



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

23 March 2023*

(Appeal – Civil service – Psychological harassment – Medical opinions – Unjustified absences – Remuneration – Staff Regulations of Officials of the European Union – Article 11a – Conflict of interests – Article 21a – Manifestly illegal order – Article 23 – Compliance with laws and police regulations – Disciplinary procedure – Removal from post – Withdrawal of removal – New disciplinary procedure – Fresh removal from post)

In Case C-640/20 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 23 November 2020,

PV, represented by D. Birkenmaier, Rechtsanwalt,

appellant,

the other party to the proceedings being:

European Commission, represented initially by T.S. Bohr, B. Mongin and A.-C. Simon, and subsequently by T.S. Bohr and A.-C. Simon, acting as Agents,

defendant at first instance,

THE COURT (First Chamber),

composed of A. Arabadjiev, President of the Chamber, L. Bay Larsen (Rapporteur), Vice-President of the Court, P.G. Xuereb, A. Kumin and I. Ziemele, Judges,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 29 September 2022,

gives the following

* Language of the case: French.

Judgment

- 1 By his appeal, PV asks the Court of Justice to set aside the judgment of the General Court of the European Union of 30 January 2020, *PV v Commission* (T-786/16 and T-224/18, not published, ‘the judgment under appeal’, EU:T:2020:17), by which the General Court dismissed the actions brought by PV seeking,
 - in Case T-786/16, annulment, principally, of PV’s appraisal reports for the years 2014 to 2016, of the decisions of the Director-General of the European Commission’s Directorate-General (DG) for Interpretation of 31 May, 5 July, 31 July and 15 September 2016, relating to deductions from PV’s salary, of the decision of the appointing authority of 28 November 2016 rejecting the complaints lodged against the decisions of 31 May and 5 July 2016 relating to deductions from PV’s salary, of the pre-information letter from the Office for the Administration and Payment of Individual Entitlements (PMO) of 21 June 2016 informing PV that he owed a debt amounting to EUR 33 593.88, of the decision of PMO of 11 July 2016 to suspend payment of PV’s salary from 1 July 2016, of the memorandum from the Director-General of DG Interpretation of 31 July 2016 announcing the intention to consider PV’s absences for the period from 2 June to 31 July 2016 as unauthorised and to make corresponding deductions from his salary, of the pre-information letter from PMO of 21 September 2016 informing PV that he owed a debt amounting to EUR 42 704.74, of the decision of the appointing authority of 17 January 2017 rejecting the complaint brought against those acts, of the decision of the appointing authority of 26 July 2016 to remove PV from his post, of the decision of the appointing authority of 2 February 2017 rejecting the complaint lodged against that removal decision, of the debit note of 20 July 2017, of the decision of the appointing authority of 29 November 2017 rejecting the complaint lodged against that note and of disciplinary procedure CMS 13/087, and
 - annulment, in the alternative, of the medical opinions of 27 June and 10 October 2014, of the notes of the medical officer of 16 July, 18 July, 8 August, 4 September and 4 December 2014, of 4 February, 13 April, 4 June, 11 August, 14 October and 4 December 2015, of 5 February, 22 March, 18 April, 3 June, 30 June and 25 July 2016, of the decisions rejecting the requests for assistance of 23 October 2014, of 20 January, 20 March and 30 July 2015 and of 15 March and 18 May 2016, of the decisions of the Director-General of DG Interpretation of 9 February, 30 March, 5 May, 24 June, 1 October and 12 November 2015, of 15 January and 22 April 2016, relating to deductions from PV’s salary, of the decisions of the appointing authority rejecting the complaints lodged against those decisions relating to salary deductions, of the debt letters of 10 March, 11 May, 10 June, 11 August, 13 November and 9 December 2015 and of 18 July 2016, of the decisions of the appointing authority of 12 March, 11 August and 13 October 2015, and of 7 June and 21 September 2016, rejecting the complaints relating to the appraisal exercises from 2013 to 2015 and of the decision of the appointing authority of 14 July 2016 rejecting the complaint concerning PV’s unjustified absences of 16 and 17 March 2016;
 - in Case T-224/18, a finding that PV was the victim of psychological harassment, and
 - annulment of disciplinary procedure CMS 17/025, of the decision of the appointing authority of 2 May 2018 rejecting the complaint brought against the decision to initiate that procedure, of the emails from DG Human Resources and Security of 23 October 2017 and 16 March 2018 inviting PV to draft his self-assessment relating to the active service periods 2016 and 2017, of the decisions of the appointing authority of 16 March and 1 June 2018 rejecting the complaints

lodged against those emails, of the decision of the appointing authority of 24 July 2017 withdrawing PV's removal from his post, of the decision of the appointing authority of 15 January 2018 rejecting the complaint brought against that decision withdrawing PV's removal from his post, of the decision of PMO of 12 September 2017 concerning the set-off of the respective debts between PV and the Commission, of the decision of the appointing authority of 9 March 2018 rejecting the complaint made against that decision to offset the debts and of the decision of the Director-General of DG Interpretation of 13 October 2017 to suspend payment of PV's salary with effect from 1 October 2017;

- in Cases T-786/16 and T-224/18, compensation for the material and non-material damage allegedly suffered by PV.

Legal context

- 2 Article 1e(2) of the Staff Regulations of Officials of the European Union, in the version applicable to the dispute ('the Staff Regulations'), states:

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

- 3 Article 11a(1) and (2) of the Staff Regulations provides:

'1. An official shall not, in the performance of his duties and save as hereinafter provided, deal with a matter in which, directly or indirectly, he has any personal interest such as to impair his independence, and, in particular, family and financial interests.

2. Any official to whom it falls, in the performance of his duties, to deal with a matter referred to above shall immediately inform the Appointing Authority. The Appointing Authority shall take any appropriate measure, and may in particular relieve the official from responsibility in this matter.'

- 4 Article 12a(1) to (3) of the Staff Regulations provides:

'1. Officials shall refrain from any form of psychological or sexual harassment.

