Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

8 September 2020*

Table of contents

* Language of the case: French.

(Appeal – Civil service – Staff Regulations of Officials of the European Union – Reform of 1 January 2014 – Article 6 of Annex X – Officials and members of the contract staff serving in a third country – New provisions on the granting of days of paid annual leave – Objection of illegality – Charter of Fundamental Rights of the European Union – Article 31(2) – Directive 2003/88/EC – Fundamental right to paid annual leave)

In Joined Cases C-119/19 P and C-126/19 P,

TWO APPEALS under Article 56 of the Statute of the Court of Justice of the European Union, brought on 14 February 2019 and 15 February 2019, respectively,

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

appellant,

the other parties to the proceedings being:

Francisco Carreras Sequeros, residing in Addis Ababa (Ethiopia),

Mariola de las Heras Ojeda, residing in Ciudad de Guatemala (Guatemala),

Olivier Maes, residing in Skopje (North Macedonia),

Gabrio Marinozzi, residing in Santo Domingo (Dominican Republic),

Giacomo Miserocchi, residing in Islamabad (Pakistan),

Marc Thieme Groen, residing in Kampala (Uganda),

represented by S. Orlandi and T. Martin, avocats,

applicants at first instance,

European Parliament, represented by O. Caisou-Rousseau, J. Steele and E. Taneva, acting as Agents,

Council of the European Union, represented by M. Bauer and R. Meyer, acting as Agents,

interveners at first instance (C-119/19 P),

and

Council of the European Union, represented by M. Bauer and R. Meyer, acting as Agents,

appellant,

the other parties to the proceedings being:

Francisco Carreras Sequeros, residing in Addis Ababa,

Mariola de las Heras Ojeda, residing in Ciudad de Guatemala,

Olivier Maes, residing in Skopje,

Gabrio Marinozzi, residing in Santo Domingo,

Giacomo Miserocchi, residing in Islamabad,

Marc Thieme Groen, residing in Kampala,

represented by S. Orlandi and T. Martin, avocats,

applicants at first instance,

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

defendant at first instance,

European Parliament, represented by O. Caisou-Rousseau, J. Steele and E. Taneva, acting as Agents,

intervener at first instance (C-126/19 P),

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, J.-C. Bonichot, A. Arabadjiev, A. Prechal, S. Rodin and L.S. Rossi (Rapporteur), Presidents of Chambers, E. Juhász, M. Ilešič, J. Malenovský, F. Biltgen, K. Jürimäe, A. Kumin, N. Jääskinen and N. Wahl, Judges,

Advocate General: J. Kokott,

Registrar: V. Giacobbo-Peyronnel, Administrator,

having regard to the written procedure and further to the hearing on 3 February 2020,

after hearing the Opinion of the Advocate General at the sitting on 26 March 2020,

gives the following

Judgment

1 By their appeals, the European Commission and the Council of the European Union seek to have set aside the judgment of the General Court of the European Union of 4 December 2018, *Carreras Sequeros and Others* v *Commission* (T-518/16, EU:T:2018:873; 'the judgment under appeal'), by which the General Court annulled the Commission's decisions fixing, for 2014, the number of days of annual leave of the applicants at first instance, Mr Francisco Carreras Sequeros, Ms Mariola de las Heras Ojeda, Mr Olivier Maes, Mr Gabrio Marinozzi, Mr Giacomo Miserocchi and Mr Marc Thieme Groen (together, 'Carreras Sequeros and Others'), all of whom are officials or members of the contract staff of the Commission ('the decisions at issue').

Legal context

European Social Charter

2 The European Social Charter, signed in Turin on 18 October 1961 within the framework of the Council of Europe and revised in Strasbourg on 3 May 1996, entered into force in 1999. All the Member States are parties to that convention in so far as they acceded to it in its original version, in its revised version, or in both versions.

3 In its revised version, Article 2 of the European Social Charter provides:

'With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake … to provide for a minimum of four weeks' annual holiday with pay …'

Community Charter of the Fundamental Social Rights of Workers

4 Point 8 of the Community Charter of the Fundamental Social Rights of Workers, which was adopted at the meeting of the European Council held in Strasbourg on 9 December 1989, provides:

'Every worker of the European Community shall have a right to a weekly rest period and to annual paid leave, the duration of which must be progressively harmonised in accordance with national practices.'

Charter of Fundamental Rights of the European Union

5 Article 31 of the Charter of Fundamental Rights of the European Union ('the Charter'), entitled 'Fair and just working conditions', provides:

'1. Every worker has the right to working conditions which respect his or her health, safety and dignity.

2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.'

Directive 2003/88/EC

6 Article 1 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9), entitled 'Purpose and scope', is worded as follows:

'1. This Directive lays down minimum safety and health requirements for the organisation of working time.

2. This Directive applies to:

(a) minimum periods of … annual leave …

…'

7 As provided in Article 7 of Directive 2003/88, entitled 'Annual leave':

'1. Member States shall take the measures necessary to ensure that every worker is entitled to paid annual leave of at least four weeks in accordance with the conditions for entitlement to, and granting of, such leave laid down by national legislation and/or practice.

2. The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated.'

8 Article 14 of the directive, entitled 'More specific Community provisions', provides:

'This Directive shall not apply where other Community instruments contain more specific requirements relating to the organisation of working time for certain occupations or occupational activities.'

9 Article 23 of the directive, entitled 'Level of protection', provides:

'Without prejudice to the right of Member States to develop, in the light of changing circumstances, different legislative, regulatory or contractual provisions in the field of working time, as long as the minimum requirements provided for in this Directive are complied with, implementation of this Directive shall not constitute valid grounds for reducing the general level of protection afforded to workers.'

Staff Regulations

10 The Staff Regulations of Officials of the European Union ('the Staff Regulations') are laid down by Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ, English Special Edition 1968(I), p. 30), as amended by Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 (OJ 2013 L 287, p. 15).

11 Article 1e(2) of the Staff Regulations, which is in the general provisions of those regulations and applicable by analogy to contract staff in accordance with Article 80(4) of the Conditions of Employment of Other Servants of the European Communities ('the CEOS'), states:

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

12 The first paragraph of Article 57 of the Staff Regulations, applicable by analogy to contract staff in accordance with Articles 16 and 91 of the CEOS, is worded as follows:

'Officials shall be entitled to annual leave of not less than twenty-four working days nor more than thirty working days per calendar year, in accordance with rules, to be laid down by common accord of the appointing authorities of the institutions of the Union, after consulting the Staff Regulations Committee.'

13 Annex X to the Staff Regulations contains special and exceptional provisions applicable to officials serving in a third country. Under Article 118 of the CEOS, some of those provisions apply by analogy to contract staff in the same situation. That is true of Article 6 of Annex X to the Staff Regulations.

14 Before Regulation No 1023/2013 came into effect, Article 6 of Annex X to the Staff Regulations provided, with regard to staff serving in a third country:

'An official shall, per calendar year, be entitled to annual leave of three and a half working days for each month of service.'

15 Recital 27 of Regulation No 1023/2013 states:

'It is appropriate to modernise working conditions for staff employed in third countries and to render them more cost-effective whilst generating cost savings. Annual leave entitlements should be adjusted, and provision should be made for the possibility of including a wider range of parameters to fix the allowance for living conditions, without affecting the overall aim of generating cost savings. The conditions for granting the accommodation allowance should be revised to take better account of local conditions and to reduce the administrative burden.'

16 Since Article 1(70)(a) of Regulation No 1023/2013 came into effect on 1 January 2014, Article 6 of Annex X to the Staff Regulations ('the new Article 6 of Annex X to the Staff Regulations') has provided, in respect of officials serving in third countries:

'An official shall, per calendar year, be entitled to annual leave of two working days for each month of service.

