regards confidentiality (see, by analogy, judgment of 4 April 2019, *OZ* v *EIB*, C-558/17 P, EU:C:2019:289, paragraph 57).

122 In addition, the Court has had occasion to state that where the duration of a procedure is not set by a provision of EU law, the 'reasonableness' of the period of time taken by the institution, body, office or agency of the European Union to adopt the measure at issue must be appraised in the light of all of the circumstances specific to each case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the parties (see, to that effect, judgment of 28 February 2013, *Review of Arango Jaramillo and Others* v *EIB*, C-334/12 RX-II, EU:C:2013:134, paragraph 28).

123 As a result, as the Advocate General stated in points 154, 156 and 158 of his Opinion, the General Court did not err in law when it found, in paragraphs 216 and 219 to 223 of the judgment under appeal, first, that it was for the Deputy Director of SatCen and its Director to give KF a proper hearing before adopting both the investigation report and the decision to initiate disciplinary proceedings regarding her, second, that they should, to that end, have communicated to KF the facts concerning her and granted her a reasonable period of time to prepare her observations, and, third, that that information should have been disclosed at the very least by means of a summary of the statements made by the various people consulted, which should have been prepared in compliance with any legitimate expectations as regards confidentiality of those witnesses.

124 Moreover, as was noted in paragraph 104 above, save where the clear sense of the evidence adduced before the General Court has been distorted, the appraisal of the facts does not constitute a point of law which is, as such, subject to review by the Court of Justice. Since SatCen does not allege any distortion of the evidence, its claims must be rejected as inadmissible in so far as they would require the Court to make a new appraisal of the facts as regards the balancing of the interests at stake and the reasonableness of the period of time granted to KF to prepare for her interview with the Director of SatCen.

125 In the light of the foregoing, the fourth ground of appeal must be rejected.

126 Having regard to all the foregoing considerations, the appeal must be dismissed.

Costs

127 Under Article 184(2) of the Rules of Procedure, where the appeal is unfounded, the Court is to make a decision as to the costs.

128 In accordance with Article 138(1) of those rules of procedure, which applies to the procedure on appeal by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

129 Under Article 184(4) of the Rules of Procedure, where the appeal has not been brought by an intervener at first instance, he or she may not be ordered to pay costs in the appeal proceedings unless he or she participated in the written or oral part of the proceedings before the Court of Justice. Where an intervener at first instance takes part in the proceedings, the Court may decide that he or she shall bear his or her own costs.

130 Since SatCen has been unsuccessful and KF has applied for costs to be awarded against it, SatCen must be ordered to bear its own costs and to pay those incurred by KF.

131 Since the Council participated in the proceedings before the Court, it must be held, in the circumstances of the present case, that it must bear its own costs.

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

1. **Dismisses the appeal;**

2. **Orders the European Union Satellite Centre (SatCen) to bear its own costs and to pay those incurred by KF;**

3. **Orders the Council of the European Union to bear its own costs.**

Arabadjiev Xuereb von Danwitz

Delivered in open court in Luxembourg on 25 June 2020.

A. Calot Escobar
Registrar

A. Arabadjiev
President of the Second Chamber