2. An official who has been the victim of psychological or sexual harassment shall not suffer any prejudicial effects on the part of the institution. An official who has given evidence on psychological or sexual harassment shall not suffer any prejudicial effects on the part of the institution, provided the official has acted honestly.

3. "Psychological harassment" means any improper conduct that takes place over a period, is repetitive or systematic and involves physical behaviour, spoken or written language, gestures or other acts that are intentional and that may undermine the personality, dignity or physical or psychological integrity of any person.'

- 5 Article 21a(1) and (2) of the Staff Regulations is worded as follows:

'1. An official who receives orders which he considers to be irregular or likely to give rise to serious difficulties shall inform his immediate superior, who shall, if the information is given in

writing, reply in writing. Subject to paragraph 2, if the immediate superior confirms the orders and the official believes that such confirmation does not constitute a reasonable response to the grounds of his concern, the official shall refer the question in writing to the hierarchical authority immediately above. If the latter confirms the orders in writing, the official shall carry them out unless they are manifestly illegal or constitute a breach of the relevant safety standards.

2. If the immediate superior considers that the orders must be executed promptly, the official shall carry them out unless they are manifestly illegal or constitute a breach of the relevant safety standards. At the request of the official, the immediate superior shall be obliged to give such orders in writing.'

6 The first paragraph of Article 23 of the Staff Regulations states:

'The privileges and immunities enjoyed by officials are accorded solely in the interests of the Union. Subject to the Protocol on Privileges and Immunities, officials shall not be exempt from fulfilling their private obligations or from complying with the laws and police regulations in force.'

7 Article 24 of the Staff Regulations reads as follows:

'The Union shall assist any official, in particular in proceedings against any person perpetrating threats, insulting or defamatory acts or utterances, or any attack to person or property to which he or a member of his family is subjected by reason of his position or duties.

It shall jointly and severally compensate the official for damage suffered in such cases, in so far as the official did not either intentionally or through grave negligence cause damage and has been unable to obtain compensation from the person who did cause it.'

8 The first and second paragraphs of Article 25 of the Staff Regulations provide:

'Officials may submit requests concerning issues covered by these Staff Regulations to the Appointing Authority of their institution.

Any decision relating to a specific individual which is taken under these Staff Regulations shall at once be communicated in writing to the official concerned. Any decision adversely affecting a member of temporary staff shall state the grounds on which it is based.'

9 Article 59(1) and (3) of the Staff Regulations provides:

'1. An official who provides evidence of being unable to carry out his duties by reason of illness or accident shall be entitled to sick leave.

The official concerned shall notify his institution of his incapacity as soon as possible and at the same time state his current address. He shall produce a medical certificate if he is absent for more than three days. ... Failing this, and unless failure to send the certificate is due to reasons beyond his control, the official's absence shall be considered as unauthorised.

The official may at any time be required to undergo a medical examination arranged by the institution. If the examination cannot take place for reasons attributable to the official, his absence shall be considered as unauthorised as from the date that the examination is due to take place.

If the finding made in the examination is that the official is able to carry out his duties, his absence shall, subject to the following subparagraph, be regarded as unjustified from the date of the examination.

If the official considers the conclusions of the medical examination arranged by the Appointing Authority to be unjustified on medical grounds, he or a doctor acting on his behalf may within two days submit to the institution a request that the matter be referred to an independent doctor for an opinion.

...

3. Without prejudice to the application of the rules on disciplinary proceedings, where appropriate, any absence considered to be unjustified under paragraphs 1 and 2 shall be deducted from the annual leave of the official concerned. In the event that the official has no outstanding leave entitlement, he shall lose the benefit of his remuneration for the corresponding period.'

- 10 Article 6(5) of Annex IX to the Staff Regulations states:

'The official concerned shall be entitled to reject one of the Board members within five days of the Board's establishment. The institution shall also be entitled to reject one of the Board members.

Within the same time limit, Board members may ask to be excused from duty for legitimate reasons and shall withdraw if a conflict of interests exists.

...'

Background to the dispute

- 11 The background to the dispute is set out in paragraphs 1 to 33 of the judgment under appeal. For the purposes of the present proceedings, it may be summarised as follows.
- 12 PV, who had been an official of the European Union since 16 July 2007, was assigned to the Commission's DG Employment, Social Affairs and Inclusion until 30 September 2009.
- 13 Considering himself to be a victim of harassment, PV submitted, on 5 August 2009, a request for assistance on the basis of Article 24 of the Staff Regulations. That procedure was closed on 9 June 2010 following an investigation conducted by the Investigation and Disciplinary Office of the Commission, which concluded that the conditions required by Article 12a(3) of the Staff Regulations for particular conduct to be classified as psychological harassment had not been fulfilled. PV was transferred to the Commission's DG Budget on 1 October 2009.
- 14 On 1 April 2013, PV was assigned to the 'Budget and Financial Management' Unit of DG Interpretation.
- 15 On 12 November 2013, the head of that unit lodged a disciplinary complaint against PV, alleging behavioural problems, failure to apply procedures in force and unsatisfactory performance.
- 16 Between 8 May 2014 and 31 July 2016, PV did not show up for work, considering himself to be a victim of psychological harassment.