Notwithstanding the first paragraph of this Article, officials posted already in a third country on 1 January 2014 shall be entitled to:

– three working days from 1 January 2014 until 31 December 2014;

– two and half working days from 1 January 2015 until 31 December 2015.'

Background to the dispute

17 The background to the dispute was set out in paragraphs 1 to 8 of the judgment under appeal. For the purposes of the present proceedings, this may be summarised as follows.

18 Carreras Sequeros and Others are officials or members of the contract staff of the Commission. They were all posted in third countries and were already posted in a third country before 1 January 2014.

19 The personnel files of Carreras Sequeros and Others were updated to take account of the first indent of the second paragraph of the new Article 6 of Annex X to the Staff Regulations, as a result of which they were allocated 36 working days of annual leave for 2014, as against 42 for the previous year.

20 Carreras Sequeros and Others submitted complaints between 17 February and 13 March 2014. Those complaints were rejected by the appointing authority or by the authority empowered to conclude contracts of employment, as appropriate, by decisions of 23 May 2014, all of which were formulated in the same terms.

The action before the General Court and the judgment under appeal

21 In their action before the General Court, Carreras Sequeros and Others applied, under their first head of claim, for the new Article 6 of Annex X to the Staff Regulations to be declared unlawful and, under their second head of claim, for the decisions at issue reducing their annual leave 'as from 2014' to be annulled.

22 In support of their action, Carreras Sequeros and Others put forward four pleas in law, alleging, respectively, disregard for the specific nature and purpose of the right to annual leave; breach of the general principle of equal treatment; breach of the principle of protection of legitimate expectations; and infringement of the right to respect for private and family life.

23 Before commencing its examination, the General Court explained, in the first place, in paragraphs 24 to 26 of the judgment under appeal, that the subject matter of the action concerned the determination of the right to annual leave of Carreras Sequeros and Others in respect of 2014 only, and that, in the context of that action, the objection had been raised that the new Article 6 of Annex X to the Staff Regulations was unlawful.

24 In the second place, in paragraphs 27 to 39 of the judgment under appeal, the General Court assessed the scope and admissibility of the objection of illegality raised by Carreras Sequeros and Others. In that respect, after recalling its own case-law, the General Court ruled in paragraph 35 of that judgment that, 'in view of the link between transitional provisions and definitive provisions, the former having no raison d'être without the latter, and in view of the fact that the competent authority has no discretion, it must be held here that there is a direct legal connection between the [decisions at issue] and the first paragraph of the new Article 6 of Annex X to the Staff Regulations and that, since that first paragraph is the culmination of the second paragraph, first indent, of the new Article 6 of Annex X to the Staff Regulations, it is at least indirectly applicable to those decisions inasmuch as it was relevant for the purposes of their adoption in so far as they were essentially based on it, even though it was not their

formal legal basis'. Consequently, as set out in paragraph 36 of that judgment, 'from the … perspective [of Carreras Sequeros and Others], the [decisions at issue] were the first application of the new Article 6 of Annex X to the Staff Regulations, with the result that, as of 2016, [Carreras Sequeros and Others] were to have only 24 days of leave'.

25 In paragraph 39 of the judgment under appeal, the General Court concluded its examination of the scope and admissibility of the objection of illegality by ruling that, 'even if the [decisions at issue] are formally based on the transitional provision which concerns exclusively 2014, contained in the second paragraph, first indent, of the new Article 6 of Annex X to the Staff Regulations, [Carreras Sequeros and Others'] challenge, by way of an objection, to the legality of the definitive annual leave regime determined under the first paragraph of that article is also admissible'.

26 Next, the General Court examined the first plea in law in the action brought by Carreras Sequeros and Others, alleging disregard for the specific nature and purpose of the right to annual leave, and concluded, in paragraph 113 of the judgment under appeal, that that plea was well founded. It therefore upheld the action brought by Carreras Sequeros and Others, without examining the other pleas put forward.

27 In order to reach that conclusion, the General Court first verified, in paragraphs 60 to 70 of the judgment under appeal, whether, as Carreras Sequeros and Others maintained, Directive 2003/88 could be relied on against the EU legislature. While the General Court noted that a directive is not, as such, binding on the EU institutions, in paragraph 61 of the judgment it identified three situations in which those institutions would nevertheless be required to take account of directives. In particular, it considered whether Directive 2003/88 could be relied on against the EU legislature in so far as the directive gives expression to a fundamental right, in this instance the right to annual leave guaranteed in Article 31(2) of the Charter.

28 On the basis of the explanations of the Praesidium of the Convention relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17), the General Court found, in paragraphs 69 and 70 of the judgment under appeal, that, 'in so far as Directive 2003/88 is a concrete expression of the principle laid down in Article 31(2) of the Charter …, the legislature, bound as it is to comply with that article which has the same force as the Treaties, could not disregard the content of that directive', in consequence of which the new Article 6 of Annex X to the Staff Regulations should be disapplied if it 'is shown to be incompatible with the right to annual leave, the nature and purpose of which follow from Article 31(2) of the Charter read in the light of Directive 2003/88'.

29 Second, in proceeding to verify, in paragraphs 72 to 96 of the judgment under appeal, whether the right to annual leave was adversely affected by the new Article 6 of Annex X to the Staff Regulations, the General Court took into consideration the content of the provisions of Directive 2003/88 and its objective. The General Court held, in paragraphs 88 and 89 of that judgment, that, by its nature, the entitlement to annual leave referred to in Article 31(2) of the Charter is intended, in principle, to promote the improvement of the living and working conditions of workers, and that the fact that the number of days of annual leave determined by the new Article 6 of Annex X to the Staff Regulations remains higher than the minimum required under Article 7 of Directive 2003/88 is not sufficient, as the Commission claims, to conclude that the new article does not infringe the right to annual leave.

30 On the contrary, in paragraphs 90 to 96 of the judgment under appeal, the General Court found, in essence, that the significant reduction in the length of leave of officials and other members of staff serving in third countries, which decreased from 42 to 24 days in the space of three years, could not be regarded as being consistent with the principle of promoting the improvement of the living and working conditions of the persons concerned, and that the scale of that reduction was not mitigated by the other provisions of the Staff Regulations and the annexes thereto which form the backdrop for the new Article 6 of Annex X to the Staff Regulations. Those provisions were held by the General

Court to be either irrelevant, or insufficient or inconsequential as regards making up for the reduction in the number of days of annual leave resulting from the new Article 6 of Annex X to the Staff Regulations.

31 Third, the General Court investigated whether there was appropriate justification for the adverse effect on the right to annual leave thus established, but ruled that out following its examination in paragraphs 98 to 112 of the judgment under appeal.

32 In particular, the General Court stated, in paragraphs 109 and 110 of that judgment, that, by reducing the annual leave to 24 working days as from 2016, the EU legislature did not appear to have taken account of the fact that officials and other members of staff posted within the European Union are eligible for leave of up to 30 working days depending on their age and grade, or to have ascertained whether the rest leave provided for in the first paragraph of Article 8 of Annex X to the Staff Regulations actually ensured that the health and safety of all officials and other members of staff serving in third countries and placed in a particularly difficult situation were sufficiently protected, even though, under that provision, that rest leave may only be granted exceptionally and requires a special reasoned decision.

33 The General Court therefore considered, in paragraph 112 of the judgment under appeal, that the EU legislature had not satisfied itself that the new Article 6 of Annex X to the Staff Regulations did not constitute a disproportionate interference with the right to annual leave enjoyed by officials and other members of staff serving in third countries. It consequently held that the Commission was not entitled to rely on the new Article 6 of Annex X to the Staff Regulations in order to adopt the decisions at issue, and annulled them.

