



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

14 July 2022*

(Appeal – Civil service – Pension – Staff Regulations of Officials of the European Union – Article 20 of Annex VIII – Grant of a survivor’s pension – Surviving spouse of a former official in receipt of a retirement pension – Marriage entered into after termination of the official’s service – Condition that the marriage must have lasted for at least five years at the date of the official’s death – Article 18 of Annex VIII – Marriage entered into before termination of the official’s service – Condition that the marriage must have lasted for at least one year only – Plea of illegality in respect of Article 20 of Annex VIII – Charter of Fundamental Rights of the European Union – Article 20 – Principle of equal treatment – Article 21(1) – Principle of non-discrimination on the ground of age – Article 52(1) – No arbitrary or manifestly inappropriate differentiation in the light of the objective pursued by the EU legislature)

In Joined Cases C-116/21 P to C-118/21 P, C-138/21 P and C-139/21 P,

FIVE APPEALS under Article 56 of the Statute of the Court of Justice of the European Union, brought on 25 February 2021 in Cases C-116/21 P to C-118/21 P and on 26 February 2021 in Cases C-138/21 P and C-139/21 P,

European Commission, represented by G. Gattinara, B. Mongin and B. Schima, acting as Agents,
appellant,

the other parties to the proceedings being:

VW, represented by N. de Montigny, avocate,

applicant at first instance,

European Parliament, represented by D. Boytha, J. Steele and J. Van Pottelberge, acting as Agents,

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

interveners at first instance (C-116/21 P),

and

European Commission, represented by G. Gattinara, B. Mongin and B. Schima, acting as Agents,

* Language of the cases: French.

appellant,

the other parties to the proceedings being:

BT, residing in Overijse (Belgium), represented by J.-N. Louis, avocat,

applicant at first instance,

European Parliament, represented by D. Boytha, J. Steele and J. Van Pottelberge, acting as Agents,

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

International Association of Former Officials of the European Union (AIACE International), established in Brussels (Belgium), represented by N. Maes, advocaat, and J. Van Rossum, avocat,

interveners at first instance (C-117/21 P),

and

European Commission, represented by G. Gattinara, B. Mongin and B. Schima, acting as Agents,

appellant,

the other parties to the proceedings being:

RN, residing in [*confidential*] (France), represented by F. Moyse, avocat,

applicant at first instance,

European Parliament, represented by D. Boytha, J. Steele and J. Van Pottelberge, acting as Agents,

intervener at first instance (C-118/21 P),

and

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

appellant,

the other parties to the proceedings being:

BT, residing in Overijse, represented by J.-N. Louis, avocat,

applicant at first instance,

European Commission, represented by G. Gattinara, B. Mongin and B. Schima, acting as Agents,

European Parliament, represented by D. Boytha, J. Steele and J. Van Pottelberge, acting as Agents,

International Association of Former Officials of the European Union (AIACE International), established in Brussels, represented by N. Maes, advocaat, and J. Van Rossum, avocat,

interveners at first instance (C-138/21 P),

and

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

appellant,

the other parties to the proceedings being:

VW, represented by N. de Montigny, avocate,

applicant at first instance,

European Commission, represented by G. Gattinara, B. Mongin and B. Schima, acting as Agents,

defendant at first instance,

European Parliament, represented by D. Boytha, J. Steele and J. Van Pottelberge, acting as Agents,

intervener at first instance (C-139/21 P),

THE COURT (Third Chamber),

composed of K. Jürimäe, President of the Chamber, N. Jääskinen, M. Safjan (Rapporteur), N. Piçarra and M. Gavalec, Judges,

Advocate General: A. Rantos,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- 1 By their appeals, the European Commission and the Council of the European Union seek to have set aside the judgments of the General Court of the European Union of 16 December 2020, *VW v Commission* (T-243/18, not published, EU:T:2020:619, ‘the first judgment under appeal’), and of 16 December 2020, *BT v Commission* (T-315/19, not published, EU:T:2020:622) (‘the second

judgment under appeal'), and the Commission also seeks to have set aside the judgment of the General Court of 16 December 2020, *RN v Commission* (T-442/17 RENV, EU:T:2020:618, 'the third judgment under appeal') (together 'the judgments under appeal'). By those judgments, the General Court upheld the actions brought by VW, BT and RN and annulled, respectively, the decisions of 26 June 2017, 20 July 2018 and 24 September 2014 (together, 'the decisions at issue') by which the Commission had rejected the request for the grant of a survivor's pension in respect of each of those persons, on the basis of Article 20 of Annex VIII to the Staff Regulations of Officials of the European Union, established by Council Regulation (EEC, Euratom, ECSC) No 259/68 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) ('the Staff Regulations').

Legal context

2 Article 1d of the Staff Regulations is worded as follows:

'1. In the application of these Staff Regulations, any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, or sexual orientation shall be prohibited.

For the purposes of these Staff Regulations, non-marital partnerships shall be treated as marriage provided that all the conditions listed in Article 1(2)(c) of Annex VII are fulfilled.

2. With a view to ensuring ... full equality in practice between men and women in working life, which shall be an essential element to be considered in the implementation of all aspects of these Staff Regulations, the principle of equal treatment shall not prevent the institutions of the European Union from maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

...

5. Where persons covered by these Staff Regulations, who consider themselves wronged because the principle of equal treatment as set out above has not been applied to them, establish facts from which it may be presumed that there has been direct or indirect discrimination, the onus shall be on the institution to prove that there has been no breach of the principle of equal treatment. This provision shall not apply in disciplinary proceedings.

6. While respecting the principle of non-discrimination and the principle of proportionality, any limitation of their application must be justified on objective and reasonable grounds and must be aimed at legitimate objectives in the general interest in the framework of staff policy. Such objectives may in particular justify stipulating a mandatory retirement age and a minimum age for drawing a retirement pension.'

3 Article 35 of the Staff Regulations provides:

‘Officials shall be assigned one of the following administrative statuses:

- (a) Active employment;
- (b) Secondment;
- (c) Leave on personal grounds;
- (d) Non-active status;
- (e) Leave for military service;
- (f) Parental leave or family leave;
- (g) Leave in the interests of the service.’

4 Article 47 of the Staff Regulations provides:

‘Services shall be terminated by:

- (a) resignation;
- (b) compulsory resignation;
- (c) retirement in the interests of the service;
- (d) dismissal for incompetence;
- (e) removal from post;
- (f) retirement; or
- (g) death.’

5 Article 52 of the Staff Regulations provides:

‘Without prejudice to the provisions of Article 50, an official shall be retired:

- (a) either automatically on the last day of the month in which he reaches the age of 66, or
- (b) at his own request on the last day of the month in respect of which the request was submitted where he has reached pensionable age or where he is between 58 and pensionable age and satisfies the requirements for immediate payment of a pension in accordance with Article 9 of Annex VIII. The second sentence of the second paragraph of Article 48 shall apply by analogy.

However, an official may at his own request, and where the appointing authority considers it justified in the interests of the service, carry on working until the age of 67, or exceptionally, until the age of 70, in which case he shall be retired automatically on the last day of the month in which he reaches that age.

...'

6 According to Article 76 of the Staff Regulations:

'Gifts, loans or advances may be made to officials, former officials or, where an official has died, to those entitled under him who are in a particularly difficult position as a result of serious or protracted illness or by reason of a disability or family circumstances.'

7 Article 17 of Annex VIII to the Staff Regulations reads as follows:

'Where an official dies having one of the administrative statuses set out in Article 35 of the Staff Regulations the surviving spouse shall be entitled, provided that the couple were married for at least one year at the time of his death and subject to the provisions of Article 1(1) and Article 22, to a survivor's pension equal to 60% of the retirement pension which the official would have been paid if he had qualified, irrespective of length of service or of age, for such pension at the time of death.

The duration of the marriage shall not be taken into account if there are one or more children of the marriage or of a previous marriage of the official provided that the surviving spouse maintains or has maintained those children, or if the official's death resulted either from physical disability or sickness contracted in the performance of his duties or from accident.'

8 Article 18 of Annex VIII to the Staff Regulations provides:

'Where a former official was in receipt of [a] retirement pension the surviving spouse shall be entitled, provided that the couple were already married before the official left the service of an institution and that the marriage had lasted at least one year, and subject to the provisions of Article 22, to a survivor's pension equal to 60% of the retirement pension which he was receiving at the time of his death. The minimum survivor's pension shall be 35% of the last basic salary; the amount of the survivor's pension shall in no case, however, exceed the amount of the retirement pension which the spouse was receiving at the time of death.

The duration of the marriage shall not be taken into account if there are one or more children of a marriage contracted by the official before he left the service, provided that the surviving spouse maintains or has maintained those children.'

9 Article 19 of Annex VIII to the Staff Regulations provides:

'Where a former official was in receipt of invalidity allowance the surviving spouse shall be entitled, subject to the provisions of Article 22 of this Annex, provided that the couple were married when the official became eligible for the allowance, to a survivor's pension equal to 60% of the invalidity allowance which the spouse was receiving at the time of death.

The minimum survivor's pension shall be 35% of the final basic salary; the amount of the survivor's pension shall in no case, however, exceed the amount of the invalidity allowance which the spouse was receiving at the time of death.'

10 Article 20 of Annex VIII to the Staff Regulations states:

‘For the purpose of Articles 17a, 18, 18a, and 19 the duration of the marriage shall not be taken into account where the marriage, though contracted after termination of the official’s service, has lasted at least five years.’

11 Under Article 27 of Annex VIII to the Staff Regulations:

‘The divorced spouse of an official or a former official shall be entitled to a survivor’s pension, as defined in this Chapter, provided that, on the death of the former spouse, he/she can justify entitlement on his/her own account to receive maintenance from him by virtue of a court order or as a result of an officially registered settlement in force between himself/herself and his/her former spouse.

The survivor’s pension may not, however, exceed the amount of maintenance paid at the time of death of the former spouse, the amount having been updated in accordance with the procedure laid down in Article 82 of the Staff Regulations.

The divorced spouse’s entitlement shall cease if he or she remarries before the former spouse dies. Article 26 shall apply in the event of remarriage after the death of the former spouse.’

Background to the disputes and the decisions at issue

12 VW, BT and RN were, according to the individual case, either married or remarried to officials of the European Union who were no longer in the service of an EU institution on the date on which their marriage or remarriage was concluded. The three former officials died less than five years after that date in each case.

13 Each of the three women in question, as the surviving spouse of a former official of the European Union, applied for a survivor’s pension under Chapter 4 of Annex VIII to the Staff Regulations.

14 By the decisions at issue, the Office for the Administration and Payment of Individual Entitlements (PMO) rejected the respective applications of VW, BT and RN, on the ground that they did not satisfy the conditions laid down in Article 20 of Annex VIII to the Staff Regulations for entitlement to a survivor’s pension, since their marriage to the deceased official, entered into after termination of the latter’s service, had lasted less than five years.

15 The objections lodged by VW, BT and RN against each of those decisions were all rejected.

The actions at first instance and the judgments under appeal

16 By applications lodged at the Registry of the General Court on 20 April 2018 and 22 May 2019, respectively, and at the Registry of the Civil Service Tribunal on 17 July 2015, VW, BT and RN each brought an action for annulment of the decisions at issue concerning each of them respectively.

17 The European Parliament was granted leave to intervene in support of the form of order sought by the Commission in the three cases. As regards the Council, it was granted leave to intervene in support of the form of order sought by the Commission in the cases relating to VW and BT,

while the International Association of Former Officials of the European Union (AIACE International) was granted leave to intervene in support of the form of order sought by BT in the case relating to her.