- 17 On 27 June and 10 October 2014, the Commission's medical officer issued medical opinions stating that PV was fit to return to work. Subsequently, PV was invited to medical examinations but did not respond to those invitations.
- 18 Taking the view that PV's absences were unjustified, the Director-General of DG Interpretation adopted several decisions to withhold PV's salary.
- 19 On 23 December 2014, PV lodged a second request for assistance under Article 24 of the Staff Regulations. By decision of 12 March 2015, the appointing authority decided that there was no evidence of any psychological harassment against PV and concluded that the application of emergency distancing measures was therefore not justified.
- 20 On 10 July 2015, the Commission initiated disciplinary procedure CMS 13/087 against PV for repeated insubordination in the performance of his duties, inappropriate behaviour and unjustified absences.
- 21 By decisions of 31 May and 5 July 2016, the Director-General of DG Interpretation found that PV's absences for the periods from 5 February to 31 March 2016 and from 4 April to 31 May 2016 were unauthorised and decided to make deductions from PV's salary. The complaints lodged by PV against those decisions were rejected by decision of the appointing authority of 28 November 2016.
- 22 By decision of 11 July 2016, PMO decided to suspend payment of PV's salary with effect from 1 July 2016. The complaint lodged by PV against that decision was rejected by decision of the appointing authority of 17 January 2017.
- 23 By decision of the appointing authority of 26 July 2016, adopted in the wake of disciplinary procedure CMS 13/087, PV was removed from his post with effect from 1 August 2016 ('the removal decision of 26 July 2016'). The complaint lodged by PV against that decision was rejected by decision of the appointing authority of 2 February 2017.
- 24 By memorandum of 31 July 2016, the Director-General of DG Interpretation informed PV of his intention to consider the latter's absences from 2 June to 31 July 2016 as unauthorised and to make deductions from his salary. The complaint lodged by PV against that memorandum was rejected by decision of the appointing authority of 17 January 2017.
- 25 By pre-information letter of 21 September 2016, PMO informed PV that he owed a debt to the Commission amounting to EUR 42 704.74, corresponding to his unjustified absences. The complaint lodged by PV against that decision was rejected by decision of the appointing authority of 17 January 2017.
- 26 On 24 July 2017, the appointing authority withdrew its removal decision of 26 July 2016 and PV was informed, by memorandum from the Director-General of DG Human Resources and Security, that he would be reinstated on 16 September 2017 within the 'IT and conference systems' Unit of DG Interpretation. The complaint lodged by PV against the decision withdrawing his removal from his post was rejected by decision of the appointing authority of 15 January 2018.

- 27 By memorandum of 12 September 2017, the Director of PMO offset the amounts owed to PV for the period during which he had been removed from his duties against his debts to the Commission, which resulted in a payment of EUR 9 550 to PV. The complaint lodged by PV against that offsetting memorandum was rejected by decision of the appointing authority of 9 March 2018.
- 28 On 20 September 2017, PV was informed that his absences since 16 September 2017 were considered to be unauthorised.
- 29 On 6 October 2017, the Commission initiated disciplinary procedure CMS 17/025, in respect of the same complaints as those covered by disciplinary procedure CMS 13/087. The complaint lodged by PV against the initiation of the new disciplinary procedure was rejected by decision of the appointing authority of 2 May 2018.
- 30 On 13 October 2017, the Director-General of DG Interpretation adopted a decision suspending payment of PV's salary with effect from 1 October 2017.
- 31 By email of 15 November 2017, PV was invited to participate in appraisal exercise FP 2016. The complaint lodged by PV against that invitation was rejected by decision of the appointing authority of 16 March 2018.
- 32 By email of 22 February 2018, PV was invited to participate in appraisal exercise FP 2017. The complaint lodged by PV against that invitation was rejected by decision of the appointing authority of 20 June 2018.
- 33 By decision of 21 October 2019, adopted in the wake of disciplinary procedure CMS 17/025, the Commission removed PV from his post ('the removal decision of 21 October 2019'). That removal came into effect on 1 November 2019.

The action before the General Court and the judgment under appeal

- 34 By application lodged at the Registry of the General Court on 12 December 2017, after having been granted legal aid by the President of the General Court, PV brought an action before the General Court, registered as Case T-786/16, seeking, in the first place, annulment of the acts at issue, referred to in the first and second indents of paragraph 1 of the present judgment. In the second place, PV claimed that the Commission should be ordered to pay EUR 889 000 and EUR 132 828.67 as compensation for the alleged non-material and material damage, respectively.
- 35 In support of that action, PV put forward five pleas in law alleging, in essence, infringement, first, of Article 12a of the Staff Regulations, second, of Articles 21a and 23 of the Staff Regulations, third, of the principle of care and of Article 24 of the Staff Regulations, fourth, of Articles 59 and 60 of the Staff Regulations and, fifth, of Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter').
- 36 By application lodged at the Registry of the General Court on 11 April 2018, PV brought an action before the General Court, registered as Case T-224/18, seeking, in the first place, a declaration that he had been the victim of psychological harassment, in the second place, annulment of the acts at issue referred to in the fourth indent of paragraph 1 of the present judgment, and, in the

third place, an order that the Commission pay, principally, EUR 98 000 and EUR 23 190.44 as compensation for the alleged material and non-material damage, respectively, and, in the alternative, EUR 7 612.87 as compensation for the alleged material damage.

- 37 In support of that action, PV put forward seven pleas in law alleging, in essence, infringement, first, of Article 12a of the Staff Regulations, second, of Articles 21a and 23 of the Staff Regulations, third, of Article 11a of the Staff Regulations and of Article 41 of the Charter, fourth, of the principle of care, fifth, of the principle of non-performance and of the principle of legality, sixth, of the principle *ne bis in idem* and, seventh, of Article 41 of the Charter.
- 38 By the judgment under appeal, the General Court dismissed both of the actions brought by PV.
- 39 The General Court, in the first place, in paragraphs 67 to 130 of that judgment, rejected as inadmissible PV's head of claim requesting that the General Court find that he had been the victim of psychological harassment and the claims for annulment, inter alia, of the removal decision of 26 July 2016, of disciplinary procedures CMS 13/087 and CMS 17/025 and of the decisions whose annulment he seeks in the alternative in Case T-786/16.
- 40 The General Court, in the second place, in paragraphs 131 and 132 of the same judgment, found that there was no need to examine the fifth plea raised in Case T-786/16 or the sixth and seventh pleas raised in Case T-224/18, since those pleas were put forward in support of claims for annulment of the first and second disciplinary procedures, respectively, which had been declared inadmissible.
- 41 The General Court, in the third place, in paragraphs 135 to 248 of the judgment under appeal, rejected the other pleas in the action.
- 42 To that end, it first found, in paragraph 173 of that judgment, that the acts of psychological harassment alleged by PV had not been established to the requisite legal standard.
- 43 The General Court then, in paragraphs 177 to 241 of the said judgment, rejected PV's pleas alleging infringement of Articles 11a, 21a, 23, 24, 59 and 60 of the Staff Regulations and of the principles of legality, care and the defence of non-performance.
- 44 The General Court, in the fourth place, in paragraphs 249 to 255 of the same judgment, rejected PV's claims for compensation, on the ground that those claims were based, in essence, on the alleged illegality of the decisions that were the subject of the actions for annulment and that the illegality of those decisions had not been established by PV.