Forms of order sought and procedure before the Court of Justice

34 In Case C-119/19 P, the Commission claims that the Court of Justice should set aside the judgment under appeal, refer the case back to the General Court in order for it to rule on the second, third and fourth pleas in law in the action at first instance, and reserve the costs.

35 In Case C-126/19 P, the Council claims that the Court should uphold the appeal, dispose of the case and dismiss the action at first instance as unfounded, and order Carreras Sequeros and Others to pay the costs incurred by the Council in the context of the present proceedings.

36 Carreras Sequeros and Others contend that the Court should dismiss the appeals and order the Commission and the Council to pay the costs.

37 The European Parliament, intervener at first instance, claims that the Court should grant the appeals.

38 In accordance with Article 54(2) of the Rules of Procedure of the Court of Justice, the President of the Court decided, on 12 March 2019, that Cases C-119/19 P and C-126/19 P should be joined for the purposes of the written and oral parts of the procedure and of the judgment.

39 In accordance with Article 133(1) and (2) of the Rules of Procedure, applicable to the appeal by virtue of Article 190(1) of those rules, the Commission and the Council requested that the appeals be determined pursuant to the expedited procedure.

40 By decision of 12 March 2019, the President of the Court refused those requests. Neither the ground relating to the alleged legal uncertainty surrounding the new Article 6 of Annex X to the Staff Regulations arising from the judgment under appeal, nor that relating to the number of officials potentially concerned by the inferences to be drawn from that judgment, are capable, as such, of constituting exceptional circumstances that justify a case being determined pursuant to an expedited

procedure (see, to that effect, order of 7 April 2016, *Council* v *Front Polisario*, C-104/16 P, not published, EU:C:2016:232, paragraph 7 and the case-law cited). The same assessment applies as regards the administrative disadvantages relating to the management of staff working in delegations in third countries, which were also invoked in support of the Commission's request.

41 However, in view of the importance of Cases C-119/19 P and C-126/19 P for the European Union and its institutions, the President of the Court decided that those cases would be given priority, pursuant to Article 53(3) of the Rules of Procedure.

42 By document lodged on 30 April 2019, the Council brought a cross-appeal in Case C-119/19 P.

43 Carreras Sequeros and Others contend that that cross-appeal should be dismissed and the Council ordered to pay the costs.

44 By document lodged on 20 May 2019, the European External Action Service (EEAS) applied for leave to intervene in Case C-119/19 P, in support of the form of order sought by the Commission.

45 By order of 29 July 2019, *Commission* v *Carreras Sequeros and Others* (C-119/19 P, not published, EU:C:2019:658), the President of the Court dismissed that application.

The appeals

46 The appeals are based, in essence, on three grounds.

First ground of the Council's appeal and cross-appeal, alleging errors of law that vitiated the scope of the General Court's jurisdiction in the examination of the action

47 This ground of appeal is in two parts.

First part, alleging an error of law in the failure to redefine the subject matter of the action at first instance

– Arguments of the parties

48 According to the Council, as endorsed by the Commission in its responses to the Council's appeal and cross-appeal, the General Court erred in ruling, in paragraph 26 of the judgment under appeal and in the operative part, that the decisions at issue entailed not the determination of the number of days of annual leave for 2014, pursuant to the first indent of the second paragraph of the new Article 6 of Annex X to the Staff Regulations, but a reduction of the number of days of annual leave.

49 In the Council's opinion, the General Court was required to define the subject matter of the action correctly, as it has the power to do. The consequence of the failure to redefine the subject matter of the action was, according to the Council, damaging in two respects.

50 First, it had led the General Court to direct the Commission to reinstate the number of days of annual leave to which Carreras Sequeros and Others were entitled before the Staff Regulations were amended. The Council recalls, however, referring in particular to the order of 26 October 1995, *Pevasa and Inpesca* v *Commission* (C-199/94 P and C-200/94 P, EU:C:1995:360, paragraph 24), that the EU judicature has no jurisdiction to issue directions to the administration or to require that its judgment be complied with in a particular manner. In addition, there is no longer a legal basis for the

Commission to take the necessary measures to comply with the operative part of the judgment under appeal, since the version of Article 6 of Annex X to the Staff Regulations that predated the entry into force of Regulation No 1023/2013 was repealed by that regulation.

51 Second, the Council submits that the annulment of the decisions at issue 'reducing' the number of days of annual leave for 2014 alters the number of days' leave to be allocated to the officials and other members of staff concerned and, therefore, the very substance of the decisions at issue. The judgment under appeal had thus replaced decisions that set the number of days of annual leave to which Carreras Sequeros and Others were entitled at 36 with other decisions setting that number at 42 for 2014. The General Court had thus varied the decisions at issue, thereby exceeding its jurisdiction.

52 Carreras Sequeros and Others dispute the arguments set out by the Council.

– *Findings of the Court*

53 It must be observed that while, in paragraph 25 of the judgment under appeal, the General Court summarised the subject matter of the second head of claim of Carreras Sequeros and Others as annulment of the decisions at issue that had 'reduced' their annual leave entitlement as from 2014, it is apparent, in particular, from paragraph 27 of that judgment that the General Court described the decisions at issue as having 'determined the number of days of annual leave for 2014 alone'. The Council thus at least partly misreads the grounds of the judgment under appeal.

54 Further, the fact that point 1 of the operative part of the judgment under appeal annuls those decisions 'reducing' the number of days of annual leave for 2014 of Carreras Sequeros and Others does not in any way imply that, beyond the possible formal inaccuracy of that expression, the General Court disregarded the subject matter of the dispute before it or directed the Commission to comply with the judgment under appeal in a particular manner.

55 First, as regards the subject matter of the dispute, it must be noted that the Council does not contest the General Court's finding in paragraphs 32 and 33 of the judgment under appeal that, in essence, the competent authority had no discretion for the purposes of determining the number of days of annual leave following the entry into force, on 1 January 2014, of the new Article 6 of Annex X to the Staff Regulations, which resulted, in the case of Carreras Sequeros and Others, in a six-day reduction of their annual leave for 2014, compared with 2013, in accordance with the first indent of the second paragraph of the new Article 6 of Annex X to the Staff Regulations.

56 Second, with regard to the Council's claim that the General Court exceeded its jurisdiction in so far as it gave the Commission directions as to the manner in which the judgment under appeal was to be complied with, it must be recalled that when the General Court annuls an act of an institution, that institution is required, under Article 266 TFEU, to take the necessary measures to comply with the judgment of the General Court.

57 Article 266 TFEU does not, however, specify the nature of the measures to be taken by the institution concerned for the purposes of such compliance, meaning that it is for that institution to identify those measures (see, to that effect, judgment of 14 June 2016, *Commission* v *McBride and Others*, C-361/14 P, EU:C:2016:434, paragraphs 52 and 53). Furthermore, Article 266 TFEU requires the institution which adopted the annulled act only to take the necessary measures to comply with the judgment annulling its act (judgment of 6 March 2003, *Interporc* v *Commission*, C-41/00 P, EU:C:2003:125, paragraph 30).

58 Contrary to the Council's contention, it does not in any way follow from the judgment under appeal that, in disregard of Article 266 TFEU, the General Court not only annulled the decisions at issue but also directed the Commission to substitute for them new decisions allocating to Carreras Sequeros and Others, for 2014, the number of days' annual leave that they could have claimed before the Staff Regulations were amended by Regulation No 1023/2013.

59 Furthermore, since the General Court merely annulled the decisions at issue, it cannot be claimed that the General Court varied them.

60 It is, moreover, apparent from the written pleadings of the Commission and those of Carreras Sequeros and Others that, without prejudice to the present appeal proceedings, the Commission identified a number of ways in which compliance with the judgment under appeal might be effected, including possible financial compensation for Carreras Sequeros and Others.