- 18 By judgment of 20 July 2016, *RN v Commission* (F-104/15, EU:F:2016:163), the Civil Service Tribunal, in the case relating to RN, upheld the first plea in law in the action and annulled the decision of 24 September 2014. That judgment was the subject of an appeal brought by the Commission, which was upheld by the General Court by judgment of 18 July 2017, *Commission v RN* (T-695/16 P, not published, EU:T:2017:520). In that judgment, the General Court set aside the judgment of 20 July 2016, *RN v Commission* (F-104/15, EU:F:2016:163), and, taking the view that the state of the proceedings did not permit it to give final judgment, referred the case back to a Chamber of the General Court other than that which had ruled on the appeal.
- 19 By decisions of 6 May 2019 and 11 March 2019, the General Court ordered that the cases relating to VW and RN should be stayed pending delivery of the final judgment of the Court of Justice in Case C-460/18 P, *HK v Commission*.
- 20 On 19 December 2019, the Court delivered its judgment in *HK v Commission* (C-460/18 P, EU:C:2019:1119).
- 21 In the three cases which gave rise to the judgments under appeal, the General Court, by letters of 23 December 2019, requested the parties to submit their observations on the consequences to be drawn from that judgment of the Court of Justice.
- 22 By the judgments under appeal, the General Court, on 16 December 2020, annulled each of the decisions at issue, upholding the plea raised by VW, BT and RN alleging, in essence, that Article 20 of Annex VIII to the Staff Regulations was unlawful in the light of the principle of equal treatment as well as, in the cases relating to VW and RN, in the light of the principle of proportionality and, in the cases concerning BT and RN, in the light of the principle of non-discrimination on grounds of age.
- 23 The judgments under appeal are based on materially identical reasoning, with the notable exception of the considerations set out by the General Court in paragraphs 41 to 46 of the third judgment under appeal. In that latter regard, the General Court, ruling on the scope of the dispute following the referral of the case back to it, ruled that, in the judgment of 18 July 2017, *Commission v RN* (T-695/16 P, not published, EU:T:2017:520), the plea raised by RN alleging infringement of the principles of equal treatment, non-discrimination on grounds of age and proportionality had not been dealt with, with the result that, ultimately, the General Court had to rule in the third judgment under appeal on all the pleas in law raised by RN at first instance, in the light of the points of law decided by the General Court in the judgment of 18 July 2017, *Commission v RN* (T-695/16 P, not published, EU:T:2017:520).
- 24 As to the remainder, in the three judgments under appeal, the General Court held that, for the purposes of granting a survivor's pension, the situation covered by Article 18 of Annex VIII to the Staff Regulations, namely that of surviving spouses of a former official of the European Union who married before termination of the latter's service, was comparable to the situation covered by Article 20 of that annex, namely that of surviving spouses of a former official who entered into marriage after termination of the latter's service. The General Court then held that there was a difference in the treatment of comparable situations depending on the date on which the marriage was entered into, in that the survivor's pension is granted to surviving spouses on

condition that the marriage had lasted at least one year under Article 18 of Annex VIII to the Staff Regulations and at least five years under Article 20 of that annex. The General Court added that such a difference in treatment gave rise to a disadvantage for surviving spouses of a former official who married after termination of the latter's service as compared with the surviving spouses of a former official who entered into marriage prior to such termination. In the cases concerning BT and RN, the General Court also found a difference in the treatment of comparable situations based indirectly on the age of the former official on the date on which the marriage was entered into.

- 25 After stating that the difference in treatment introduced by Article 20 of Annex VIII to the Staff Regulations was provided for by 'law', within the meaning of Article 52(1) of the Charter of Fundamental Rights of the European Union ('the Charter'), the General Court examined whether the difference in treatment noted could be justified by a general-interest objective and whether it was proportionate in the light of the objective pursued, in particular in the light of the case-law referred to in paragraph 48 of the first and second judgments under appeal and in paragraph 70 of the third judgment under appeal.
- 26 In that connection, as regards, first, the general-interest objective of preventing fraud, the General Court – while acknowledging that the condition that the marriage must have lasted for a minimum period of time before it gives rise to an entitlement to a survivor's pension makes it possible to ensure that that marriage is not based exclusively on considerations unrelated to a common project of life, such as purely financial considerations or considerations connected with obtaining a right of residence – held that it is unreasonable to take the view that the condition, provided for under Article 20 of Annex VIII to the Staff Regulations, that the marriage must have lasted for a minimum of five years, which is five times longer than the minimum duration provided for in Article 18 of Annex VIII to the Staff Regulations, and which is not subject to any exception enabling the absence of fraud to be established, irrespective of the objective evidence adduced, may be necessary in order to achieve the objective of combating fraud.
- 27 As regards, second, the general-interest objective of safeguarding the finances of the European Union, the General Court acknowledged that such an objective could be regarded as legitimate, but that, in accordance with the case-law of the Court of Justice, it could not in itself justify a derogation from the general principle of equal treatment. The General Court then held that, since the condition as to the minimum duration of the marriage, laid down in Article 20 of Annex VIII to the Staff Regulations, cannot be justified by the objective of combating fraud, the difference in treatment established by that provision could also not be justified solely by the safeguarding of the finances of the European Union.
- 28 The General Court concluded that Article 20 of Annex VIII to the Staff Regulations infringed the principle of equal treatment as well as, in the case concerning VW, the principle of proportionality and, in the cases concerning BT and RN, the principle of non-discrimination on grounds of age. In those circumstances, and as has already been stated in paragraph 22 of the present judgment, it upheld the pleas of illegality raised by VW, BT and RN and annulled each of the decisions at issue.

Forms of order sought and procedure before the Court of Justice

- 29 By its appeals in Cases C-116/21 P to C-118/21 P, the Commission claims that the Court should:
- set aside each of the judgments under appeal;

- dismiss each of the actions at first instance; and
 - order VW, BT and RN to pay the costs incurred at first instance and on appeal, including, as regards RN, the costs relating to Cases F-104/15 and T-442/17 RENV.
- 30 By its appeals in Cases C-138/21 P and C-139/21 P, the Council claims that the Court should:
- uphold the appeals and set aside the first and second judgments under appeal;
 - dispose of the cases and dismiss the actions at first instance as unfounded; and
 - order VW and BT to pay the costs incurred at first instance and on appeal.
- 31 In Cases C-116/21 P and C-139/21 P, VW contends that the Court should:
- dismiss the appeals brought by the Commission and the Council respectively; and
 - order the Commission and the Council respectively to pay the costs incurred at first instance and on appeal.
- 32 In Cases C-117/21 P and C-138/21 P, BT contends that the Court should:
- dismiss the appeals brought by the Commission and the Council respectively; and
 - order the Commission and the Council respectively to pay the costs.
- 33 In Case C-118/21 P, RN contends that the Court should:
- primarily, declare the appeal inadmissible;
 - in the alternative, declare that the grounds of appeal are inadmissible or, in any event, unfounded, and dismiss the appeal as unfounded; and
 - order the Commission to pay the costs incurred in the present appeal and, if the third judgment under appeal is set aside, at first instance, including the costs relating to Cases F-104/15 and T-442/17 RENV.
- 34 In Cases C-116/21 P to C-118/21 P, C-138/21 P and C-139/21 P, the Parliament, which, as an intervener at first instance, has lodged a response in accordance with Article 172 of the Rules of Procedure of the Court of Justice, claims that the Court should uphold the appeals.
- 35 In Cases C-117/21 P and C-138/21 P, AIACE International, which, as an intervener at first instance, has lodged a response in accordance with Article 172 of the Rules of Procedure of the Court of Justice, contends that the Court should:
- dismiss the appeals brought by the Commission and the Council respectively; and
 - order the Commission and the Council respectively to pay the costs.

- 36 In Cases C-138/21 P and C-139/21 P, the Commission, which, as the defendant at first instance, has lodged a response in accordance with Article 172 of the Rules of Procedure of the Court of Justice, claims that the Court should:
- set aside the first and second judgments under appeal;
 - dismiss the actions at first instance; and
 - order VW and BT to pay the costs.
- 37 Pursuant to Article 54(2) of the Rules of Procedure of the Court of Justice, the President of the Court decided, on 13 April 2021, to join Cases C-116/21 P to C-118/21 P, C-138/21 P and C-139/21 P for the purposes of the written and oral parts of the procedure and the judgment.

The appeals

- 38 In support of its appeals in Cases C-116/21 P and C-117/21 P, the Commission puts forward three identical grounds of appeal, alleging, first, an error of law regarding the criteria for assessing the lawfulness of the choices made by the EU legislature and an infringement of the obligation to state reasons, second, an error of law in the interpretation of the principle of non-discrimination and, third, an error of law in the interpretation of Article 52(1) of the Charter and several infringements of the obligation to state reasons. In Case C-118/21 P, the Commission raises the same grounds of appeal while preceding them with another ground of appeal alleging an error of law in the definition and application of the power of the Court to which the case is referred back to rule on the pleas in law in the action at first instance after setting aside the judgment under appeal.
- 39 In support of its appeals, the Council raises three identical grounds of appeal alleging, first, errors of law as regards the existence of a difference in treatment, second, errors of law concerning the extent of the General Court's review of the choices made by the EU legislature and, third, errors of law as regards the justification for the difference in treatment. In Case C-138/21 P, the Council also raises a fourth ground of appeal, alleging errors of law and an infringement of the obligation to state reasons as regards the General Court's findings concerning the infringement of the principle of non-discrimination on grounds of age.
- 40 VW, BT and RN also plead that the appeals brought in Cases C-116/21 P, C-117/21 P and C-118/21 P, respectively, and also in Case C-138/21 P in the case of BT, are inadmissible.

Admissibility of the appeal in Case C-116/21 P

- 41 VW submits that the meaning and scope of certain grounds of appeal and arguments of the Commission are incomprehensible and that there is no summary of the grounds of appeal, in breach of Article 168(1)(d) of the Rules of Procedure of the Court of Justice.
- 42 The Commission disputes that line of argument, referring in particular to the content of its appeal.
- 43 In that regard, it must be borne in mind that it follows from the second subparagraph of Article 256(1) TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union, as well as from Article 168(1)(d) of the Rules of Procedure of the Court of

Justice, that an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal, failing which the appeal or the ground of appeal in question will be dismissed as inadmissible (judgment of 25 January 2022, *Commission v European Food and Others*, C-638/19 P, EU:C:2022:50, paragraph 75 and the case-law cited).

- 44 In the present case, it is sufficient to note that the Commission set out, in the context of the three grounds of appeal which it puts forward in support of its appeal, clear and detailed arguments setting out the grounds on which the paragraphs of the first judgment under appeal which it criticises are, in its view, vitiated by errors of law or by an infringement of the obligation to state reasons.
- 45 Moreover, contrary to what VW claims, the appeal lodged by the Commission does contain a summary of the grounds put forward, in accordance with Article 168(1)(d) of the Rules of Procedure of the Court.
- 46 It follows that the appeal in Case C-116/21 P is admissible.