Forms of order sought

- 45 By his appeal, PV claims that the Court of Justice should:
- set aside the judgment under appeal;
 - rule on the dispute; and
 - order the Commission to pay the costs of the proceedings at both instances.

46 The Commission contends that the Court should:

- dismiss the appeal and
- order PV to pay the costs.

The appeal

47 PV relies on 10 grounds in support of his appeal, alleging, first, infringement of Articles 72 and 270 TFEU and Article 23 of the Staff Regulations; second, infringement of Article 4 TEU, Article 41 of the Charter and Article 11a of the Staff Regulations; third, infringement of the principle *fraus omnia corrumpit* and of Article 36 of the Statute of the Court of Justice of the European Union; fourth, infringement of Articles 1, 3, 4, 31 and 41 of the Charter and of Articles 1e and 12a of the Staff Regulations; fifth, misinterpretation of Article 59 of the Staff Regulations and infringement of an internal Commission decision; sixth, infringement of the principle of the defence of non-performance; seventh, infringement of Article 41 of the Charter and Article 25 of the Staff Regulations; eighth, distortion of the facts; ninth, infringement of Article 15 of the Charter and, tenth, breach of the prohibition on ruling *ultra petita*.

The first ground of appeal

Arguments of the parties

- 48 By his first ground of appeal, PV criticises the assessment made by the General Court, in paragraphs 184 and 185 of the judgment under appeal, of his line of argument alleging infringement of Articles 21a and 23 of the Staff Regulations.
- 49 In the first place, the General Court erred in law in holding, in paragraph 184 of that judgment, that only a conviction could establish acts of psychological harassment or intellectual forgery and that an order for a measure of inquiry would be entirely irrelevant in the examination of whether such facts are well founded.
- 50 In the second place, the General Court infringed Article 270 TFEU by holding, in paragraph 185 of the said judgment, that the employment relationship between an official and his or her institution is governed exclusively by the Staff Regulations, when other sources of law are relevant, particularly the criminal law of the Member State in which the staff member concerned works. Thus, any criminal offence committed by a staff member, such as psychological harassment, the forgery of public documents or corruption, which is punishable under the Belgian Criminal Code, also constitutes an infringement of Article 23 of the Staff Regulations. The orders issued by the Belgian investigating judge following complaints lodged by PV against several officials demonstrate that such criminal offences have been committed. By failing to take into account the evidence on which those judicial decisions are based, the General Court also infringed Article 2 TEU and Article 67(3) TFEU.
- 51 In the third place, the General Court distorted the facts by failing to take into account a number of decisive factors. First of all, the General Court failed to take into consideration the orders adopted by a Belgian investigating judge for the hearing of certain Commission officials involved in the adoption of certain acts at issue even though those orders were adopted under a procedural

regime which shows that those persons are regarded as being suspected of having committed the alleged offences. Next, the General Court should have taken into account the seizure, which took place on 19 September 2018, by a Belgian investigating judge of disciplinary file CMS 17/025 as incriminating evidence of the offence of forgery of public documents. Last, a false signature, which appears on the salary deduction decision of 15 September 2016, should have led the General Court to apply the principle *fraus omnia corrumpit*.

- 52 In addition, the General Court distorted the facts by finding, in paragraph 184 of the judgment under appeal, that, at the hearing, the Commission argued, without being challenged on that point by PV, that the Belgian courts had ordered him to pay the Commission's medical officer a sum of EUR 25 000 by way of compensation. In actuality, PV was not ordered to pay such a sum by way of compensation. On the contrary, the tribunal correctionnel de Bruxelles (Criminal Court, Brussels, Belgium) found that the direct summons from a Commission medical officer was inadmissible and ordered PV to pay a procedural indemnity of EUR 440.
- 53 The Commission contends that the first ground of appeal must be rejected.

Findings of the Court

- 54 As regards, first, the error of law invoked by PV with regard to the General Court's holding in paragraph 184 of the judgment under appeal, it should be noted that PV criticises the General Court, on the one hand, for having considered that only a conviction could establish facts of psychological harassment or intellectual forgery and, on the other hand, for having considered that an order for a measure of inquiry would be entirely irrelevant in the context of the examination of the merits of such facts.
- 55 In that regard, it should be noted, in the first place, that the General Court rightly considered, in paragraph 184 of the judgment under appeal, that, by their nature, documents which do not contain a definitive finding of acts constituting intellectual forgery or harassment cannot, in themselves, establish such facts.
- 56 In the second place, PV's claim that the General Court considered, in paragraph 184 of the judgment under appeal, that an order for a measure of inquiry would be entirely irrelevant for the purposes of establishing acts of psychological harassment or intellectual forgery, stems from a misreading of that paragraph 184.
- 57 In finding, in the said paragraph 184, that none of the acts which PV described as psychological harassment or intellectual forgery had been characterised as such or had been the subject of a criminal conviction by a Belgian national court, the General Court found that the orders adopted in the context of the criminal investigation procedure relied on by PV could not, in themselves, establish those acts and were therefore not decisive in the context of that assessment, without, however, deeming them irrelevant.
- 58 Consequently, PV's line of argument according to which the General Court erred in law in the same paragraph 184 is unfounded.
- 59 Second, so far as concerns the interpretation of Article 270 TFEU adopted by the General Court in paragraph 185 of the judgment under appeal, by which it ruled out, on the basis of that provision, any relevance of national law in the examination of PV's arguments relating to the infringement of Articles 21a and 23 of the Staff Regulations, it should be noted that Article 270 TFEU provides that

the Court of Justice is to have jurisdiction in any dispute between the Union and its servants within the limits and under the conditions laid down in the Staff Regulations and the Conditions of Employment of other servants of the Union.