61 It follows from this that the first part of the first ground of the Council's appeal and cross-appeal must be rejected as being unfounded.

Second part, alleging errors of law in relation to the admissibility and scope of the objection of illegality raised at first instance

– *Arguments of the parties*

62 The Council, supported by the Commission and by the Parliament, claims that the General Court disregarded the extent of its jurisdiction by declaring admissible the objection of illegality that was raised by Carreras Sequeros and Others and which related to the entire system of annual leave provided for in the new Article 6 of Annex X to the Staff Regulations, including the definitive stage applicable as from 2016, and not merely to the provision applied by the decisions at issue, that is to say, the first indent of the second paragraph of the new Article 6 of Annex X to the Staff Regulations.

63 In the Council's view, the decisions at issue were adopted on the basis of the first indent of the second paragraph of the new Article 6 of Annex X to the Staff Regulations, and therefore the objection of illegality could relate only to that provision, since the Commission had not, in this instance, either directly or indirectly applied the first paragraph of Article 6 of Annex X.

64 The Council notes in this regard that that non-application of the first paragraph of Article 6 of Annex X to the Staff Regulations, applicable from 1 January 2016, cannot have an effect on the legality of the decisions at issue fixing the number of days of annual leave for 2014, which is the subject matter of the action for annulment. The fact that a provision may, hypothetically, be applied to an official cannot justify that official being able to challenge the lawfulness of that provision under Article 277 TFEU, unless a party is to be entitled to contest the applicability of any act of general application in support of any action whatsoever, which the case-law prohibits. The Council submits that the General Court thus distorted the case-law in relation to the admissibility and scope of an objection of illegality, notwithstanding the fact that that case-law had been correctly cited in paragraphs 30 and 31 of the judgment under appeal.

65 Carreras Sequeros and Others contend that the arguments put forward by the Council should be rejected.

– *Findings of the Court*

66 Under Article 277 TFEU, any party may, in proceedings in which an act of general application adopted by an institution, body, office or agency of the Union is at issue, plead the grounds specified in the second paragraph of Article 263 TFEU in order to invoke before the Court of Justice of the European Union the inapplicability of that act.

67 That provision gives expression to a general principle conferring upon any party to proceedings the right to challenge incidentally, with a view to obtaining the annulment of a decision addressed to that party, the validity of acts of general application which form the legal basis of that decision (see, to that effect, judgments of 6 March 1979, *Simmenthal* v *Commission*, 92/78, EU:C:1979:53, paragraph 39, and of 19 January 1984, *Andersen and Others* v *Parliament*, 262/80, EU:C:1984:18, paragraph 6).

68 Since the purpose of Article 277 TFEU is not to allow a party to contest the applicability of any act of general application in support of any action whatsoever, the act the legality of which is called in question must be applicable, directly or indirectly, to the issue with which the action is concerned (see, to that effect, judgment of 13 July 1966, *Italy* v *Council and Commission*, 32/65, EU:C:1966:42, p. 390, 409).

69 Thus, in an action for annulment brought against individual decisions, the Court has accepted that the provisions of an act of general application that constitute the basis of those decisions (see, to that effect, in particular, judgments of 28 October 1981, *Krupp Stahl* v *Commission*, 275/80 and 24/81, EU:C:1981:247, paragraph 32, and of 11 July 1985, *Salerno and Others* v *Commission and Council*, 87/77, 130/77, 22/83, 9/84 and 10/84, not published, EU:C:1985:318, paragraph 36) or that have a direct legal connection with such decisions (see, to that effect, in particular, judgments of 31 March 1965, *Macchiorlati Dalmas* v *High Authority*, 21/64, EU:C:1965:30, p. 175, 187; of 9 September 2003, *Kik* v *OHIM*, C-361/01 P, EU:C:2003:434, paragraph 76; and of 28 June 2005, *Dansk Rørindustri and Others* v *Commission*, C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, EU:C:2005:408, paragraph 237) may legitimately form the subject matter of an objection of illegality.

70 By contrast, the Court has held that an objection of illegality covering an act of general application in respect of which the individual decision being challenged does not constitute an implementing measure is inadmissible (see, to that effect, judgment of 5 October 2000, *Council* v *Chvatal and Others*, C-432/98 P and C-433/98 P, EU:C:2000:545, paragraph 33).

71 In the present case, the Council maintains that, in paragraph 35 of the judgment under appeal, the General Court wrongly characterised the relationship between the decisions at issue and the first paragraph of the new Article 6 of Annex X to the Staff Regulations as a 'direct legal connection', and, moreover, wrongly held that, since that first paragraph was the culmination of the second paragraph, first indent, of the new Article 6 of that annex, it was at least indirectly applicable to those decisions.

72 Those arguments cannot succeed.

73 It is common ground that the decisions at issue are based on the first indent of the second paragraph of the new Article 6 of Annex X to the Staff Regulations, which is merely a transitional provision organising the progressive shift toward the definitive annual leave regime established by the first paragraph of that article, in order, in particular, to avoid or to mitigate the effects of a sudden change in the old regime for the members of staff concerned who were already serving in third countries on 1 January 2014, such as Carreras Sequeros and Others.

74 Since the very nature of a transitional period is to organise the progressive shift from one regime to another, as the General Court correctly held in paragraph 34 of the judgment under appeal, the General Court did not err in law by inferring from that finding that there is a connection between the

two paragraphs of the new Article 6 of Annex X to the Staff Regulations. The transitional period provided for in the second paragraph of Article 6 of Annex X to the Staff Regulations is only justified by the adoption of the definitive regime established by the first paragraph of that article.

75 In those circumstances, the General Court was fully entitled to infer from this, in paragraphs 35 and 39 of the judgment under appeal, that the decisions at issue constitute implementing measures in respect of the regime established with effect from 1 January 2014 by Article 6 of Annex X to the Staff Regulations and have a direct legal connection with that regime, with the result that Carreras Sequeros and Others were entitled to plead the illegality of the definitive annual leave regime laid down in the first paragraph of Article 6 of Annex X to the Staff Regulations.

76 It must be added that the opposite interpretation, put forward by the Council, would have the effect, for the purposes of examining the objection of illegality in respect of the annual leave regime established with effect from 1 January 2014, of artificially separating the definitive and transitional periods of what is one single regime.

77 The second part of the first ground of the Council's appeal and cross-appeal must therefore be rejected as being unfounded, as, therefore, must the first ground of appeal in its entirety.

First ground of the Commission's appeal and second ground of the Council's appeal and cross-appeal, alleging errors of law in the interpretation of Article 31(2) of the Charter and Directive 2003/88 and in the finding of an adverse effect on the right to annual paid leave

78 The arguments put forward by the Commission and the Council in support of these grounds of appeal, relating to the General Court's findings in paragraphs 61 to 97 of the judgment under appeal, are, in essence, in four parts.

First two parts, alleging, respectively, an error of law regarding the ability to rely on directives against EU institutions, and the incorrect definition of the scope of the right to paid annual leave provided for in Article 31(2) of the Charter read in the light of Directive 2003/88

– Arguments of the parties

79 By the first part, the Council claims that, in paragraph 61 of the judgment under appeal, the General Court identified three situations in which a directive addressed to the Member States may be relied on against the EU institutions, thereby disregarding the principle that such an act cannot impose, as such, obligations on those institutions in their relationships with their staff, subject only to the – very slight – nuance that emerges from paragraphs 40 and 46 of the judgment of 19 September 2013, *Review Commission* v *Strack* (C-579/12 RX-II, EU:C:2013:570).

80 According to the Council, none of the three situations mentioned by the General Court establishes that Directive 2003/88 may be relied upon vis-à-vis the EU institutions. Nor, moreover, is it clear from the judgment under appeal which case of reliance on a directive the General Court intended to apply in the present case, or to what extent the statements in paragraph 61 of that judgment support the operative part.