Admissibility of the appeals in Cases C-117/21 P and C-138/21 P

- 47 BT submits that the appeals in Cases C-117/21 P and C-138/21 P are inadmissible in so far as they are based on the need to avoid the financial consequences for the EU budget resulting from the finding, in the second judgment under appeal, that Article 20 of Annex VIII to the Staff Regulations is unlawful, the possible existence of such consequences being a question of pure fact which does not meet the requirements of Article 58 of the Statute of the Court of Justice of the European Union.
- 48 Moreover, BT takes the view that, since the Commission undertook to pay a survivor's pension to RN whatever the outcome of the appeal in Case C-118/21 P, that institution must, on grounds of equal treatment, give the same undertaking to her and VW, which deprives both the Commission and the Council of an interest in bringing proceedings and thus renders all the appeals in the joined cases inadmissible.
- 49 The Commission disputes that argument, explaining, in particular, that the undertaking given in regard to RN was given on a purely voluntary basis under Article 76 of the Staff Regulations and cannot be extended to other persons in the name of the principle of equal treatment. Moreover, since such an extension did not take place in BT's case, the argument seeking to show that the appeals are inadmissible on the ground of lack of interest in bringing proceedings must be rejected.
- 50 In that regard, it should be borne in mind that, pursuant to Article 256 TFEU and Article 58 of the Statute of the Court of Justice of the European Union, an appeal lies on points of law only (see, to that effect, judgment of 21 December 2021, *Algebris (UK) and Anchorage Capital Group v SRB*, C-934/19 P, EU:C:2021:1042, paragraph 43 and the case-law cited).
- 51 Here, it should be noted that the appeals in Cases C-117/21 P and C-138/21 P are indeed based on grounds purely of law which do not seek to call into question the findings of fact made by the General Court, but which merely criticise the legal reasoning adopted by the General Court in the second judgment under appeal. As regards the fact that the Commission and the Council draw the attention of the Court of Justice, by way of introduction or by way of a digression,

respectively, to the consequences of dismissing their appeals, it must be held that such explanations, which are not used as such in support of the legal arguments directed against the second judgment under appeal, cannot call into question the admissibility of the appeals.

- 52 As regards the plea of inadmissibility alleging a lack of interest in bringing proceedings, it should be noted that that line of argument is based on an alleged obligation which the Commission is under to extend to BT the benefit of the survivor's pension which, as is apparent from the Commission's explanations, was granted to RN voluntarily under Article 76 of the Staff Regulations, whereas such an obligation does not arise either from the Staff Regulations or, more generally, from EU law, since any decision to make a 'gift', within the meaning of that provision of the Staff Regulations, is made in the exercise of discretion and must necessarily be based on an individual decision in the light of the circumstances of the case.
- 53 It follows that the appeals in Cases C-117/21 P and C-138/21 P are admissible.

Admissibility of the appeal in Case C-118/21 P

- 54 RN claims that the appeal in Case C-118/21 P is inadmissible. She submits that the Commission cannot bring a second appeal in the same case. Neither the FEU Treaty nor the Statute of the Court of Justice of the European Union contains any provision authorising repeated appeals in the same case. RN also relies in that regard on the rule that 'an appeal on an appeal is not valid'.
- 55 The Commission replies that RN's arguments have no basis in the applicable procedural provisions.
- 56 In that regard, it must be recalled that, as is apparent from paragraph 18 of the present judgment, the Commission, in accordance with Article 9 of Annex I to the Statute of the Court of Justice of the European Union, brought an appeal against the judgment of the Civil Service Tribunal of 20 July 2016, *RN v Commission* (F-104/15, EU:F:2016:163). That appeal was upheld by the General Court by judgment of 18 July 2017, *Commission v RN* (T-695/16 P, not published, EU:T:2017:520), and the case was referred back, following the dissolution of the Civil Service Tribunal on 1 September 2016, to a Chamber of the General Court other than that which had ruled on the appeal. The case was thus heard for a second time at first instance, giving rise to the third judgment under appeal. In accordance with Article 56 of the Statute of the Court of Justice of the European Union, the Commission brought an appeal against that judgment.
- 57 Since both the judgment of 20 July 2016, *RN v Commission* (F-104/15, EU:F:2016:163) and the third judgment under appeal are, each taken in isolation, 'final decisions' within the meaning of Article 9 of Annex I to the Statute of the Court of Justice of the European Union and within the meaning of Article 56 of that statute, RN is wrong to assert that the Commission has brought two appeals in the same case.
- 58 It follows that the appeal in Case C-118/21 P is admissible.

The first ground of appeal in Case C-118/21 P

Arguments of the parties

- 59 By its first ground of appeal, the Commission submits that the General Court erred in law, in paragraphs 41 to 46 of the third judgment under appeal, in the definition and application of the power of the Court to which the case is referred back to rule on the pleas in law raised at first instance after the General Court, ruling on the appeal, has set aside the judgment at first instance. That ground of appeal is divided into three parts.
- 60 By the first part of its first ground of appeal, the Commission claims that the extent of the referral is not left to the discretion of the Court to which the case is referred. In that regard, it is apparent, in particular, from paragraph 68 of the judgment of 18 July 2017, *Commission v RN* (T-695/16 P, not published, EU:T:2017:520), that the subject matter of the referral before the General Court, in the case giving rise to the third judgment under appeal, was clearly limited to an examination of the third plea in the action at first instance, which contains no argument alleging the illegality of Article 20 of Annex VIII to the Staff Regulations. Accordingly, the General Court, in the third judgment under appeal, could not rule on any plea other than the third plea.
- 61 Furthermore, in addition to the contention that the General Court wrongly took into consideration, in paragraph 42 of the third judgment under appeal, the grounds raised in support of the appeal in order to establish whether or not elements of the judgment at first instance had been found to be invalid, the Commission submits that the setting aside of the judgment of 20 July 2016, *RN v Commission* (F-104/15, EU:F:2016:163), is based on paragraphs 51 to 57 of the judgment of 18 July 2017, *Commission v RN* (T-695/16 P, not published, EU:T:2017:520), relating to the interpretation of Article 20 of Annex VIII to the Staff Regulations, paragraphs 58 to 64 of that judgment supporting the General Court's reasoning in relation to RN's claims in support of the plea of illegality with regard to that provision of the Staff Regulations.
- 62 Therefore, it is argued, by holding that the scope of the dispute, after referral back, also covered the plea put forward by RN in her original action before the Civil Service Tribunal alleging infringement of the principles of equal treatment and non-discrimination on grounds of age, the General Court erred in law.
- 63 By the second part of its first ground of appeal, the Commission submits that, in the third judgment under appeal, the General Court implicitly but necessarily ruled on the absence of discrimination in situations governed by Articles 18 and 20 of Annex VIII to the Staff Regulations. In that regard, the Commission submits that the General Court, in the judgment of 18 July 2017, *Commission v RN* (T-695/16 P, not published, EU:T:2017:520), held that the Civil Service Tribunal's interpretation of Article 20 of Annex VIII to the Staff Regulations was incorrect as a matter of law as regards RN's argument alleging a difference in duration of marriage. In taking the view, in that regard, that the failure to take into account the period of marriage prior to the date of termination of the official's service cannot demonstrate the unlawfulness of that provision, the General Court implicitly but necessarily took the view that the scope of Articles 18 and 20 of Annex VIII to the Staff Regulations was such that the plea of illegality regarding that latter provision on the ground of infringement of the principle of equal treatment could not arise and that, as a result, it was not necessary to rule on the question of proportionality, as it held in paragraph 63 of that judgment. Therefore, having carried out, in paragraph 45 of the third judgment under appeal, an incorrect analysis of the judgment of 18 July 2017, *Commission v RN* (T-695/16 P, not published, EU:T:2017:520), the General Court

was wrong to hold, in paragraph 46 of the third judgment under appeal, that the pleas alleging infringement of the principle of equal treatment and of the principles of non-discrimination and proportionality had not been settled in that judgment of 18 July 2017, *Commission v RN* (T-695/16 P, not published, EU:T:2017:520).

- 64 By the third part of its first ground of appeal, the Commission claims that, by concluding, in paragraph 112 of the third judgment under appeal, that Article 20 of Annex VIII to the Staff Regulations infringes, inter alia, the principle of equal treatment, the General Court ruled in a manner contrary to the judgment of 18 July 2017, *Commission v RN* (T-695/16 P, not published, EU:T:2017:520). The finding in paragraph 59 of that judgment concerning the delimitation of the scope of Article 20 of Annex VIII to the Staff Regulations and the difference in the conditions for the grant of the survivor's pension between that provision and Article 18 of that annex do not support the conclusion that there has been a breach of the principle of equal treatment.
- 65 RN submits, for her part, primarily, that the first ground of appeal is inadmissible in that it lacks precision, since the Commission cannot logically criticise the General Court for having erred in law both in the definition and in the application of the power of the Court to which the case is referred back. Consequently, that lack of precision affects the legal arguments underlying the first ground of appeal.
- 66 RN contends, in the alternative, that the first ground of appeal must be rejected as unfounded.
- 67 In its reply, the Commission submits that the first ground of appeal is admissible in that it cannot merely challenge only the interpretation of the principles which are the subject of the appeal without also contesting their actual application and vice versa. As to the remainder, it disputes RN's interpretation of the third judgment under appeal.

Findings of the Court

– Admissibility of the first ground of appeal

- 68 Contrary to RN's submission, it must be held that the formulation of the Commission's first ground of appeal is neither lacking in precision nor illogical in the light of the case-law referred to in paragraph 43 of the present judgment. By this first ground of appeal, the Commission claims, in clear terms, that the General Court erred in law both in the definition and in the application of the power of the Court to which the case is referred back to rule on the pleas in law in the action at first instance after the judgment under appeal is set aside and puts forward, in support of that ground, three lines of argument formulated in an equally precise and clear manner.
- 69 In so far as RN criticises the Commission for taking the view that the General Court erred in law 'both' in the definition and in the application of the power of the Court to which the case is referred back, which in her view is not possible, it is sufficient to note that, in its appeal, the Commission states, in essence, that the General Court did not, in the third judgment under appeal, correctly define the subject matter and scope of the dispute in the case before it, in view of the fact that it misapplied the judgment of 18 July 2017, *Commission v RN* (T-695/16 P, not published, EU:T:2017:520) and the case-law relating to the determination of the subject matter and the scope of the dispute after referral back.

70 Accordingly, it must be concluded that the Commission's first ground of appeal in Case C-118/21 P is admissible.

– *Substance of the first ground of appeal*

71 In the first place, the Commission's complaint alleging that the General Court erred in law in paragraph 42 of the third judgment under appeal must be rejected. The Commission, in taking the view that the General Court determined the subject matter of the dispute and its scope after referral back on the basis of the pleas put forward by the Commission in its appeal in Case T-695/16 P, has misread that paragraph. In fact, in the first sentence of paragraph 42 of the third judgment under appeal, the General Court recalls that the judgment of 18 July 2017, *Commission v RN* (T-695/16 P, not published, EU:T:2017:520), set aside the judgment of 20 July 2016, *RN v Commission* (F-104/15, EU:F:2016:163), after upholding in part two grounds of appeal raised by the Commission. In those circumstances, and as RN argues, the setting aside in full of the judgment of the Civil Service Tribunal should have led the Court to which the case is referred back to rule afresh on the action at first instance in its entirety.

72 The General Court was therefore correct to conclude, in paragraph 43 of the third judgment under appeal, that it had to rule again on all the pleas for annulment raised by RN before the Civil Service Tribunal, in the light of the points of law decided by the judgment of 18 July 2017, *Commission v RN* (T-695/16 P, not published, EU:T:2017:520), which are binding on the General Court in the context of the referral back. In order to reach that conclusion, the General Court necessarily relied on the case-law referred to in paragraph 41 of the third judgment under appeal, which is not disputed by the Commission, and on the finding made in the first sentence of paragraph 42 of that judgment concerning the setting aside in full of the judgment of 20 July 2016, *RN v Commission* (F-104/15, EU:F:2016:163). As regards the last two sentences in paragraph 42 of the third judgment under appeal, it must be stated that they are merely a reminder – ineffective for the purposes of that conclusion – of the pleas raised by the Commission in the case which gave rise to the judgment of 18 July 2017, *Commission v RN* (T-695/16 P, not published, EU:T:2017:520).

73 In the second place, it should be noted that the General Court also did not err in law, in paragraphs 45 and 46 of the third judgment under appeal, in finding that, in its judgment of 18 July 2017, *Commission v RN* (T-695/16 P, not published, EU:T:2017:520), it had not ruled on the parts of the second plea in law raised by RN in her action before the Civil Service Tribunal.