- 60 It follows from that provision that any dispute between an official or servant of the European Union and the institution to which he or she belongs which originates in the employment relationship between the person concerned and that institution falls within the exclusive jurisdiction of the Court of Justice (see, to that effect, judgment of 15 July 2021, *OH (Immunity from jurisdiction)*, C-758/19, EU:C:2021:603, paragraphs 24 and 34).
- 61 However, it is in no way apparent from the wording of Article 270 TFEU that the employment relationship between an official and his or her institution would be governed exclusively by the Staff Regulations.
- 62 On the one hand, as the Advocate General observed in points 62 to 71 of his Opinion, other provisions of EU law, both primary and secondary, apply to the employment relationship between an official and his or her institution.
- 63 On the other hand, certain provisions of the Staff Regulations contain references to the national law of the Member States.
- 64 This is the case, in particular, of Articles 21a and 23 of the Staff Regulations, which were relied on by PV in support of his actions for annulment.
- 65 Thus, Article 23 of the Staff Regulations, relating to the privileges and immunities enjoyed by officials, states, in its first paragraph, that the persons concerned are not exempt from complying with the laws and police regulations in force. Accordingly, it is apparent from that provision that officials are required to comply with the laws adopted by the Member State of their place of employment, compliance with which is binding on every person in its territory, including the criminal law of that Member State.
- 66 Likewise, Article 21a(1) of the Staff Regulations provides that an official is not required to carry out orders which are manifestly illegal or constitute a breach of the relevant safety standards. That provision, read in combination with the first paragraph of Article 23 of the Staff Regulations, thus allows an official to refuse to carry out an order that he or she has received on the ground that carrying out the order would entail an infringement of the criminal law of the Member State of his or her place of employment.
- 67 It follows from those considerations that the General Court erred in law in holding, in paragraph 185 of the judgment under appeal, that the employment relationship between an official and his or her institution is governed exclusively by the Staff Regulations, thereby denying, on the basis of Article 270 TFEU, any relevance to national criminal law.
- 68 However, even if the grounds of a judgment of the General Court reveal an infringement of EU law, but its operative part appears well founded on other grounds of law, the appeal must be dismissed (judgment of 25 February 2021, *Dalli v Commission*, C-615/19 P, EU:C:2021:133, paragraph 165 and the case-law cited).

- 69 In that regard, it should be noted that Article 21a of the Staff Regulations permits an official to refuse to carry out an order where that order is manifestly illegal or constitutes a breach of the relevant safety standards.
- 70 It follows that that provision cannot be relied on in support of an action for annulment of decisions which do not follow from an official's refusal to comply with an order that he or she has received.
- 71 It must be pointed out that, in the present case, none of the decisions at issue in Cases T-786/16 and T-224/18 follows from PV's refusal to carry out an order.
- 72 In terms of the complaint alleging infringement of Article 23 of the Staff Regulations, it must be held that the mere allegation that criminal offences were committed by officials who were involved in the adoption of the decisions at issue and that criminal investigations were initiated in respect of those offences, in the context of which those officials were heard, is not sufficient to demonstrate that such offences were committed during the adoption of those decisions. In so far as PV's line of argument in paragraph 185 of the judgment under appeal is based on such unsubstantiated allegations, it should, in any event, have been rejected as unfounded.
- 73 Accordingly, the line of argument alleging that the General Court erred in law in paragraph 185 must be rejected as ineffective.
- 74 In respect of PV's allegation that the General Court infringed Article 2 TEU and Article 67(3) TFEU by failing to take into account the evidence supporting the orders made by a Belgian investigating judge and relied on by PV, suffice it to note that those provisions have neither the purpose nor the effect of determining the rules relating to the assessment of facts and evidence by the EU judicature.
- 75 Third, regarding PV's claim that the General Court carried out 'distortions by omission', it should be noted that, although the line of argument developed by PV in his first ground of appeal relates to paragraphs 184 and 185 of the judgment under appeal, the General Court did not make any findings of fact in that paragraph 185, meaning that PV's line of argument alleging a distortion of the facts must be understood as seeking to challenge the facts established in paragraph 184 of that judgment.
- 76 In the said paragraph 184, the General Court *inter alia* found that none of the acts which PV had described as psychological harassment or intellectual forgery had been characterised as such or had been the subject of a criminal conviction by a Belgian national court. It also noted that the complaints lodged by PV with the Belgian courts had given rise to criminal investigations.
- 77 In that regard, it is worth recalling that it follows from Article 256 TFEU and from the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union that an appeal lies on points of law only. The General Court therefore has exclusive jurisdiction to find and appraise the relevant facts and to assess the evidence. The appraisal of those facts and the assessment of that evidence thus do not, save where the facts and evidence are distorted, constitute a point of law which is subject, as such, to review by the Court of Justice on appeal (judgment of 21 October 2021, *Parliament v UZ*, C-894/19 P, EU:C:2021:863, paragraph 46 and the case-law cited).