81 In its response to the Council's cross-appeal, the Commission states that it is difficult to understand whether paragraph 61 of the judgment under appeal serves as a basis for the claims that Directive 2003/88 can be relied on against the EU legislature and Article 31(2) of the Charter should be read in the light of that directive. However, should the Court of Justice find that the General Court's

substantive reasoning is based on the conditions for reliance on directives vis-à-vis the EU institutions, as set out in paragraph 61 of the judgment under appeal, the Commission makes clear that it also contests that point, as does the Council.

82 By the second part, the Commission and the Council, supported by the Parliament, submit that the EU legislature is not, as the General Court wrongly found in paragraphs 69 to 72 of the judgment under appeal, bound by the full content of Directive 2003/88, and that that directive cannot be incorporated into primary law.

83 According to the Commission, only the substance of Article 7 of Directive 2003/88, as a minimum protection rule, and not all of that directive's provisions can, in accordance with the case-law of the Court, be taken into consideration in the context of the incidental review of the legality of a provision of the Staff Regulations concerning entitlement to annual leave in the light of Article 31(2) of the Charter.

84 The Council adds that, in the present case, the General Court distorted the scope of Article 52(7) of the Charter by some sophistry culminating in a review of the legality of Regulation No 1023/2013 – which introduced the new Article 6 of Annex X to the Staff Regulations – in the light of the provisions of Directive 2003/88, incorporating the latter directive into primary law, in disregard of the hierarchy of norms.

85 According to the Commission and the Council, that error of law is particularly evident in that it led the General Court, in paragraphs 73 to 83 of the judgment under appeal, to examine the legality of the new Article 6 of Annex X to the Staff Regulations in the light of Articles 14 and 23 of Directive 2003/88, although those provisions cannot be taken into account. In that regard, the Commission recalls that Article 336 TFEU specifically empowers the EU legislature to lay down the rules applicable to the working relationship between the staff of the EU institutions and those institutions. In so doing, it is primary law itself that has given those institutions the power to lay down the law applicable to their own staff, without making it subject to other provisions of secondary legislation.

86 Carreras Sequeros and Others contend that those two parts are ineffective and, in any event, unfounded.

– Findings of the Court

87 Having recalled, in paragraph 60 of the judgment under appeal, that the provisions of Directive 2003/88 cannot be treated as imposing any obligations on the EU institutions in their relations with their staff, the General Court identified, in paragraph 61 of that judgment, three situations in which the institutions cannot 'preclude rules or principles laid down in that directive from being relied on against [them]'.

88 First, it indicated that that is the case where those rules or principles 'themselves appear to be merely the specific expression of fundamental Treaty rules and general principles directly applicable to the institutions'. Second, it considered that a 'directive may be binding on an institution where the latter, within the scope of its organisational autonomy and within the limits of the Staff Regulations, has sought to carry out a specific obligation laid down by a directive or in the specific instance where an internal measure of general application itself expressly refers to measures laid down by the EU legislature pursuant to the Treaties'. Finally, third, it found that 'the institutions must, in their conduct as employer and in accordance with their duty to cooperate in good faith, take account of legislative provisions adopted at EU level'.

89 While it is not necessary to rule in general terms on the accuracy of the General Court's identification in paragraph 61 of the judgment under appeal of three separate situations in which a directive may be relied on against an EU institution, it must first of all be observed, as regards Directive 2003/88, which alone is at issue in the present case, that the General Court rejected, in paragraph 64 of that judgment, the argument of Carreras Sequeros and Others that Article 1e(2) of the Staff Regulations was an internal measure of general application referring to that directive. In so doing, as is clear from that paragraph 64, the General Court ruled out the possibility of Carreras Sequeros and Others being able to rely on Article 1e(2) of the Staff Regulations and that directive in order to have the new Article 6 of Annex X to the Staff Regulations incidentally declared inapplicable.

90 Consequently, in so far as the Council takes issue with the second situation which the General Court set out in paragraph 61 of the judgment under appeal, since the assessment relating thereto does not support the operative part of that judgment, the Council's argument must be rejected as being ineffective.

91 Next, it is not apparent from any of the grounds of the judgment under appeal that the General Court applied the third situation which it identified in paragraph 61 of that judgment and which is referred to in paragraph 88 of the present judgment. Consequently, to the extent that it relates to the third situation, the Council's argument is also ineffective.

92 Last, as regards the first situation in which Directive 2003/88 may be relied on against an EU institution, identified in paragraph 61 of the judgment under appeal and according to which that directive as a whole is the specific expression of fundamental Treaty rules and general principles, that situation was taken into account by the General Court, in particular in paragraphs 69 to 83 of that judgment.

93 However, it is sufficient to note that the operative part of the judgment under appeal is based not on the considerations set out in paragraphs 69 to 83 of that judgment but on the grounds set out in paragraphs 84 to 113 thereof, on the basis of which the General Court established that there was an unjustified adverse effect on Carreras Sequeros and Others' right to paid annual leave, based on the disregard for the nature and purpose of that right, as referred to in Article 31(2) of the Charter.

94 The first two parts of the Commission's first ground of appeal and of the Council's second ground of appeal and cross-appeal must therefore be rejected as being ineffective.

Third part, alleging an error of law as to the nature and purpose of the right set out in Article 31(2) of the Charter

– *Arguments of the parties*

95 The Commission and the Council claim that the General Court's statement, in paragraph 88 of the judgment under appeal, that the entitlement to annual leave referred to in Article 31(2) of the Charter is intended to promote the improvement of the living and working conditions of workers is incorrect.

96 They submit that no such purpose is mentioned in that article, the title of which refers only to 'fair and just working conditions'. As was recalled in the Court's case-law, cited in paragraph 84 of the judgment under appeal, the purpose of the entitlement to annual leave is, according to those institutions, to enjoy a period of relaxation and leisure.

97 Nor, the Commission adds, does the objective of improving the living and working conditions of the persons concerned follow from reading Article 31(2) of the Charter in the light of Directive 2003/88, as the General Court stated in paragraph 70 of the judgment under appeal. There is nothing to justify incorporating the provisions of Directive 2003/88, other than Article 7 of that directive, into the content of the right to annual leave that is guaranteed in Article 31(2) of the Charter.

98 The references to Articles 151 and 153 TFEU in paragraph 85 of the judgment under appeal, which admittedly cover the Union's social policy objectives, change nothing in that regard. Those provisions are, it is claimed, irrelevant in the present case, which is concerned with assessing the compatibility with Article 31(2) of the Charter of a legislative act adopted on the basis of Article 336 TFEU.

99 Last, it is submitted that the General Court's statement in paragraph 90 of the judgment under appeal, that the reduction, by the new Article 6 of Annex X to the Staff Regulations, in the number of days of annual leave cannot be regarded as being consistent with the principle of promoting the improvement of the living and working conditions of the persons concerned, is also wrong, for two other reasons.

100 First, according to the Commission, it is not apparent from any judgment of the Court that the improvement of living and working conditions is, in itself, the specific expression of a fundamental Treaty rule or of a general principle. On the contrary, the Court accepted, in the judgment of 22 December 2008, *Centeno Mediavilla and Others* v *Commission* (C-443/07 P, EU:C:2008:767, paragraphs 60 and 99), that when the legislature acts under Article 336 TFEU, the rights of officials may be amended at any time, even if the amended provisions are less favourable than the former provisions.

101 Second, in the Council's view, the issue is not whether the reduction in the number of days of annual leave is consistent with the principle of improving living and working conditions, but whether the number of days of annual leave to which officials and other members of staff of the European Union are entitled adversely affects their right to annual leave, their health and their safety.