74 It is apparent from paragraphs 35, 55 to 60 and 76 of the judgment of 20 July 2016, *RN v Commission* (F-104/15, EU:F:2016:163), that the Civil Service Tribunal had examined RN's second plea not from the perspective of the plea of illegality in respect of Article 20 of Annex VIII to the Staff Regulations, but only for the purpose of interpreting, when examining the first plea in law, the condition relating to the minimum duration of the marriage contained in that provision. In that context, the Civil Service Tribunal sought to determine whether that provision could be interpreted, in accordance with the principles of EU law such as the principles of equal treatment and non-discrimination, as meaning that the Commission had to take into account the combined duration of RN's two periods of marriage with her deceased spouse, an interpretation which, according to the Civil Service Tribunal, was not ruled out by the wording of that provision.

75 Furthermore, it should be noted that, in paragraph 57 of the judgment of 18 July 2017, *Commission v RN* (T-695/16 P, not published, EU:T:2017:520), the General Court, ruling on appeal, held that the interpretation of the provision at issue made by the Civil Service Tribunal in

paragraphs 57 and 76 of the judgment of 20 July 2016, *RN v Commission* (F-104/15, EU:F:2016:163), was vitiated by an error of law on the ground, in essence, that the clear wording of that provision precluded such an interpretation. The General Court then set aside that judgment in its entirety.

- 76 It follows that, although the General Court, by its judgment of 18 July 2017, *Commission v RN* (T-695/16 P, not published, EU:T:2017:520), set aside the judgment of 20 July 2016, *RN v Commission* (F-104/15, EU:F:2016:163), it did so because it overturned the Civil Service Tribunal's interpretation of Article 20 of Annex VIII to the Staff Regulations in the light of RN's first plea in law and in the light of the principle of equal treatment, irrespective of the complaints alleging the illegality of that provision raised by RN.
- 77 In so doing, the General Court was unable to adopt a position, even if only implicitly, on the complaints alleging such illegality because, contrary to what the Commission claims, neither the overturning of the Civil Service Tribunal's interpretation of Article 20 of Annex VIII to the Staff Regulations nor the scope attributed by the General Court to Articles 18 and 20 of that annex implies that the latter article could not yet be declared unlawful in the light of the arguments raised by RN in the context of the second plea in her initial application. If that plea were upheld, RN could, notwithstanding the fact that she could not require the duration of her two marriages to be aggregated in the context of the interpretation of Article 20 of Annex VIII to the Staff Regulations, have that provision declared unlawful, with the result that the Commission would be required to take a fresh decision in respect of her, drawing the appropriate conclusions from the judgment bringing the dispute to an end.
- 78 In those circumstances, the Commission is wrong to assert, in essence, that the General Court implicitly but necessarily ruled in the negative, in the judgment of 18 July 2017, *Commission v RN* (T-695/16 P, not published, EU:T:2017:520), on the plea of illegality in respect of Article 20 of Annex VIII to the Staff Regulations.
- 79 In addition, contrary to what is claimed by the Commission, the General Court, in paragraphs 58 to 64 of its judgment of 18 July 2017, *Commission v RN* (T-695/16 P, not published, EU:T:2017:520), did not examine or reject the claims put forward by RN in support of the plea of illegality in respect of Article 20 of Annex VIII to the Staff Regulations, with the result that the Commission cannot claim that, in paragraph 46 of the third judgment under appeal, the General Court was wrong to hold that it had not ruled on the second plea in that first judgment.
- 80 It should be noted in this regard that, in paragraphs 58 to 64 of its judgment of 18 July 2017, *Commission v RN* (T-695/16 P, not published, EU:T:2017:520), the General Court merely responded to the arguments put forward by RN in response to the Commission's appeal. First, RN's two arguments, examined in paragraphs 59 to 61 of that judgment, relate exclusively to the General Court's interpretation of Article 20 of Annex VIII to the Staff Regulations and therefore have no connection with the plea of illegality of that provision.
- 81 Second, as regards RN's argument examined in paragraphs 62 to 64 of the judgment of 18 July 2017, *Commission v RN* (T-695/16 P, not published, EU:T:2017:520), it is true that that argument relating to infringement of the principle of proportionality relates to the second plea in the initial action, alleging illegality. However, the General Court, in paragraph 63 of that judgment, explains that the Civil Service Tribunal examined the question of the infringement of the principle of proportionality by starting from the premiss that the wording of Article 20 of Annex VIII to the Staff Regulations could be interpreted as requiring the cumulative duration of

RN's two marriages to be taken into account. However, having held that the Civil Service Tribunal was unable to start from such a premiss, the General Court concluded, still in paragraph 63 of that judgment, that it was not necessary to rule on RN's argument claiming infringement of the principle of proportionality. Therefore, far from rejecting RN's second plea in the initial action, the General Court merely refused to examine that plea and, more specifically, the argument alleging infringement of the principle of proportionality, on the ground that such an examination did not come within the scope of the appeal.

- 82 It follows that, in paragraph 45 of the third judgment under appeal, the General Court correctly analysed paragraph 63 of the judgment of 18 July 2017, *Commission v RN* (T-695/16 P, not published, EU:T:2017:520), with the result that it cannot be accused of any error of law in that regard.
- 83 In the third place, the Commission is wrong to state that, in the third judgment under appeal, the General Court could not, on account of the statement in the first sentence of paragraph 68 of the judgment of 18 July 2017, *Commission v RN* (T-695/16 P, not published, EU:T:2017:520), rule on pleas other than the third plea in the action brought before the Civil Service Tribunal.
- 84 It must be noted that the General Court, in paragraph 68 of that judgment, merely stated that it was unable to rule on the case since the Civil Service Tribunal had not examined the third plea relied on by RN. It should be noted that that statement relates only to the issue of whether the case could be ruled on by the General Court hearing the case on appeal and not to the separate matter relating to the determination of the subject matter and scope of the dispute after referral back. In that regard, it is for the Court to which the case is referred back alone, and not for the appeal Court, to determine that subject matter and scope as a consequence of the judgment delivered by the appeal Court. Therefore, any statement as to whether the state of the proceedings permits final judgment cannot in itself be decisive for the purposes of the analysis of the subject matter and scope of the case after referral back, which the Court to which the case is referred back must undertake.
- 85 In the present case, it is apparent from paragraph 73 of the present judgment that, in paragraph 46 of the third judgment under appeal, the General Court correctly held that it had not ruled on the parts of the second plea in law in the judgment of 18 July 2017, *Commission v RN* (T-695/16 P, not published, EU:T:2017:520) alleging infringement of the principles of equal treatment, non-discrimination on grounds of age and proportionality.
- 86 In the fourth place, the Commission's claim that there is a contradiction between paragraph 112 of the third judgment under appeal and paragraph 59 of the judgment of 18 July 2017, *Commission v RN* (T-695/16 P, not published, EU:T:2017:520), cannot succeed in so far as it is based on the premiss, rejected in paragraph 78 of the present judgment, that, in the judgment of 18 July 2017, *Commission v RN* (T-695/16 P, not published, EU:T:2017:520), the General Court had implicitly but necessarily rejected the ground alleging infringement of the principle of equal treatment.
- 87 In the light of the foregoing considerations, the first ground of appeal raised by the Commission in support of its appeal in Case C-118/21 P must be rejected as unfounded.

The third part of the first ground of appeal and the second ground of appeal in Case C-116/21 P, the third part of the first ground of appeal and the first two parts of the second ground of appeal in Case C-117/21 P, the third part of the second ground of appeal and the

first two parts of the third ground of appeal in Case C-118/21 P and the first ground of appeal in Cases C-138/21 P and C-139/21 P

Arguments of the parties

- 88 By these grounds of appeal and parts thereof, the Commission and, in the main, the Council submit that, by the judgments under appeal, the General Court erred in law in its interpretation of the principle of equal treatment and of the principle of non-discrimination in that it wrongly concluded that the situations covered by the provisions of Articles 18 and 20 of Annex VIII to the Staff Regulations were comparable and, therefore, that there was a difference in treatment arising from the application of different schemes to those comparable situations.
- 89 In general, those institutions, supported by the Parliament, consider that the General Court, in paragraphs 59 and 60 of the first judgment under appeal, in paragraphs 58 and 59 of the second judgment under appeal and, as regards the Commission, in paragraphs 80 and 81 of the third judgment under appeal, erred in law in finding that the date on which the marriage was entered into was the only factor determining the application of Article 18 or Article 20 of Annex VIII to the Staff Regulations and that, therefore, the situations covered by those provisions were indeed comparable. If the General Court had taken into account all the factors characterising those situations, it would have had to find that there is an essential and objective difference between officials in service and those who have ceased to be in the service of an EU institution, relating to the respective legal situation of those officials, in particular having regard to the professional rights and obligations to which the former, unlike the latter, are bound under the provisions of the Staff Regulations throughout the duration of their service.
- 90 In particular, both the Commission and the Council emphasise, inter alia, the fact that officials in service, unlike former officials who are no longer obliged to work, must contribute to the pension scheme, receive a basic salary that is higher than the retirement pension which will be granted to them during their retirement, are obliged to reside in their place of employment and are entitled to expatriation, expatriate and travel allowances. The Commission adds that former officials are no longer covered by the Joint Sickness Insurance Scheme for accidents at work. The Commission also states that, unlike Article 20 of Annex VIII to the Staff Regulations, Article 18 of that annex provides that the condition relating to the duration of the marriage is not to be taken into account if, in the official's family, a child was born of the marriage entered into by the official before termination of his or her service, which shows that the situations covered by those two provisions are radically different. All of those considerations show that the situation of a former official who marries does not require, as evidently as in the case of an official who marries while still working, a replacement income to be offered to the surviving spouse by the grant of the survivor's pension.
- 91 The Commission also considers that the situation of officials in service and officials who have left the service of an EU institution can be distinguished from each other on an individual level. First, officials who marry before termination of their service are younger than officials covered by Article 20 of Annex VIII to the Staff Regulations. Second, a person who marries a retired official is already deemed to be in a situation of economic independence, with the result that the death of that official has a more limited effect than in the case of an official who has maintained his or her household since active service. In that regard, the Commission maintains that, in paragraph 51 of the first judgment under appeal, in paragraph 50 of the second judgment under appeal and in paragraph 72 of the third judgment under appeal, the General Court misinterpreted paragraph 69 of the judgment of 19 December 2019, *HK v Commission* (C-460/18 P,

EU:C:2019:1119). Contrary to what was claimed by the General Court, the economic capacity of the surviving spouse is capable, precisely, of constituting a relevant factor for the EU legislature when laying down the criteria for the grant of a survivor's pension under Article 20 of Annex VIII to the Staff Regulations, having regard to the circumstances in which the marriage took place.

- 92 The Commission and the Council add that the General Court was wrong to refuse, in paragraph 56 of the first judgment under appeal, in paragraph 55 of the second judgment under appeal and, as regards the Commission, in paragraph 77 of the third judgment under appeal, to draw the appropriate conclusions from paragraph 33 of the judgment of 17 June 1993, *Arauxo-Dumay v Commission* (T-65/92, EU:T:1993:47), in so far as the General Court, in that latter judgment, highlighted the difference between the situations governed by Articles 18 and 20 of Annex VIII to the Staff Regulations, the logic underlying that judgment being transposable to the present case despite the difference in the facts giving rise to the respective disputes.
- 93 The Commission further submits that, in paragraph 58 of the first judgment under appeal, in paragraph 57 of the second judgment under appeal and in paragraph 79 of the third judgment under appeal, the General Court wrongly disregarded, in its analysis, the purpose of the minimum duration of marriage laid down in Articles 18 and 20 of Annex VIII to the Staff Regulations, namely, as is apparent from paragraph 89 of the judgment of 19 December 2019, *HK v Commission* (C-460/18 P, EU:C:2019:1119), that of preventing agreements as to succession and, therefore, entering into marriage with the sole aim of being able to receive a survivor's pension without that marriage corresponding to any reality or stability in the relationship between the persons concerned. Thus, it is submitted, the General Court failed to comply with the criterion that, in the assessment of the comparability of situations, all the elements which characterise them and all the rules of law governing the positions of each of the situations to be compared must be taken into consideration. In particular, by holding, in those same paragraphs of the three judgments under appeal, that a marriage entered into after termination of service does not fundamentally alter the situation of a surviving spouse as regards his or her property rights in comparison with the situation covered by Article 18 of Annex VIII to the Staff Regulations, the General Court, in addition to failing entirely to give reasons for that consideration, disregarded the risk that such a marriage might be the pretext for the conclusion of agreements as to succession.
- 94 VW, BT, supported by AIACE International, and RN contest those arguments.