- 78 There is such distortion where, without recourse to new evidence, the assessment of the existing evidence is clearly incorrect. However, such distortion must be obvious from the documents on the Court's file, without there being any need to carry out a new assessment of the facts and the evidence. Moreover, where an appellant alleges distortion of the evidence by the General Court, he or she must indicate precisely the evidence alleged to have been distorted by that Court and show the errors of appraisal which, in his or her view, led to that distortion (judgment of 27 February 2020, *Lithuania v Commission*, C-79/19 P, EU:C:2020:129, paragraph 71 and the case-law cited).
- 79 In the light of that case-law, the findings of fact made by the General Court in paragraph 184 of the judgment under appeal could be called into question only if it were shown that it is manifestly clear from the documents submitted to the General Court that those findings are incorrect.
- 80 PV relies, first of all, in that regard, on a number of documents which he produced at first instance and which he claims the General Court did not take into account.
- 81 It is true that the findings of fact made by the General Court in paragraph 184 of the judgment under appeal are based on the circumstance that the complaints lodged by PV with the Belgian courts gave rise to the initiation of criminal investigations, on two judgments of the indictments chamber of the cour d'appel de Bruxelles (Court of Appeal, Brussels, Belgium) and on another judgment of a Belgian court.
- 82 However, by merely listing the documents which the General Court did not examine, PV has failed to demonstrate that they are capable of calling into question the assessment made by the General Court, in paragraph 184 of that judgment, according to which none of the acts which PV described as intellectual forgery or psychological harassment had been characterised as such or had been the subject of a criminal conviction by a Belgian court.
- 83 Next, in terms of the alleged distortion of the statements made by the Commission at the hearing before the General Court, it should be noted that, even supposing that the General Court was wrong to find that the Commission had argued, during that hearing, that the Belgian courts had ordered PV to pay the Commission's medical officer a sum of EUR 25 000 by way of compensation when, in reality, PV had had to pay only a sum of EUR 440, such an error would not, in any event, be capable of calling into question the assessment carried out by the General Court in paragraph 184 of the judgment under appeal and recalled in paragraph 76 of the present judgment. That argument must therefore be rejected as ineffective.
- 84 Last, concerning PV's allegation that the General Court should have examined whether the alleged false signature on the salary deduction decision of 15 September 2016 entailed the application of the principle *fraus omnia corrumpit*, it should be recalled that, in an appeal, review by the Court of Justice is limited to review of the findings of law on the pleas argued before the General Court. Accordingly, a party may not put forward for the first time before the Court of Justice pleas in law or arguments which it did not raise before the General Court (judgment of 18 March 2021, *Pometon v Commission*, C-440/19 P, EU:C:2021:214, paragraph 51 and the case-law cited).
- 85 In the case at hand, PV relied, at first instance, on the principle *fraus omnia corrumpit* only in support of the application for annulment of disciplinary procedure CMS 17/025, with the result that the complaint alleging infringement of that principle must be deemed inadmissible in respect of the other acts at issue referred to in the first ground of appeal, such as the salary deduction decision of 15 September 2016.

- 86 As far as disciplinary procedure CMS 17/025 is concerned, given that the claims for annulment of that disciplinary procedure were declared inadmissible by the General Court in paragraph 94 of the judgment under appeal, without that assessment being called into question by PV in his appeal, the General Court cannot validly be criticised for not having examined, during the assessment of those pleas, the line of argument alleging infringement of the principle *fraus omnia corrumpit*, such that PV's line of argument alleging failure to rule on the alleged infringement of that principle must be rejected as unfounded.
- 87 It follows that the first ground of appeal must be rejected as in part inadmissible and in part unfounded.

The second ground of appeal

Arguments of the parties

- 88 By his second ground of appeal, PV submits, first, that the finding made by the General Court in paragraph 184 of the judgment under appeal, according to which none of the acts described by PV as psychological harassment or intellectual forgery had been characterised as such or had been the subject of a criminal conviction by a Belgian national court, follows from the Commission's systematic 'sabotage' of the criminal investigations, in violation of PV's right to a fair trial. That institution abused functional immunity by systematically refusing to authorise the hearing of officials by an investigating judge, in breach of the principle of sincere cooperation laid down in Article 4(3) TEU, when no act of public authority was at issue. In addition, the Commission and certain of its officials interfered in criminal investigation proceedings conducted by the Belgian authorities, in breach of Article 72 TFEU, Article 23 of the Staff Regulations and in violation of the rights which Article 41 of the Charter confers on PV, in his capacity as a civil party in those criminal proceedings.
- 89 Second, the General Court distorted the file by rejecting, in paragraph 192 of the judgment under appeal, the complaint alleging infringement of Article 11a of the Staff Regulations on the ground that a mere criminal complaint lodged by PV against members of the appointing authority responsible for taking decisions in his regard could not suffice to place those persons in a situation of conflict of interest, even though several criminal complaints lodged by PV had resulted in the initiation of criminal investigation proceedings. According to PV, that circumstance should have led the General Court to find that those members of the appointing authority were in a situation of conflict of interest in disciplinary procedure CMS 17/025 as well as during the adoption of the removal decision of 21 October 2019. Therefore, the General Court should have found an infringement of Article 41 of the Charter, of Article 11a of the Staff Regulations and of Article 6(5) of Annex IX to the Staff Regulations.
- 90 According to the Commission, the second ground of appeal must be rejected.

Findings of the Court

- 91 First, regarding the allegation that the Commission systematically abused functional immunity and interfered in criminal investigations in Belgium, it should be noted that, before the General Court, PV argued only that the opposition of the former Secretary-General of the Commission to the hearing of a person who had taken part in the adoption of certain acts at issue could constitute an infringement of the principle of sincere cooperation.
- 92 Therefore, that allegation must be rejected as inadmissible, in accordance with the case-law of the Court of Justice cited in paragraph 84 of the present judgment, in so far as it is based on other alleged refusals of hearings and alleged interferences in criminal investigations in Belgium.
- 93 So far as concerns the line of argument alleging infringement of the principle of sincere cooperation on account of the opposition of the former Secretary-General of the Commission to the hearing of a person who had been involved in the adoption of certain acts at issue, it is worth noting that the first sentence of paragraph 184 of the judgment under appeal is limited to finding that none of the acts which PV had described as psychological harassment or intellectual forgery had been characterised as such or had been the subject of a criminal conviction by a Belgian national court. Since such a finding does not include any assessment of the lawfulness of that opposition, it must be held that PV's line of argument is based on a misreading of that sentence of the judgment under appeal and must, therefore, be rejected as unfounded.
- 94 Second, regarding the errors allegedly committed by the General Court in paragraph 192 of the judgment under appeal, it should be noted that PV's line of argument concerning the infringement of Article 11a of the Staff Regulations relate to disciplinary procedure CMS 17/025 and to the removal decision of 21 October 2019.
- 95 As has been noted in paragraph 86 of the present judgment, however, the claims for annulment of that disciplinary procedure were declared inadmissible by the General Court, without that assessment being called into question by PV in his appeal. Likewise, the removal decision of 21 October 2019 is not referred to in PV's submissions in his actions in Cases T-786/16 and T-224/18.
- 96 Accordingly, the line of argument alleging an error of law committed by the General Court in paragraph 192 of that judgment is ineffective.
- 97 It follows that the second ground of appeal must be rejected as in part inadmissible and in part unfounded.