102 According to the Commission and the Council, the new Article 6 of Annex X to the Staff Regulations respects the essence of the right to paid annual leave, as guaranteed in Article 31(2) of the Charter, as the number of days of annual leave granted as of right by the new Article 6, that is, 24 days as from 1 January 2016, remains higher than the minimum of four weeks – 20 days – required under Article 7 of Directive 2003/88. They argue that such a reduction in the number of days' annual leave cannot be regarded as being unlawful in itself, contrary to the General Court's finding in paragraph 90 of the judgment under appeal.

103 The Parliament agrees with that analysis. It adds that, in so far as the officials and other members of staff concerned have a sufficient number of days of leave, in this instance more than the minimum requirements in force in the European Union, even after Annex X to the Staff Regulations was amended by the EU legislature, the fundamental right to paid annual leave has not been infringed.

104 Carreras Sequeros and Others contend first of all that, in the context of the present appeals, the institutions concerned do not explain clearly how their arguments should lead to the judgment under appeal being set aside. Even if Article 31(2) of the Charter is not intended to promote the improvement of the living and working conditions of workers, the fact remains that it is undoubtedly intended to improve protection of the health and safety of workers, within the meaning of Article 153(1) TFEU.

105 They submit that the General Court ruled that that essential principle of EU social law would be breached if the EU legislature were authorised significantly to reduce the length of paid annual leave without demonstrating that it had actually struck a fair balance between the interests involved. Consequently, according to Carreras Sequeros and Others, the General Court correctly decided that the reduction in the paid annual leave entitlement of members of staff serving in third countries was disproportionate.

106 Carreras Sequeros and Others add that the judgment under appeal follows on from the case-law of the Court (judgment of 6 November 2018, *Bauer and Willmeroth*, C-569/16 and C-570/16, EU:C:2018:871, paragraphs 81 to 84) according to which workers have the right to paid annual leave, the duration of which must be progressively harmonised, including, therefore, for the purposes of improving living and working conditions. Article 31(2) of the Charter cannot be interpreted differently from the principle which it is intended to reflect.

107 Furthermore, in their submission, the EU institutions are wrong to infer an alleged 'non-regression principle' from the judgment under appeal even though, in paragraph 90 of that judgment, the General Court expressly ruled the opposite. It is in fact apparent from that judgment that the only limit which the General Court imposes on the EU legislature when it envisages reducing the duration of annual leave is that it should at least strike a fair balance between the interests involved.

108 In the present case, according to Carreras Sequeros and Others, the recitals of Regulation No 1023/2013 do not indicate that any account was taken of the particular nature and the purpose of the fundamental right to paid annual leave, so that the General Court was right to uphold their objection of illegality. Moreover, that limit imposed on the EU institutions complies with the obligation to state reasons referred to in Article 296 TFEU.

– *Findings of the Court*

109 As is apparent from paragraphs 84 to 97 of the judgment under appeal, the General Court found that, by adopting the new Article 6 of Annex X to the Staff Regulations significantly reducing the number of days of annual leave for officials and other members of staff serving in third countries, the EU legislature had adversely affected the right to annual leave, as protected by Article 31(2) of the Charter, even though the number of days of annual leave determined by that new Article 6 remained in all events higher than the minimum four weeks' annual leave provided for in Article 7(1) of Directive 2003/88.

110 In that regard, it should be recalled that, as is apparent from Article 51(1) of the Charter, the provisions of the Charter are addressed, inter alia, to the EU institutions which are, therefore, required to respect the rights enshrined in it. Moreover, since Article 31(2) of the Charter has, pursuant to the first subparagraph of Article 6(1) TEU, the same legal value as the provisions of the Treaties, the EU legislature is required to observe it in particular when it adopts a measure such as the Staff Regulations on the basis of Article 336 TFEU (judgment of 19 September 2013, *Review Commission* v *Strack*, C-579/12 RX-II, EU:C:2013:570, paragraphs 39 and 58).

111 Article 31(2) of the Charter enshrines, for every worker, the right to a period of paid annual leave, but does not specify the exact duration of that period (see, to that effect, judgments of 6 November 2018, *Bauer and Willmeroth*, C-569/16 and C-570/16, EU:C:2018:871, paragraph 85, and of 6 November 2018, *Max-Planck-Gesellschaft zur Förderung der Wissenschaften*, C-684/16, EU:C:2018:874, paragraph 74). Therefore, as the Advocate General noted in point 64 of her Opinion, the fundamental right to paid annual leave affirmed by that provision of the Charter requires, at least as regards the duration of that leave, concrete normative expression.

112 According to the explanations relating to Article 31 of the Charter, which, in accordance with the third subparagraph of Article 6(1) TEU and Article 52(7) of the Charter, must be taken into consideration for the interpretation of the Charter, Article 31(2) of the Charter is based on Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time (OJ 1993 L 307, p. 18), which was replaced and codified by Directive 2003/88 (see, to that effect, judgments of 19 September 2013, *Review Commission* v *Strack*, C-579/12 RX-II, EU:C:2013:570, paragraphs 27, 28 and 39, and of 6 November 2018, *Max-Planck-Gesellschaft zur Förderung der Wissenschaften*, C-684/16, EU:C:2018:874, paragraphs 52 and 53).

113 That being the case, the right to paid annual leave as an essential and mandatory principle of EU social law, laid down in Article 31(2) of the Charter, is also derived, according to those explanations, from various instruments either drawn up by the Members States at EU level, such as the Community Charter of the Fundamental Social Rights of Workers, or on which the Member States have cooperated or to which they have acceded, such as the European Social Charter, to which all Member States are parties, both instruments being mentioned in Article 151 TFEU (see, to that effect, in particular, judgments of 19 September 2013, *Review Commission* v *Strack*, C-579/12 RX-II, EU:C:2013:570, paragraphs 26 and 27, and of 6 November 2018, *Max-Planck-Gesellschaft zur Förderung der Wissenschaften*, C-684/16, EU:C:2018:874, paragraphs 70 to 73).

114 More specifically, the explanations relating to Article 31(2) of the Charter state that that provision is based on Article 2 of the European Social Charter and point 8 of the Community Charter of the Fundamental Social Rights of Workers, both of which affirm the right of every worker to paid annual leave, Article 2 of the European Social Charter guaranteeing the provision of a minimum of four weeks of paid annual leave.

115 Thus, it follows from the explanations relating to Article 31(2) of the Charter that the reference to Directive 2003/88 refers not, as the General Court wrongly found in paragraphs 69 to 83 of the judgment under appeal, to that directive as a whole – which, moreover, has a broader objective than the rights laid down in Article 31(2) of the Charter – but to the provisions of that directive which reflect and clarify the fundamental right to an annual period of paid leave, affirmed by that provision of the Charter. That is true, according to the case-law of the Court, of Article 7(1) of Directive 2003/88, which lays down a right to paid annual leave of at least four weeks (see, to that effect, judgments of 4 October 2018, *Dicu*, C-12/17, EU:C:2018:799, paragraphs 24 and 25, and of 13 December 2018, *Hein*, C-385/17, EU:C:2018:1018, paragraphs 22 and 23).

116 In that regard, as is confirmed by Article 1e(2) of the Staff Regulations and as the EU institutions acknowledge in the present appeals, the minimum requirements of Article 7(1) of Directive 2003/88, in so far as they guarantee at least four weeks' paid annual leave for every worker, are an integral part of the Staff Regulations and must, without prejudice to the more favourable provisions contained in those regulations, be applied to officials and other members of staff of the EU institutions (see, to that effect, judgment of 19 September 2013, *Review Commission* v *Strack*, C-579/12 RX-II, EU:C:2013:570, paragraphs 51 and 56).