Findings of the Court

- 95 As a preliminary point, it is necessary to recall the settled case-law of the Court according to which equality before the law, set out in Article 20 of the Charter, is a general principle of EU law which 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 2 September 2021, *État belge (Right of residence in the event of domestic violence)*, C-930/19, EU:C:2021:657, paragraph 57 and the case-law cited).
- 96 The requirement that situations must be comparable, for the purpose of determining whether there is a breach of the principle of equal treatment, must be assessed in the light of all the elements that characterise them and, in particular, in the light of the subject matter and purpose of the act that makes the distinction in question, while the principles and objectives of the field to which the act relates must also be taken into account. In so far as the situations are not

comparable, a difference in treatment of the situations concerned does not infringe equality before the law as enshrined in Article 20 of the Charter (judgment of 2 September 2021, *État belge (Right of residence in the event of domestic violence)*, C-930/19, EU:C:2021:657, paragraph 58 and the case-law cited).

- 97 It is in the light of that case-law that it is necessary to examine the claims of the Commission and the Council, supported by the Parliament, that the General Court erred in finding, in the judgments under appeal, that the situations covered by the provisions of Articles 18 and 20 of Annex VIII to the Staff Regulations were comparable and that there was a difference in treatment of those comparable situations depending on the date on which the marriage was entered into.
- 98 In that regard, it should be noted that, in paragraphs 51, 52 and 55 of the first judgment under appeal, in paragraphs 50, 51 and 54 of the second judgment under appeal and in paragraphs 72, 73 and 76 of the third judgment under appeal, the General Court found that the purpose of Articles 18 and 20 of Annex VIII to the Staff Regulations, subject to compliance with the condition relating to the minimum duration of the marriage, is to grant survivor's pensions to the surviving spouse exclusively on the basis of the legal nature of the ties linking that spouse to the deceased spouse. The General Court also stated that those provisions pursue the objective of granting the surviving spouse a replacement income intended to compensate in part for the loss of the deceased spouse's income, the latter being a former official who is no longer in service and who therefore no longer contributes to the EU pension scheme.
- 99 Therefore, the General Court held, in essence, that those two provisions of Annex VIII to the Staff Regulations had an appreciably identical subject matter and purpose in the light of the case-law referred to in paragraph 96 of the present judgment and referred to by the General Court itself in paragraph 44 of the first and second judgments under appeal and in paragraph 66 of the third judgment under appeal. According to the General Court, the main element characterising the survivor's pensions in question lies in the legal nature of the links between the surviving spouse, as a person on whom those provisions confer a right, and the deceased former official. Again according to the General Court, the only difference in the application of Articles 18 and 20 of Annex VIII to the Staff Regulations relates to the condition of a minimum duration of the marriage, which for its part depends on the date on which the marriage was entered into in the light of the official's position under the Staff Regulations on that date, as can clearly be seen from paragraph 53 of the first judgment under appeal, paragraph 52 of the second judgment under appeal and paragraph 74 of the third judgment under appeal.
- 100 In those circumstances, the General Court did not err in law when it considered, first, in paragraph 59 of the first judgment under appeal, in paragraph 58 of the second judgment under appeal and in paragraph 80 of the third judgment under appeal, that the situations covered by the provisions of Articles 18 and 20 of Annex VIII to the Staff Regulations were comparable and, second, in paragraphs 53 and 60 of the first judgment under appeal, in paragraphs 52 and 59 of the second judgment under appeal and in paragraphs 74 and 81 of the third judgment under appeal, that the situations covered by those provisions differed only with regard to the date on which the marriage was entered into in relation to the official's position under the Staff Regulations.
- 101 The Commission and the Council, supported by the Parliament, state, however, in the first place, that the situations referred to in Articles 18 and 20 of Annex VIII to the Staff Regulations differ in an essential and objective manner by the fact that, on the date on which the marriage was entered

into, the official was, in the context of the first provision, still working for an EU institution, whereas in the context of the second provision he or she was no longer working for an EU institution. The General Court, they submit, thus failed to take sufficient account of that characteristic element in its assessment of the comparability of the situations.

- 102 However, as the General Court correctly stated, in paragraph 54 of the first judgment under appeal, in paragraph 53 of the second judgment under appeal and in paragraph 75 of the third judgment under appeal, the legal nature of the links between the surviving spouse and the deceased official does not differ according to whether or not, on the date on which the marriage was entered into, the respective official was in active employment or not and according to the amount of contributions to the EU pension scheme which had been paid or which were still due. Similarly, as the General Court held in paragraph 58 of the first judgment under appeal, in paragraph 57 of the second judgment under appeal and in paragraph 79 of the third judgment under appeal, whether the deceased official married before or after termination of his or her service is not a fact capable of altering substantially the situation of the surviving spouse as regards his or her property rights, which include the right to a survivor's pension as replacement income.
- 103 It should be noted that the date on which the marriage was entered into is determined solely by the will of the future spouses. That decision is the result of a free choice on the part of the official on the basis of multiple considerations which do not necessarily or solely require account to be taken of circumstances connected with whether or not he or she is actively employed. Contrary to the assertions of the Commission and the Council, the issue of whether or not that official was in service on that date cannot therefore have a decisive influence on the assessment of the comparability of the situations at issue in the light of the criteria set out in paragraph 96 of the present judgment and, in particular, the subject matter and purpose of Articles 18 and 20 of Annex VIII to the Staff Regulations, as set out in paragraph 98 of the present judgment. In that regard, the General Court's reasoning, set out in the preceding paragraph of the present judgment, is based, in essence, on that subject matter, that purpose and that main element.
- 104 It is true that, as is apparent from paragraph 99 of the present judgment, the position of an official under the Staff Regulations at the date on which the marriage is entered into affects the condition of the minimum duration of that marriage. Whereas the required duration is only one year in the case where the marriage is entered into when the official is still in service, it is extended to five years where the official marries after having ceased to be in the service of an EU institution.
- 105 However, as VW rightly points out and as is apparent from paragraphs 102 and 103 of the present judgment, neither the position of an official under the Staff Regulations nor the date on which the marriage is entered into is relevant at the stage of comparability of the situations in that they have no direct link with the subject matter, purpose and main element of the right to a survivor's pension referred to in Articles 18 and 20 of Annex VIII to the Staff Regulations.
- 106 It is for that reason that it is necessary to hold, by analogy, as the Court indicated, as regards the survivor's pension provided for in Article 17 of Annex VIII to the Staff Regulations, in paragraph 70 of the judgment of 19 December 2019, *HK v Commission* (C-460/18 P, EU:C:2019:1119), that the grant of the survivor's pension depends 'solely', in principle, on the legal nature of the ties between the person concerned and the deceased official, even though the Court acknowledged, in paragraph 89 of that judgment, that the grant of the survivor's pension is also dependent on the minimum duration of the marriage.

- 107 It is the legal nature of the ties between the spouses which underlies the EU civil service's survivor's pension scheme, in that that condition for granting the pension is common to all the survivor's pensions referred to in Articles 17 to 20 and Article 27 of Annex VIII to the Staff Regulations. For its part, the condition as to the minimum duration of the marriage is ancillary to the condition relating to the legal nature of the ties between the spouses, in so far as it seeks merely to specify the period during which the legal relationship must have persisted for the purposes of the grant of the survivor's pension. Furthermore, that ancillary condition is not repeated in some of the survivor's pensions, such as those referred to in Articles 19 and 27 of Annex VIII to the Staff Regulations.
- 108 The General Court was therefore right, in paragraphs 52 and 54 of the first judgment under appeal, in paragraphs 51 and 53 of the second judgment under appeal and in paragraphs 73 and 75 of the third judgment under appeal, to emphasise, in its statement of reasons, the importance of the legal link between the spouses as a main feature characterising the EU survivor's pension scheme and to conclude that the official's position under the Staff Regulations has no effect on that link.
- 109 The Commission and the Council claim, in the second place, that the situation of a former official who marries after termination of his or her service does not require that a replacement income be offered to the surviving spouse as evidently as in the case of an official who marries while he or she is still in service. In that regard, it is sufficient to bear in mind, as the General Court correctly stated in paragraph 58 of the first judgment under appeal, in paragraph 57 of the second judgment under appeal and in paragraph 79 of the third judgment under appeal, by referring to paragraph 69 of the judgment of 19 December 2019, *HK v Commission* (C-460/18 P, EU:C:2019:1119), that entitlement to the survivor's pensions referred to in Articles 18 and 20 of Annex VIII to the Staff Regulations is not subject to conditions of resources or assets which should characterise the surviving spouse's inability to meet his or her needs and thereby demonstrate his or her past financial dependence on the deceased.
- 110 The Commission claims, in the third place, that the General Court did not take account of the purpose of the minimum duration of marriage laid down in Articles 18 and 20 of Annex VIII to the Staff Regulations, which, as is apparent from paragraph 89 of the judgment of 19 December 2019, *HK v Commission* (C-460/18 P, EU:C:2019:1119), is to prevent the conclusion of fraudulent or abusive agreements as to succession. In that regard, it is sufficient to note that that aspect is not relevant at the stage of assessing the comparability of the situations. That argument relates to the justification of the greater or lesser period of time for which the marriage must have lasted, with the result that it can come into consideration only at the stage of assessing the proportionality of any difference in treatment found to exist.
- 111 As regards, moreover, the Commission's argument that the lack of comparability of the situations is also evidenced by the fact that, by contrast to what is provided for in Article 20 of Annex VIII to the Staff Regulations, the condition relating to the minimum duration of the marriage ceases to operate, under Article 18 of that annex, when the surviving spouse provides or has provided for the needs of the children of the former official, that factor has no bearing on the assessment of the comparability of the situations covered by those two articles. The condition relating to the maintenance of children, provided for only in Article 18 of Annex VIII to the Staff Regulations, has, by analogy with what has been stated in paragraphs 104 and 106 of the present judgment, the same ancillary nature as the condition relating to the minimum duration of the marriage, which it replaces. It thus has no direct link with the subject matter, purpose and main element of the right to a survivor's pension referred to in Articles 18 and 20 of that annex.

- 112 It follows from the foregoing considerations that, contrary to what the Commission and the Council, supported by the Parliament, state, the conclusions reached by the General Court, in paragraphs 59 and 60 of the first judgment under appeal, in paragraphs 58 and 59 of the second judgment under appeal and in paragraphs 80 and 81 of the third judgment under appeal are not vitiated by an error of law.
- 113 In those circumstances, the argument of the Commission and the Council that the General Court wrongly refused, in paragraph 56 of the first judgment under appeal, in paragraph 55 of the second judgment under appeal and, as regards the Commission, in paragraph 77 of the third judgment under appeal, to draw the appropriate conclusions from paragraph 33 of the judgment of 17 June 1993, *Arauxo-Dumay v Commission* (T-65/92, EU:T:1993:47), must be regarded as ineffective. Even if that argument were well founded, the General Court's conclusions relating to the comparability of the situations are sufficiently based on the reasoning set out in paragraphs 51 to 55 and 58 of the first judgment under appeal, in paragraphs 50 to 54 and 57 of the second judgment under appeal and in paragraphs 72 to 76 and 79 of the third judgment under appeal, respectively, irrespective of the considerations set out in paragraphs 56, 57 and 77 of those judgments, respectively.
- 114 It follows that the third part of the first ground of appeal and the second ground of appeal in Case C-116/21 P, the third part of the first ground of appeal and the first two parts of the second ground of appeal in Case C-117/21 P, the third part of the second ground of appeal and the first two parts of the third ground of appeal in Case C-118/21 P, together with the first ground of appeal in Cases C-138/21 P and C-139/21 P, must be rejected as unfounded.