The third ground of appeal

Arguments of the parties

- 98 By his third ground of appeal, PV claims that the General Court 'distorted the facts by omission' and disregarded the obligation to state reasons under Article 36 of the Statute of the Court of Justice of the European Union by not examining the application of the principle *fraus omnia corrumpit* to disciplinary procedure CMS 17/025, on account of the use, in that procedure, of a decision bearing a false signature.

99 The examination of that principle should have led the General Court to annul the administrative investigation, disciplinary procedure CMS 17/025 as well as several decisions pertaining to PV's salary.

100 The Commission contends that the third ground of appeal must be rejected.

Findings of the Court

101 It must be borne in mind that, in accordance with the case-law of the Court cited in paragraph 84 of the present judgment, in an appeal, a party may not put forward for the first time before the Court of Justice pleas in law or arguments which it did not raise before the General Court.

102 In the case at hand, PV relied, at first instance, on the principle *fraus omnia corrumpit* only in respect of disciplinary procedure CMS 17/025. Therefore, the third ground of appeal must be regarded as inadmissible in so far as it criticises the General Court for not having applied that principle to the decisions pertaining to PV's salary.

103 In respect of disciplinary procedure CMS 17/025, as has been noted in paragraph 86 of the present judgment, the claims for annulment of that procedure were declared inadmissible by the General Court in paragraph 94 of the judgment under appeal, without that assessment being called into question by the appeal. Consequently, the General Court cannot validly be criticised for not having ruled on the merits of the application of the principle *fraus omnia corrumpit*. PV's complaint alleging failure to rule on the application of the principle *fraus omnia corrumpit* must therefore be rejected as unfounded.

104 It follows that the third ground of appeal must be rejected as in part inadmissible and in part unfounded.

The fifth ground of appeal

105 By his fifth ground of appeal, which is, in essence, divided into three parts and which it is appropriate to examine in the fourth place, PV submits that the General Court committed a number of errors in rejecting his line of argument relating to the infringement of Article 59 of the Staff Regulations and to the use, by the Commission, of intellectual forgery.

The second part of the fifth ground of appeal

– Arguments of the parties

106 By the second part of his fifth ground of appeal, which it is appropriate to examine first, PV claims that the General Court distorted the facts and committed errors of law in its assessment, in paragraphs 112 to 116 of the judgment under appeal, of the line of argument according to which the Commission's use of intellectual forgery in the form of medical opinions issued by the institution's medical officer implies the non-existence of the acts at issue.

- 107 First, the General Court was not entitled to find, in paragraph 114 of that judgment, that the fact that certain notes of non-appearance were entitled ‘medical opinions’ was the result of a negligent drafting error. PV maintains that, in view of the number of medical opinions issued by the Commission’s medical officer, there can be no question of negligence. The conduct of that doctor should, on the contrary, be regarded as deliberate.
- 108 Second, the General Court erred in law in finding, in that paragraph 114, that that drafting error had been clarified and rectified subsequently. PV claims that the medical opinions in question were not rectified, such that the alleged illegality persists. Moreover, the General Court did not specify how those medical opinions had been rectified.
- 109 That error of law led the General Court to consider, incorrectly, in paragraphs 115 and 116 of the judgment under appeal, that the alleged illegalities are not sufficiently clear and serious to declare the acts at issue non-existent.
- 110 Third, the General Court erred in law in holding, in paragraph 114 of that judgment, that a note of non-appearance from the medical officer does not constitute an act adversely affecting the person concerned and that such a note cannot be challenged by way of arbitration pursuant to the fifth subparagraph of Article 59(1) of the Staff Regulations. The two conditions required by that provision, namely the existence of a medical conclusion and the medically unjustified nature of that conclusion, were satisfied as regards both the opinions and the notes at issue from the medical officer. Those acts must therefore be annulled, since the medical officer refused, without giving reasons, PV’s requests for arbitration.
- 111 The Commission contends that the second part of the fifth ground of appeal should be rejected.

– *Findings of the Court*

- 112 As regards the errors of law allegedly committed by the General Court in paragraph 114 of the judgment under appeal, it must be recalled that it is settled case-law of the Court of Justice that any measures adopted by the institutions, whatever their form, which are intended to have binding legal effects, are regarded as acts open to challenge, within the meaning of Article 263 TFEU (judgment of 6 October 2021, *Tognoli and Others v Parliament*, C-431/20 P, EU:C:2021:807, paragraph 33 and the case-law cited).
- 113 The Court has also stated that intermediate measures the aim of which is to prepare, in a procedure comprising several stages, the final decision do not, in principle, constitute acts which may form the subject matter of an action for annulment (judgment of 6 October 2021, *Tognoli and Others v Parliament*, C-431/20 P, EU:C:2021:807, paragraph 35 and the case-law cited).
- 114 In the present case, as the General Court observed, in essence, in paragraph 114 of the judgment under appeal, the notes of non-appearance of the medical officer constitute intermediate measures which have no autonomous legal effects and which may, where appropriate, be challenged in actions brought against the decisions adopted on the basis of those measures.
- 115 It follows that PV’s allegation that the General Court erred in law in holding, in paragraph 114, that a note of non-appearance does not constitute an act adversely affecting the person concerned must be rejected as unfounded.