117 A provision, such as Article 7(1) of Directive 2003/88, which specifies, in EU law, the minimum duration of the annual period of paid leave to which every worker is entitled, by aligning itself in that respect with the period laid down in Article 2 of the European Social Charter which also underpins the fundamental right to paid annual leave affirmed in Article 31(2) of the Charter, cannot, by its very nature, constitute an adverse effect on that fundamental right. Article 7(1) of that directive merely gives concrete expression to that fundamental right.

118 It follows that a provision of EU law which, like the new Article 6 of Annex X to the Staff Regulations, ensures that workers are entitled to paid annual leave of more than the minimum of four weeks laid down in Article 7(1) of Directive 2003/88 cannot be regarded as adversely affecting the fundamental right to paid annual leave.

119 In that regard, it must be noted that, under the second paragraph of the new Article 6 of Annex X to the Staff Regulations, the number of days of paid annual leave allocated to officials and to other members of staff serving in third countries was 36 for 2014, the year with which the decisions at issue were concerned, and 30 for 2015. In accordance with the first paragraph of the new Article 6, that number was reduced to 24 from 1 January 2016, albeit that, as is apparent from the annex to the Commission's decision of 16 December 2013 concerning leave, which the Commission produced pursuant to a measure of organisation of procedure adopted by the General Court, and contrary to what the General Court held in paragraph 109 of the judgment under appeal, those officials and

members of staff have, since that date, like other officials and members of staff of the European Union, benefited from the application of Article 57 of the Staff Regulations, in accordance with which officials are entitled to a number of days' leave in addition to their basic entitlement depending on their grade and age up to a maximum of 30 working days per calendar year.

120 The fact that, as from the entry into force of the new Article 6 of Annex X to the Staff Regulations, the officials and other members of staff concerned were gradually deprived of a certain number of days of paid annual leave does not in any way alter the findings in paragraphs 118 and 119 of the present judgment, since, under the new Article 6, they remain eligible for a period of paid annual leave which in any event exceeds that arising from the minimum requirements under Article 7(1) of Directive 2003/88.

121 It must be added that, by setting a period of paid annual leave that is greater than the minimum of four weeks required in Article 7(1) of Directive 2003/88, a provision such as the new Article 6 of Annex X to the Staff Regulations is capable of ensuring that the dual purpose of the right to annual leave is fulfilled, that is to say, in accordance with the case-law of the Court, to enable the worker to rest from carrying out the work he or she is required to do and to enjoy a period of relaxation and leisure (see, in particular, judgments of 19 September 2013, *Review Commission* v *Strack*, C-579/12 RX-II, EU:C:2013:570, paragraph 35, and of 6 November 2018, *Max-Planck-Gesellschaft zur Förderung der Wissenschaften*, C-684/16, EU:C:2018:874, paragraph 32).

122 Setting a period of paid annual leave that exceeds the minimum requirements of Article 7(1) of Directive 2003/88 is also intended to contribute to compliance with the objective laid down in Article 2 of the European Social Charter, which the General Court did not, however, take into consideration in the grounds of the judgment under appeal, in particular in paragraph 87 thereof.

123 It is apparent from that article of the European Social Charter that the contracting parties to that charter agreed that a minimum period of paid annual leave of four weeks '[ensures] the effective exercise of the right to just conditions of work'.

124 Last, contrary to what is maintained by the Commission, it must be acknowledged, in the light of point 8 of the Community Charter of the Fundamental Social Rights of Workers, that, as the General Court held in paragraph 88 of the judgment under appeal, the entitlement to annual leave provided for in Article 31(2) of the Charter is intended, in principle, to promote the improvement of the living and working conditions of workers.

125 That finding does not in any way mean, however, contrary to what the General Court considered, in essence, in paragraphs 89 and 90 of the judgment under appeal, that a provision which, despite leading to a reduction in the number of days of paid annual leave to which the workers concerned were entitled under an earlier provision, maintains a period of such leave that exceeds the minimum requirements laid down in Article 7(1) of Directive 2003/88, must be regarded as being incompatible with such an objective, nor, moreover, that it is incompatible with the objective of improving health and safety protection for workers, to which those minimum requirements contribute directly (see, to that effect, judgment of 19 September 2013, *Review Commission* v *Strack*, C-579/12 RX-II, EU:C:2013:570, paragraph 44).

126 It follows that, contrary to what the General Court held, a provision of EU law, such as the new Article 6 of Annex X to the Staff Regulations, the purpose of which is to specify the duration of the right to annual leave for which officials and other members of staff serving in third countries are to be eligible, by ensuring that, in all events, their entitlement exceeds the minimum requirements laid down in Article 7(1) of Directive 2003/88, cannot be regarded as being contrary to the nature and purpose of the fundamental right to paid annual leave set out in Article 31(2) of the Charter.

127 It follows from all of the foregoing that the General Court could not, without erring in law in its assessment, find that, by adopting the new Article 6 of Annex X to the Staff Regulations, the EU legislature had adversely affected the fundamental right to paid annual leave referred to in Article 31(2) of the Charter, when the duration set by that new Article 6 of the paid annual leave of officials and members of the contract staff of the European Union serving in third countries remains higher, in all events, than the minimum period of four weeks required under Article 7(1) of Directive 2003/88.

128 In those circumstances, the third part of the Commission's first ground of appeal and of the Council's second ground of appeal and cross-appeal must be upheld. Accordingly, the judgment under appeal must be set aside, without it being necessary to examine the fourth part of those grounds of appeal or the other grounds of the Commission's and Council's appeals and of the latter's cross-appeal, which concern the General Court's assessment of the justification for the adverse effect on the right to annual leave.

The action before the General Court

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

130 In the present case, in the light in particular of the fact that the action for annulment brought by Carreras Sequeros and Others in Case T-518/16 is based on pleas that were the subject of an exchange of arguments before the General Court and whose examination does not require any further measure of organisation of procedure or inquiry to be taken in the case, the Court of Justice considers that the state of the proceedings is such that it may give final judgment in the matter and that it should do so.

131 This action is based on four pleas, alleging, respectively, disregard for the nature and purpose of the right to annual leave, breach of the general principle of equal treatment, breach of the principle of protection of legitimate expectations and infringement of the right to respect for private and family life.

First plea in law, alleging disregard for the specific nature and purpose of the right to annual leave

132 Carreras Sequeros and Others claim, in essence, that, by adopting the new Article 6 of Annex X to the Staff Regulations, the EU legislature disregarded the specific nature and purpose of the right to annual leave.

133 In that regard it is sufficient, however, to note that, for the reasons set out in paragraphs 110 to 127 of the present judgment, that plea must be rejected as being unfounded, since the duration of paid annual leave set by the new Article 6 of Annex X to the Staff Regulations over and above the minimum requirements of Article 7(1) of Directive 2003/88 does not in fact disregard the nature and purpose of the fundamental right of Carreras Sequeros and Others to an annual period of paid leave that is laid down by Article 31(2) of the Charter.

Second plea in law, alleging breach of the general principle of equal treatment

134 Carreras Sequeros and Others submit, first, that a reduction of the number of days of their annual leave breaches the principle of equal treatment in that it fails to take into account the special situation that distinguishes officials and other members of staff serving in third countries from staff posted in

the European Union, and which arises essentially from the fact that their living conditions in those third countries are more difficult, that they are more frequently subject to periodic moves, and that they often have to maintain two homes, one where they are posted and the other, the family home.

135 They maintain, second, that, unlike in the case of officials and other members of staff posted within the European Union, the EU legislature did not provide for officials and other members of staff serving in third countries to be eligible for additional annual leave days, depending on their age and grade, up to the maximum of 30 working days laid down in Article 57 of the Staff Regulations.