The first two parts of the first ground of appeal in Cases C-116/21 P and C-117/21 P, the first two parts of the second ground of appeal in Case C-118/21 P and the second ground of appeal in Cases C-138/21 P and C-139/21 P

Arguments of the parties

- 115 By these grounds of appeal, the Commission and, in the alternative, the Council claim, in essence, that the General Court erred in law in the judgments under appeal as regards the scope of judicial review.
- 116 Those two institutions, supported by the Parliament, take the view that, in the second sentence of paragraph 48 of the first two judgments under appeal and, as regards the Commission, in the second sentence of paragraph 70 of the third judgment under appeal, the General Court applied EU case-law developed in the radically different context of staff-policy choices in situations where several options are open to the legislature. Thus, the General Court, in particular in paragraph 80 of the first judgment under appeal, in paragraph 84 of the second judgment under appeal and, as regards the Commission, in paragraph 105 of the third judgment under appeal, wrongly concluded that the choice made by the EU legislature in relation to the minimum duration of marriage mandated in Article 20 of Annex VIII to the Staff Regulations was simply 'unreasonable'. In so doing, it carried out a review which went beyond the 'manifestly unsuitable or inappropriate' nature of the measure at issue in the light of the objective pursued by the competent institutions, namely, in the present case, to prevent abuse of rights and fraud and to preserve the European Union's finances. The General Court, it is argued, thereby substituted its own assessment for that of the EU legislature and therefore exceeded the limits of the review of legality.

- 117 As regards the objective of preserving the European Union’s finances, the Council claims that the General Court failed to examine Article 20 of Annex VIII to the Staff Regulations in the light of that objective, understood in the broad sense, in conjunction with the objective of combating fraud. Apart from the fact that the General Court should have examined whether that provision was manifestly inappropriate in the light of those objectives, the Council submits that the General Court was wrong to hold, in paragraph 83 of the first judgment under appeal and in paragraph 87 of the second judgment under appeal, that, even in the absence of that provision, the financial equilibrium of the EU pension scheme would not be jeopardised. According to the Council, the European Union was required to devise a regime capable of preventing cases of fraud resulting from marriages of convenience concluded by retired EU officials.
- 118 The Commission submits, further, that the General Court, when it asserted that it based its assessment of the lawfulness of Article 20 of Annex VIII to the Staff Regulations on Articles 20 and 21 of the Charter, departed from the case-law of the Court of Justice according to which the assessment of the legality of an EU measure in the light of fundamental rights cannot, in any event, be based on allegations drawn from the consequences of that act in a particular case. According to the Commission, the General Court highlighted the particular disadvantage which certain persons may face and also relied on the specific nature of the factual circumstances of the case in question, in paragraphs 77 and 78 of the first judgment under appeal, in paragraph 81 of the second judgment under appeal and in paragraphs 101 to 103 of the third judgment under appeal, in order to find Article 20 of Annex VIII to the Staff Regulations unlawful.
- 119 VW considers that, in criticising the General Court for having ascertained that the choice made by the EU legislature was ‘unreasonable’ in nature, the Commission and the Council misread the first judgment under appeal. The General Court, in paragraphs 69 to 74 of that judgment, examined the ‘manifestly unreasonable’ nature of that choice, understood as meaning ‘inappropriate’. Taking the view that the General Court followed the correct logic of the examination of proportionality as it follows from the case-law of the Courts of the European Union, VW submits that the General Court was right to hold that, even if the objective of combating fraud were recognised as legitimate, the measure seeking to impose, on the basis of an irrebuttable presumption, a minimum duration of marriage five times greater than that required by Article 18 of that annex was manifestly inappropriate and went beyond what was necessary to ensure that there was no fraud.
- 120 VW also takes the view that, contrary to what the Commission maintains, the General Court, in addition to the considerations relating to her factual and family situation, stated, in paragraph 61 of the first judgment under appeal, that the difference in treatment entailed a disadvantage not only for herself but, more generally, for all surviving spouses of a former official who married after termination of that official’s service and, therefore, for all surviving spouses coming within the scope of Article 20 of Annex VIII to the Staff Regulations.
- 121 BT, supported by AIACE International, also submits that the General Court expressed itself, in paragraph 61 of the second judgment under appeal, in generic terms without specifically referring to her own case and without drawing any argument from the factual circumstances of the case.
- 122 In addition, BT claims that, just as the Court of Justice held in the judgment of 19 December 2019, *HK v Commission* (C-460/18 P, EU:C:2019:1119) that the condition that the couple had to have been married for at least one year, set out in Articles 17 and 18 of Annex VIII to the Staff Regulations, did not appear to be discriminatory or manifestly inappropriate in the light of the

objective pursued by the grant of the survivor's pension, the General Court was required to examine whether the condition that the couple had to have been married for at least five years, set out in Article 20 of that annex, was not discriminatory or manifestly inappropriate and was necessary to achieve the aims set by the EU legislature. The General Court carefully carried out that examination in the second judgment under appeal.

123 RN submits that the Commission's argument alleging disregard by the General Court of the extent of its power of review lacks clarity and is therefore inadmissible, in that the Commission does not specify in the light of which objective pursued by the survivor's pension the legality of Article 20 of Annex VIII to the Staff Regulations should have been contemplated. In any event, RN is of the view that the General Court assessed the situation of surviving spouses in the light of the objective of compensating, for the benefit of those spouses, for the loss of income resulting from the death of the former official.

124 RN also submits that, contrary to the Commission's assertion, when assessing the validity of Article 20 of Annex VIII to the Staff Regulations, the General Court did not simply contemplate the application of that provision to the case at hand, but, in paragraphs 83 and 103 of the third judgment under appeal, observed that that provision placed an entire category of persons, namely surviving spouses who had married a former official, at a particular disadvantage.

Findings of the Court

125 As a preliminary point, it should be noted that, contrary to RN's assertions, the Commission's argument that the General Court disregarded the scope of its judicial review is not lacking in clarity and is, therefore, not inadmissible in the light of the case-law referred to in paragraph 43 above. Indeed, by that argument, the Commission criticises the General Court for not having correctly applied the benchmark against which the legality of Article 20 of Annex VIII to the Staff Regulations had to be assessed.

126 As to the substance, it should be noted that the General Court recalled, in paragraphs 46 to 48 of the first and second judgments under appeal and in paragraphs 68 to 70 of the third judgment under appeal, the requirements referred to in Article 52(1) of the Charter and the case-law applicable for the purposes of reviewing the proportionality of a difference in treatment. It then held, in paragraph 49 of the first and second judgments under appeal and in paragraph 71 of the third judgment under appeal, that, if the situations referred to respectively in Articles 18 and 20 of Annex VIII to the Staff Regulations were comparable, it would then have to verify that it did not appear unreasonable for the EU legislature to take the view that the difference in treatment introduced may be appropriate and necessary in order to achieve the general-interest objective pursued by the condition relating to the minimum duration of marriage laid down in Article 20 of Annex VIII to the Staff Regulations. Having concluded that the situations were comparable, it carried out that analysis beginning in paragraph 65 of the first judgment under appeal, in paragraph 66 of the second judgment under appeal and in paragraph 90 of the third judgment under appeal.

127 As the Commission and the Council, supported by the Parliament, argue, it is clear from the case-law of the Court that, when provisions of the Staff Regulations such as those at issue in the present cases are involved, and in the light of the broad discretion which the EU legislature enjoys in that regard, there is a breach of the principle of equal treatment, as enshrined in Article 20 of the Charter, only where the EU legislature makes a distinction which is arbitrary or

manifestly inappropriate in relation to the objective pursued by the rules in question (see, to that effect, judgment of 25 March 2021, *Alvarez y Bejarano and Others v Commission*, C-517/19 P and C-518/19 P, EU:C:2021:240, paragraph 53 and the case-law cited).

- 128 It must be held that that case-law is applicable in the context of the verification of the requirement of proportionality imposed by Article 52(1) of the Charter.
- 129 In the present cases, the General Court considered, in paragraph 49 of the first and second judgments under appeal and in paragraph 71 of the third judgment under appeal, that it had to ascertain whether it seemed not unreasonable for the EU legislature to take the view that the difference in treatment established could be appropriate and necessary for the purposes of attaining the general-interest objective pursued by the condition relating to the minimum duration of a marriage laid down in Article 20 of Annex VIII to the Staff Regulations. However, it ought to have confined itself to ascertaining whether the distinction made in that provision, read in conjunction with Article 18 of that annex, seemed to be neither arbitrary nor manifestly inappropriate in the light of the general-interest objective pursued. In doing as it did, it misunderstood the scope of its power of judicial review by incorrectly examining the requirement of proportionality and thus made an error of law. Without that error, the General Court would have been led to adopt different reasoning and possibly to reach conclusions other than those which it reached in paragraphs 80, 85 and 87 of the first judgment under appeal, in paragraphs 84, 90 and 92 of the second judgment under appeal and in paragraphs 105, 110 and 112 of the third judgment under appeal.
- 130 That misunderstanding of the scope of its judicial review was also reflected in paragraph 69 of the first judgment under appeal, in paragraph 71 of the second judgment under appeal and in paragraph 94 of the third judgment under appeal. The General Court thus sought to examine, starting from those paragraphs, whether the condition of a minimum duration of five years' marriage laid down in Article 20 of Annex VIII to the Staff Regulations, taken in isolation and independently of the minimum duration of one year laid down in Article 18 of that annex, was, in the context of Article 52(1) of the Charter, proportionate in that it did not manifestly go beyond what is necessary to achieve the objective pursued by the EU legislature. As is apparent from paragraph 128 of the present judgment, even in the context of that provision of the Charter, the General Court should have confined itself to examining whether the distinction established in this instance, namely the fact that the requirement relating to the minimum duration of the marriage, in the situations covered by Article 20 of Annex VIII to the Staff Regulations, is five times greater than that in the situations covered by Article 18 of that annex, even though all those situations are comparable, had to be regarded as arbitrary or manifestly inappropriate in the light of the objective pursued by the EU legislature.
- 131 In those circumstances, and without it being necessary to examine the other arguments raised by the Commission and the Council, the first two parts of the first ground of appeal in Cases C-116/21 P and C-117/21 P, the first two parts of the second ground of appeal in Case C-118/21 P and the second ground of appeal in Cases C-138/21 P and C-139/21 P must be upheld.
- 132 Accordingly, it is appropriate, without there being any need to examine the third ground of appeal in Case C-116/21 P, the third part of the second ground of appeal and the third ground of appeal in Case C-117/21 P, the third part of the third ground of appeal and the fourth ground of appeal in Case C-118/21 P, the third and fourth grounds of appeal in Case C-138/21 P and the third ground of appeal in Case C-139/21 P, to uphold the appeals and to set aside the three judgments under appeal.

The actions before the General Court

- 133 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.
- 134 In the present cases, having regard in particular to the fact that the actions for annulment in Cases T-243/18, T-315/19 and T-442/17 RENV are based on pleas which have been the subject of an exchange of arguments before the General Court, the examination of which does not require the adoption of any additional measure of organisation of procedure or of inquiry, it must be held that those actions are ready for judgment and that final judgment must be given on them.
- 135 In order for the Court to have before it the complete files relating to the cases for that purpose, the Registry of the Court of Justice, requested to that effect by the Judge-Rapporteur, requested the Registry of the General Court, on 21 January 2022, to transmit the sound recording of the hearings held in Cases T-243/18 and T-315/19. The Registry of the General Court granted that request on 25 January 2022.

The action in Case T-243/18

- 136 In support of her action before the General Court, in Case T-243/18, VW raised, in essence, two pleas in law alleging, principally, that Article 20 of Annex VIII to the Staff Regulations is unlawful and, in the alternative, misinterpretation of Article 27 of Annex VIII to the Staff Regulations. She also pleaded, in the alternative, that that provision was unlawful on the ground that it infringes the principle of equal treatment enshrined in Article 20 of the Charter.

The first plea, alleging that Article 20 of Annex VIII to the Staff Regulations is unlawful

- 137 By her first plea, in Case T-243/18, VW claims that Article 20 of Annex VIII to the Staff Regulations infringes the principles of equal treatment and proportionality, enshrined in Article 20 and Article 52 of the Charter, respectively, in that, by imposing a condition that the marriage must have lasted for at least five years, whereas Article 18 of Annex VIII to the Staff Regulations requires that the marriage had to have lasted for only one year, it unduly denies her entitlement to a survivor's pension.
- 138 The Commission, supported by the Parliament and the Council, disputes those arguments.
- 139 It should be borne in mind that, under Article 52(1) of the Charter, any limitation on the exercise of the rights and freedoms recognised by the Charter must be provided for by law and must respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others.

- 140 Furthermore, the principle of equal treatment is a general principle of EU law, enshrined in Article 20 of the Charter, of which the principle of non-discrimination laid down in Article 21(1) of the Charter is a specific expression (judgment of 29 October 2020, *Veselibas ministrija*, C-243/19, EU:C:2020:872, paragraph 35 and the case-law cited). Those two principles are also reiterated in Article 1d of the Staff Regulations.
- 141 The Court has already held that the prohibition of all discrimination on grounds of age, laid down in Article 21(1) of the Charter, is mandatory as a general principle of EU law, that prohibition being sufficient in itself to confer on individuals a right which they may rely on as such in disputes between them in a field covered by EU law (judgment of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 76 and the case-law cited). The same must apply to the general principle of equal treatment or equality before the law referred to in Article 20 of the Charter.
- 142 Thus, as has already been stated in paragraph 95 of the present judgment, the general principle of equal treatment requires from the EU legislature, in accordance with the requirements of Article 52(1) of the Charter, that comparable situations should not be treated differently and that different situations should not be treated in the same way unless such treatment is objectively justified. A difference in treatment is justified if it is based on an objective and reasonable criterion, that is, if the difference relates to a legally permitted aim pursued by the legislation in question, and it is proportionate to the aim pursued by the treatment in question (judgment of 22 May 2014, *Glatzel*, C-356/12, EU:C:2014:350, paragraph 43 and the case-law cited).
- 143 As was set out in paragraph 96 of the present judgment, the requirement that situations must be comparable, for the purpose of determining whether there is a breach of the principle of equal treatment, must be assessed in the light of all the elements that characterise them and, in particular, in the light of the subject matter and purpose of the act that makes the distinction in question, while the principles and objectives of the field to which the act relates must also be taken into account. In so far as the situations are not comparable, a difference in treatment of the situations concerned is not in breach of equality before the law as enshrined in Article 20 of the Charter.
- 144 In addition, it is necessary to bear in mind the case-law of the Court, referred to in paragraph 127 of the present judgment, according to which, when provisions of the Staff Regulations such as those at issue in the present cases are involved, and in the light of the broad discretion which the EU legislature enjoys in that regard, there is a breach of the principle of equal treatment only where the legislature makes a distinction which is arbitrary or manifestly inappropriate in relation to the objective pursued.
- 145 It is in the light of that case-law and of the requirements of Article 52(1) of the Charter that it is necessary to examine the plea of illegality raised by VW in Case T-243/18 in respect of Article 20 of Annex VIII to the Staff Regulations in the light of Articles 20 and 52 of the Charter.
- 146 As regards, in the first place, the comparability of the situations referred to in Articles 18 and 20 of Annex VIII to the Staff Regulations, it must be held, for the reasons stated in paragraphs 98 to 113 of the present judgment, that those situations are comparable.
- 147 In the second place, it should be noted that, by providing, in those provisions of Annex VIII to the Staff Regulations, for different minimum periods for which the marriage must have lasted, the EU legislature treated comparable situations differently.

- 148 In the third place, it is necessary to examine whether that difference in treatment complies with Article 20 of the Charter in that it meets the criteria set out in Article 52(1) thereof and referred to in paragraph 139 of the present judgment.
- 149 First, it is common ground that that difference in treatment is provided for by law, within the meaning of Article 52(1) of the Charter, since it results from Article 20 of Annex VIII to the Staff Regulations, read in conjunction with Article 18 of that annex. Those provisions of EU law lay down precisely quantified conditions relating to the minimum duration of marriage, which define the scope of the limitation on the exercise of the right to equal treatment (see, as regards the scope of the requirement that any limitation on the exercise of fundamental rights must be provided for by law, judgment of 26 April 2022, *Poland v Parliament and Council*, C-401/19, EU:C:2022:297, paragraph 64 and the case-law cited).
- 150 Second, the limitation introduced to the survivor's pension scheme by the difference in treatment at issue respects the essence of the principle of equal treatment, in accordance with Article 52(1) of the Charter. That limitation does not call into question that principle as such, since it concerns only the limited matter of the condition of the minimum duration of marriage which surviving spouses of officials or former officials who have died must satisfy in order to be able to receive a survivor's pension, without those spouses being deprived of the possibility of receiving such a pension in each of the situations contemplated in Articles 18 and 20 of Annex VIII to the Staff Regulations.
- 151 Third, that limitation meets a general-interest objective, within the meaning of Article 52(1) of the Charter, namely that of preventing abuse of rights and fraud, the prohibition of which is a general principle of EU law with which individuals must comply (judgment of 6 February 2018, *Altun and Others*, C-359/16, EU:C:2018:63, paragraph 49). The Court has, in fact, already held that the condition that the marriage must have lasted for a certain period of time in order for the surviving spouse to be entitled to the survivor's pension is intended to ensure the reality and stability of the relationship between the persons concerned (see, to that effect, judgment of 19 December 2019, *HK v Commission*, C-460/18 P, EU:C:2019:1119, paragraph 89). This is a uniform criterion applicable without distinction to all surviving spouses covered by the provisions of Articles 18 and 20 of Annex VIII to the Staff Regulations, which is designed not to presume the existence of abuse or fraud on the part of surviving spouses, but to prevent the commission of such abuses or fraud.
- 152 As regards, fourth, the assessment of proportionality, it is necessary, in the context of the review of the legality of a provision of EU law in the light of the principle of equal treatment and by reason of the broad discretion enjoyed by the EU legislature in relation to rules of the Staff Regulations, to ascertain, as has been pointed out in paragraphs 127 and 144 of the present judgment, whether, by imposing on surviving spouses who married an official after termination of the latter's service a requirement to have been married for a minimum duration of five years, whereas that minimum duration is, under Article 18 of Annex VIII to the Staff Regulations, only one year in the case of a marriage entered into with an official still in service, Article 20 of that annex provides for an arbitrary or manifestly inappropriate differentiation in relation to the general-interest objective referred to in the preceding paragraph of the present judgment.
- 153 The Court has already held that the condition of a minimum duration of one year laid down in Article 17 of Annex VIII to the Staff Regulations is neither arbitrary nor manifestly inappropriate in the light of that objective, that analysis applying *mutatis mutandis* to the condition of a

minimum period of one year laid down in Article 18 of Annex VIII to the Staff Regulations (see, by analogy, judgment of 19 December 2019, *HK v Commission*, C-460/18 P, EU:C:2019:1119, paragraph 90).

- 154 As the Commission, supported by the Council and the Parliament, indicated, in essence, in its written pleadings and during the hearing before the General Court, it appears neither arbitrary nor manifestly inappropriate to require, in Article 20 of Annex VIII to the Staff Regulations, a longer minimum duration of marriage than that provided for in Article 18 of that annex. In the situation referred to in Article 20, which is characterised by the fact that the marriage was entered into after termination of the official's service, there is likely to be greater incentive to commit abuses or fraud as a result of the greater predictability of and the closer proximity to the official's death since, as in the present cases, the official left service as a result of retirement, within the meaning of Article 52 of the Staff Regulations.
- 155 In those circumstances, it must be held that, by providing in Article 20 of Annex VIII to the Staff Regulations that the marriage must have lasted for a minimum of five years in order to prevent abuse and fraud, whereas the marriage must have lasted for a minimum of only one year in the situations covered by Article 18 of that annex, the EU legislature, in the exercise of its broad discretion, did not draw arbitrary or manifestly inappropriate distinctions.
- 156 It follows from the foregoing that, without there being any need to examine the objective of protecting the financial interests of the European Union, raised by the Commission at the hearing before the General Court, the difference in treatment established in Article 20 of Annex VIII to the Staff Regulations is consistent with Article 20 of the Charter.
- 157 Therefore, the first plea, alleging that Article 20 of Annex VIII to the Staff Regulations is unlawful, must be rejected.

The second plea, alleging misinterpretation of Article 27 of Annex VIII to the Staff Regulations and that that provision is unlawful

- 158 By her second plea in law, in Case T-243/18, VW claims that the Commission erred in law in its interpretation of Article 27 of Annex VIII to the Staff Regulations, in that, according to VW, that provision can be interpreted only as referring to the situation of a marriage occurring after divorce between different persons. In the alternative, VW claims that that provision is unlawful in so far as it infringes the principles of equal treatment and proportionality enshrined in Article 20 and Article 52 of the Charter, respectively.
- 159 The Commission, supported by the Parliament and the Council, disputes those arguments, referring, in particular, to the clear wording of Article 27 of Annex VIII to the Staff Regulations. Having claimed, in its defence, that the second plea was inadmissible, the Commission stated in its rejoinder that it was withdrawing that objection of inadmissibility as regards the main part of that plea, while maintaining it as regards the alternative part of that plea. In that latter regard, it states, inter alia, that the plea of illegality in respect of Article 27 of Annex VIII to the Staff Regulations is inadmissible on account of the lack of clarity in the application as regards that part of the second plea.
- 160 As regards, in the first place, the error of law allegedly committed by the Commission in its interpretation of Article 27 of Annex VIII to the Staff Regulations, it should be noted, as the Commission points out in its defence, that, according to its clear wording, that article exclusively

governs the right of divorced spouses of an official or former official to a survivor's pension. Without it being necessary to interpret the term 'remarries', which appears in the third paragraph of that article, it is common ground that, at the date of the death of her husband, VW was married to, and not divorced from, a former official, with the result that, as regards her entitlement to a survivor's pension, she came within the scope not of Article 27 of Annex VIII to the Staff Regulations but only of Article 20 of that annex. That article is not, as is apparent from the rejection of the first plea, vitiated by illegality and thus does not, in itself, deprive surviving spouses in VW's situation of being able to receive a survivor's pension provided that they fulfil the conditions laid down in Article 20.