136 The Commission, supported by the Council and the Parliament, disputes the merits of this plea.

137 It must be recalled in that regard that the principle of equal treatment, which is applicable to the law governing the EU civil service (see, to that effect, judgment of 22 December 2008, *Centeno Mediavilla and Others* v *Commission*, C-443/07 P, EU:C:2008:767, paragraph 76), 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 (see, to that effect, judgments of 11 September 2007, *Lindorfer* v *Council*, C-227/04 P, EU:C:2007:490, paragraph 63, and of 15 April 2010, *Gualtieri* v *Commission*, C-485/08 P, EU:C:2010:188, paragraph 70).

138 In the present case, as regards the arguments of Carreras Sequeros and Others mentioned in paragraph 134 of the present judgment, it must be noted that, irrespective of the other advantages which the Commission highlighted and which are enjoyed, under Articles 5, 10 and 24 of Annex X to the Staff Regulations, by officials and other members of staff serving in a third country in respect of accommodation, a special allowance for living conditions and supplementary sickness insurance cover, the EU legislature, when adopting the reform of 2014, ensured that it remained possible for those officials and other members of staff, subject to their particular situation being taken into account, to request, on the basis of the first paragraph of Article 8 and Article 9(2) of Annex X to the Staff Regulations, a special rest leave of up to 15 days, depending on the degree of difficulty of the living conditions in the place of employment, in addition to the rights to paid annual leave for which every official or other member of the staff of the European Union is eligible under the Staff Regulations.

139 As to the arguments of Carreras Sequeros and Others set out in paragraph 135 of the present judgment, these must be rejected for the reasons stated in paragraph 119 of this judgment.

140 It follows that the second plea must be rejected as being unfounded.

Third plea in law, alleging breach of the principle of protection of legitimate expectations

141 Carreras Sequeros and Others submit that the number of days of annual leave which they were awarded before 1 January 2014 was an essential and decisive condition of their working conditions. Furthermore, the long period during which the EU institutions considered that number of days' leave to be necessary had given rise to a legitimate expectation on their part as to the possibility of combining their professional and private lives throughout their careers, and that expectation was disappointed by the EU legislature.

142 The Commission and the interveners refute those arguments.

143 It is to be borne in mind in that regard that the legal link between an official and the administration is based upon the Staff Regulations and not upon a contract. It follows that the rights and obligations of officials may be altered at any time by the legislature (judgments of 22 December 2008, *Centeno Mediavilla and Others* v *Commission*, C-443/07 P, EU:C:2008:767, paragraph 60, and of 4 March 2010, *Angé Serrano and Others* v *Parliament*, C-496/08 P, EU:C:2010:116, paragraph 82).

144 Moreover, it should be recalled that the right to rely on the principle of the protection of legitimate expectations presupposes that precise, unconditional and consistent assurances originating from authorised, reliable sources have been given to the person concerned by the competent authorities of the European Union (judgment of 14 June 2016, *Marchiani* v *Parliament*, C-566/14 P, EU:C:2016:437, paragraph 77 and the case-law cited).

145 As the Commission and the interveners have maintained without being contradicted in this respect by Carreras Sequeros and Others, the latter have not established that any assurance was given to them by the competent authorities of the European Union that Article 6 of Annex X to the Staff Regulations would never be altered.

146 It follows from this that the third plea must be rejected as being unfounded.

Fourth plea in law, alleging infringement of the right to respect for private and family life

147 Carreras Sequeros and Others submit that the new Article 6 of Annex X to the Staff Regulations prevents them from pursuing family and social activities during their annual leave as they were previously able to do. In that respect, they mention the example of one of their number, who has been posted to Pakistan but resides in Milan (Italy), and who ultimately has only 16 days per year to maintain a relationship with his daughters who live in Athens (Greece) with their mother.

148 According to Carreras Sequeros and Others, the deterioration of their working conditions affecting their private and family lives is disproportionate.

149 The Commission, whose arguments are endorsed by the Council and the Parliament, disputes the reasoning put forward by Carreras Sequeros and Others.

150 In that regard, without there being any need to rule, in the present case, on the link which Carreras Sequeros and Others claim to have established between the rights laid down, respectively, in Article 7 and Article 31(2) of the Charter, it should be noted that the new Article 6 of Annex X to the Staff Regulations, which Carreras Sequeros and Others claim is unlawful, is exclusively concerned with the number of days of annual leave to which officials and other members of staff serving in third countries are entitled.

151 Thus, as the Commission, supported by the Council and the Parliament, contends, that new Article 6 is without prejudice to the general provisions applicable to officials and other members of staff covered by the Staff Regulations, which take into consideration the private and family life of the person concerned, such as those relating to the calculation of annual travel expenses and to travelling time.

152 Moreover, other provisions of Annex X to the Staff Regulations take account of the family situation of officials and other members of staff serving in third countries. Thus, Articles 18, 20 to 22, 24 and 25 of Annex X, relating, respectively, to reimbursement of the cost of accommodation, reimbursement of travel expenses, direct billing in respect of removal costs, a temporary accommodation allowance, supplementary sickness insurance cover and insurance against accidents occurring outside the European Union, apply to those officials and members of staff as well as to their families or their other dependants.

153 Last, as regards the example mentioned in paragraph 147 of the present judgment, put forward by Carreras Sequeros and Others in support of this plea, it should be borne in mind that the assessment of the legality of an EU act in the light of fundamental rights cannot, in any event, be based on claims relating to the consequences of that act in a specific case (see, to that effect, judgment of 14 October 1999, *Atlanta* v *European Community*, C-104/97 P, EU:C:1999:498, paragraph 43).

154 It follows that the fourth plea must also be rejected as being unfounded.

155 Since none of the pleas put forward in the action has been upheld, the action must be dismissed.

Costs

156 Under Article 184(2) of the Rules of Procedure, where the appeal is unfounded or where the appeal is well founded and the Court of Justice itself gives final judgment in the case, the Court is to make a decision as to the costs.

157 According to Article 138(1) of those rules of procedure, applicable to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

158 In the present case, since Carreras Sequeros and Others have been unsuccessful and the Council has applied for them to be ordered to pay the costs, they must be ordered to pay the costs of the Council in relation to the present appeals and to the proceedings before the General Court. Since the Commission has applied before the General Court, but not before the Court of Justice, for Carreras Sequeros and Others to be ordered to pay the costs, they must be ordered to pay the costs of the Commission in relation to the proceedings before the General Court, while the Commission must bear its own costs in relation to the present appeals.

159 In accordance with Article 140(1) of the Rules of Procedure, applicable to appeal proceedings by virtue of Article 184(1) thereof, the Member States and institutions which have intervened in the proceedings are to bear their own costs. The Parliament, having intervened in the action before the General Court and participated in the proceedings before the Court of Justice, must therefore bear its own costs.

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

1. **Sets aside the judgment of the General Court of the European Union of 4 December 2018, *Carreras Sequeros and Others* v *Commission* (T-518/16, EU:T:2018:873);**

2. **Dismisses the action brought by Mr Francisco Carreras Sequeros, Ms Mariola de las Heras Ojeda, Mr Olivier Maes, Mr Gabrio Marinozzi, Mr Giacomo Miserocchi and Mr Marc Thieme Groen in Case T-518/16;**

3. **Orders Mr Francisco Carreras Sequeros, Ms Mariola de las Heras Ojeda, Mr Olivier Maes, Mr Gabrio Marinozzi, Mr Giacomo Miserocchi and Mr Marc Thieme Groen to bear their own costs and to pay those incurred by the Council of the European Union in the context of the present appeals and of the proceedings before the General Court of the European Union, as well as those incurred by the European Commission in the context of the latter proceedings;**

4. **Orders the Commission to bear its own costs incurred in the context of the present appeals;**

5. **Orders the European Parliament to bear its own costs.**

[Signatures]