- 161 As regards, in the second place, the plea of illegality in respect of Article 27 of Annex VIII to the Staff Regulations, it must be borne in mind that it follows from Article 21 of the Statute of the Court of Justice of the European Union and from Article 76 of the Rules of Procedure of the General Court that the application at first instance must, *inter alia*, state the subject matter of the dispute with sufficient clarity and precision to enable the defendant to prepare its defence and the Courts of the European Union to exercise their power of review. In particular, the heads of claim must be set out unambiguously so that the Courts of the European Union do not rule *ultra petita* or fail to rule on a claim (see, to that effect, order of 3 December 2019, *WB v Commission*, C-271/19 P, not published, EU:C:2019:1037, paragraph 15 and the case-law cited).
- 162 Although, from a formal point of view, VW's application identifies two parts to the second plea in law, it must be stated that the arguments that are supposed to support the second part of that plea, put forward in the alternative to the first part, are too brief to enable the EU Courts to assess whether it is well founded. Both its heading and its content contain general considerations which do not enable it to be examined in detail. In particular, that application does not explain how Article 27 of Annex VIII to the Staff Regulations infringes the principles of equal treatment and proportionality enshrined in Article 20 and Article 52 of the Charter, respectively.
- 163 It follows that, as regards the second part of the second plea, VW's application fails to comply with the requirements of Article 76(d) of the Rules of Procedure of the General Court and is, for that reason, inadmissible.
- 164 In the light of the foregoing considerations, the second plea in law must be rejected and VW's action in Case T-243/18 must therefore be dismissed.

The action in Case T-315/19

- 165 In support of her action before the General Court, in Case T-315/19, BT, supported by AIACE International, raised two pleas in law. The first plea alleges that the condition that the marriage must have lasted for a minimum of five years, laid down in Article 20 of Annex VIII to the Staff Regulations, is unlawful and the second plea alleges infringement of Article 1d of the Staff Regulations.
- 166 The Commission, supported by the Parliament and the Council, disputes those arguments.
- 167 As a preliminary point, it should be observed that the entire reasoning adopted by BT in her application before the General Court is based, in essence, on an infringement, in respect of Article 20 of Annex VIII to the Staff Regulations read in conjunction with Article 18 of that annex, of the principles of equal treatment and non-discrimination on grounds of age. Thus,

despite the formal presentation in her application of two pleas, BT puts forward only one single plea in law, alleging that Article 20 of Annex VIII to the Staff Regulations is unlawful in the light of those principles.

168 Moreover, it should be noted that, in her reply and then at the hearing before the General Court, BT stated that she was also claiming a breach of the duty to have regard for the welfare of officials, enshrined in Article 1d(6) of the Staff Regulations. It is true that the application refers merely to an infringement of Article 1d, with the result that BT could be considered to have implicitly referred to paragraph 6 of that article of the Staff Regulations. However, it is not apparent from the arguments put forward by BT in her application before the General Court that she intended to allege any breach of the duty to have regard for the welfare of officials, her arguments being centred solely on the breach of the principles of equal treatment and non-discrimination on grounds of age. It should also be pointed out in this regard that, in its defence, the Commission did not understand the second plea as relating to a breach of the duty to have regard for the welfare of officials.

169 Therefore, pursuant to the case-law referred to in paragraph 161 of the present judgment and in view of the fact that the Commission claimed, at the hearing before the General Court, that the plea based on the duty to have regard for the welfare of officials was inadmissible, it must be held that neither the second plea referred to in paragraph 165 of the present judgment nor the first plea can be understood as covering an infringement of the duty to have regard for the welfare of officials referred to in Article 1d(6) of the Staff Regulations.

170 With the benefit of those preliminary considerations, it is necessary to examine the single plea, alleging that Article 20 of Annex VIII to the Staff Regulations is unlawful in the light of the principles of equal treatment and non-discrimination on grounds of age.

171 In that context, as regards, in the first place, the plea of illegality in respect of Article 20 of Annex VIII to the Staff Regulations in so far as it is based on an infringement of the principle of equal treatment as enshrined in Article 20 of the Charter and reiterated in Article 1d of the Staff Regulations, it is necessary to refer to paragraphs 139 to 156 of the present judgment and to reject, for the same reasons, this first part of the single plea in law.

172 As regards, in the second place, the plea of illegality in respect of Article 20 of Annex VIII to the Staff Regulations in so far as it alleges infringement of the principle of non-discrimination on grounds of age as enshrined in Article 21(1) of the Charter and reiterated in Article 1d of the Staff Regulations, it should be noted, first, as stated in paragraph 146 of the present judgment, that the situations referred to in Articles 18 and 20 of Annex VIII to the Staff Regulations are comparable.

173 Second, it should be noted that, by providing, in Articles 18 and 20, for different minimum durations of marriage, the EU legislature introduced a difference of treatment indirectly based on age.

174 As has been stated in paragraphs 99 and 154 of the present judgment, (i) the situations covered by the provisions of Articles 18 and 20 of Annex VIII to the Staff Regulations differ as regards the date on which the marriage was entered into in relation to whether or not the official's service had terminated as a result of Article 47 of the Staff Regulations and (ii) such termination of service occurs, for the most part, as is apparent, in essence, from the parties' consistent arguments, by the effect of being retired within the meaning of Article 52 of the Staff Regulations. In view of the fact that, in its widest application, Article 52 of the Staff Regulations provides, as BT points out in her

reply before the General Court, that the retirement of officials entitled to receive a retirement pension, for the purposes of Article 20 of Annex VIII to the Staff Regulations, may take place between the ages of 58 and 70 years, it must be held that the former officials covered by that Article 20 have generally married at a more advanced age than former officials referred to in Article 18 of Annex VIII to the Staff Regulations.

- 175 It follows that Article 20 of Annex VIII to the Staff Regulations, read in conjunction with Article 18 of that annex, establishes a difference in treatment indirectly based on the age of the official, it being noted that the fact that officials may, under Article 52 of the Staff Regulations, retire and receive a retirement pension at ages differing by 12 years in the most extreme cases cannot suffice to deny that that difference in treatment is indeed based on age (see, to that effect, judgment of 2 April 2020, *Comune di Gesturi*, C-670/18, EU:C:2020:272, paragraphs 26 to 28).
- 176 Third, it is necessary to refer to paragraphs 148 to 154 of the present judgment and to conclude, on the very same grounds, without there being any need to examine the objective of protecting the financial interests of the European Union, raised by the Commission in its rejoinder before the General Court, that the difference in treatment indirectly based on age, established in Article 20 of Annex VIII to the Staff Regulations, complies with the principle of non-discrimination on grounds of age as enshrined in Article 21(1) of the Charter and reiterated in Article 1d of the Staff Regulations.
- 177 Therefore, the second part of the single plea, alleging that Article 20 of Annex VIII to the Staff Regulations is unlawful in the light of the principle of non-discrimination on grounds of age, must be rejected.
- 178 In the light of the foregoing considerations, the single plea in law alleging that Article 20 of Annex VIII to the Staff Regulations is unlawful must be rejected and, accordingly, BT's action in Case T-315/19 must be dismissed.

The action in Case T-442/17 RENV

- 179 As a preliminary point, it must be borne in mind that the Court of Justice may give final judgment in the action only within the limits of the matter before it (judgment of 23 November 2021, *Council v Hamas*, C-833/19 P, EU:C:2021:950, paragraph 78 and the case-law cited).
- 180 In support of her action before the General Court in Case T-442/17 RENV, RN relied on three pleas in law. Since the first and third pleas were rejected by the General Court in the third judgment under appeal and RN did not challenge, in a cross-appeal, the merits of the parts of that judgment devoted to those two pleas, the setting aside of that judgment by the Court of Justice does not call into question that judgment in so far as the General Court rejected those pleas. RN could have brought a cross-appeal challenging the General Court's rejection of the first and third pleas put forward at first instance, since Article 178(1) of the Rules of Procedure of the Court of Justice provides that the form of order sought in the cross-appeal is to seek to have set aside, in whole or in part, the decision of the General Court, without limiting the scope of the form of order sought to the decision of the General Court as set out in the operative part of that decision, unlike Article 169(1) of those rules, which relates to the form of order sought in the appeal. In the absence of such a cross-appeal, the third judgment under appeal therefore has the force of *res judicata* as regards the rejection of the first and third pleas (see, by analogy, judgment of 23 November 2021, *Council v Hamas*, C-833/19 P, EU:C:2021:950, paragraphs 81 and 82 and the case-law cited).

- 181 It follows that the Court of Justice need only rule, in the context of the action in Case T-442/17 RENV, on the second plea in law relied on by RN before the General Court. In that regard, it should be noted that the Commission disputed, before the General Court, the admissibility of that plea. That plea of inadmissibility must, however, be rejected on the same grounds as those set out by the General Court in paragraphs 62 and 63 of the third judgment under appeal, which, moreover, were not contested by the Commission in its appeal.
- 182 In the light of those preliminary considerations, it should be noted that, by her second plea, RN claims that Article 20 of Annex VIII to the Staff Regulations, read in conjunction with Article 18 of that annex, is unlawful in that it infringes the principles of equal treatment and non-discrimination on grounds of age laid down in Article 20 and Article 21(1) of the Charter, respectively, and reiterated in Article 1d of the Staff Regulations, as well as the principle of proportionality.
- 183 The Commission, supported by the Parliament, disputes those arguments.
- 184 In that regard, it is appropriate to refer to paragraphs 171 to 176 of the present judgment and to reject, on the very same grounds, the second plea in law and, therefore, to dismiss RN's action in Case T-442/17 RENV.

Costs

- 185 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to costs.
- 186 Under Article 138(1) of the Rules of Procedure of the Court, which applies 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.
- 187 Since VW has been unsuccessful after the appeals have been allowed and the Commission and the Council have applied for costs, VW must be ordered to bear her own costs and to pay those incurred by those two institutions both at first instance in Case T-243/18 and in the present appeals in Cases C-116/21 P and C-139/21 P.
- 188 Since BT has been unsuccessful after the appeals have been allowed and the Commission and the Council have applied for costs, BT must be ordered to bear her own costs and to pay those incurred by those two institutions both at first instance in Case T-315/19 and in the present appeals in Cases C-117/21 P and C-138/21 P.
- 189 Since RN has been unsuccessful after the appeal has been allowed and the Commission has applied for costs, she must be ordered to bear her own costs and to pay those incurred by the Commission both at first instance in Cases F-104/15 and T-442/17 RENV and in the present appeal in Case C-118/21 P. By contrast, since the Commission has not applied for RN to be ordered to pay the costs in Case T-695/16 P, each of those parties must be ordered to bear their own costs in that case.

- 190 Article 184(4) of the Rules of Procedure of the Court of Justice provides that, 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. Where an intervener at first instance takes part in the proceedings, the Court may decide that he or she is to bear his or her own costs.
- 191 In accordance with those provisions, the Parliament and AIACE International, interveners at first instance, which participated in the proceedings before the Court of Justice, are to bear their own costs in all the cases in which they respectively intervened at first instance and in the appeals, including, as regards the Parliament, in Cases F-104/15 and T-695/16 P.

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

- 1. Sets aside the judgments of the General Court of the European Union of 16 December 2020, *VW v Commission* (T-243/18, not published, EU:T:2020:619), of 16 December 2020, *BT v Commission* (T-315/19, not published, EU:T:2020:622), and of 16 December 2020, *RN v Commission* (T-442/17 RENV, EU:T:2020:618);**
- 2. Dismisses VW's action in Case T-243/18, BT's action in Case T-315/19 and RN's action in Case T-442/17 RENV;**
- 3. Orders VW to bear her own costs and to pay those incurred by the European Commission and the Council of the European Union in Case T-243/18 as well as in Cases C-116/21 P and C-139/21 P;**
- 4. Orders BT to bear her own costs and to pay those incurred by the European Commission and the Council of the European Union in Case T-315/19 as well as in Cases C-117/21 P and C-138/21 P;**
- 5. Orders RN to bear her own costs and to pay those incurred by the European Commission in Cases F-104/15 and T-442/17 RENV as well as in Case C-118/21 P;**
- 6. Orders the European Commission and RN to bear their own costs in Case T-695/16 P;**
- 7. Orders the European Parliament and the International Association of Former Officials of the European Union (AIACE International) to bear their own costs in all of the cases in which they respectively intervened at first instance and in the appeals, including, as regards the European Parliament, in Cases F-104/15 and T-695/16 P.**

[Signatures]