- 116 Furthermore, since it is apparent from the foregoing considerations that the notes of non-appearance do not constitute challengeable acts for the purposes of Article 263 TFEU, it is appropriate to reject PV's argument alleging infringement of the fifth subparagraph of Article 59(1) of the Staff Regulations as, in any event, ineffective.
- 117 The same is true of the other errors of law alleged by PV in the second part of the fifth ground of appeal.
- 118 Even supposing that the General Court erred in law in paragraph 114 of the judgment under appeal in finding that the drafting error affecting certain notes of non-appearance had been clarified and rectified, it must be noted, on the one hand, that those notes of non-appearance do not, as such, constitute challengeable acts for the purposes of Article 263 TFEU and, on the other hand, that such an error is not capable, as regards the acts at issue which were adopted in relation to those notes of non-appearance, of calling into question the General Court's finding, in paragraph 115 of that judgment, that the threshold of obviousness and gravity required to render those acts non-existent had not been reached.
- 119 It follows that the second part of the fifth ground of appeal must be rejected as unfounded.

The third part of the fifth ground of appeal

– Arguments of the parties

- 120 By the third part of his fifth ground of appeal, PV contests paragraphs 112 and 113 of the judgment under appeal, by which the General Court found that there was no list of administrative decisions which PV classified as intellectual forgeries. PV states, first, that he provided the General Court with a list of the decisions which he seeks to have annulled. Second, any administrative rejection or adverse decision based on a finding of unjustified absence must be regarded as an intellectual forgery, since all of PV's absences were justified by certificates of incapacity for work.
- 121 The Commission contends that the third part of the fifth ground of appeal must be rejected.

– Findings of the Court

- 122 In the first place, PV's argument that the General Court wrongly criticised him, in paragraphs 112 and 113 of the judgment under appeal, for not having provided a list of the acts which he describes as intellectual forgeries must be rejected as unfounded, since it is based on a misreading of those paragraphs.
- 123 The General Court held in paragraph 112 of the judgment under appeal, that it was for PV to demonstrate, for each act at issue, how the alleged use of intellectual forgeries by the Commission vitiated the act with an irregularity the gravity of which is so obvious that it cannot be tolerated by the EU legal order. It then found, in paragraph 113 of that judgment, that PV had merely made general allegations in that regard, which led it to hold, in paragraph 115 of that judgment, that the threshold of obviousness and gravity rendering an act non-existent had not been reached.

- 124 In so ruling, the General Court held that it was not apparent from PV's line of argument that the threshold of obviousness and gravity required had been reached, without, however, relying on PV's failure to produce a list of the acts which he described as intellectual forgeries.
- 125 In the second place, PV's line of argument based on the content of the certificates of incapacity for work is inadmissible, in accordance with the case-law cited in paragraph 77 of the present judgment, since it relates to the General Court's assessment of the facts without PV alleging a distortion in that regard.
- 126 It follows that the third part of the fifth ground of appeal must be rejected as in part unfounded and in part inadmissible.

The first part of the fifth ground of appeal

– Arguments of the parties

- 127 By the first part of his fifth ground of appeal, which it is appropriate to examine in the third place, PV submits, first, that the General Court, in paragraph 226 of the judgment under appeal, distorted the facts.
- 128 First, the General Court found that PV's non-attendance at check-ups was not medically justified, whereas his absences were justified by certificates from his attending doctor prescribing that he should avoid all contact with his working environment, which included the Commission's medical check-up service. In addition, according to PV, that institution could have organised a home medical check-up, which it did not do.
- 129 Second, the General Court distorted the facts by failing to note that eight invitations to attend medical examinations had been sent late and received by PV after the date of the check-up examination concerned. It follows that the assessment in paragraph 220 of the judgment under appeal, according to which the failure to attend the various invitations to the medical examinations is attributable to PV, is incorrect with regard to those eight invitations.
- 130 Second, the medical opinions of 27 June and 10 October 2014 according to which PV could return to work were probably the result of instructions received from DG Interpretation and therefore constituted active participation in the psychological harassment of which PV was the victim as well as a breach of the rules of professional conduct and an infringement of the precautionary principle.
- 131 Additionally, according to PV, the General Court failed to examine the irregularities which vitiate the opinions issued by the Commission's medical officer. Those medical opinions actually constitute intellectual forgeries. On the one hand, they assert that PV's absences were unjustified, whereas he produced certificates of incapacity for work issued by his attending doctor. On the other hand, they are not based on any medical examination. The absence of a medical examination moreover renders a finding of unauthorised absence until a future date meaningless, since such a finding is not based on an assessment of fitness for work.
- 132 Third, the General Court distorted the facts by failing to declare the non-existence of the list of arbitrating doctors, which should have been drawn up in accordance with Article 59(6) of the Staff Regulations.

133 The Commission contends that the first part of the fifth ground of appeal must be rejected.

– *Findings of the Court*

134 First, since PV claims that the General Court distorted evidence by misreading certificates issued by his attending doctor, it should be pointed out that, while a distortion of the evidence may consist in an interpretation of a document contrary to its content, it is not sufficient, in order to establish such a distortion, to show that that document could have been interpreted differently from the interpretation adopted by the General Court. To that end, it is necessary to establish that the General Court manifestly exceeded the limits of a reasonable assessment of that document, in particular by reading it in a manner contrary to its wording (judgment of 25 February 2021, *Dalli v Commission*, C-615/19 P, EU:C:2021:133, paragraph 139 and the case-law cited).

135 While it cannot be ruled out that the medical certificates produced by PV, which, as the General Court noted in paragraph 219 of the judgment under appeal, prescribed that PV should avoid ‘all contact with the working environment ... in order to avoid a second burnout’, could be interpreted as meaning that his attending doctor considered that he should not undergo the medical check-up organised by the Commission, the fact remains that the General Court did not manifestly exceed the limits of a reasonable assessment of those documents taking the view, in that paragraph 219, that the medical service is not PV’s working environment and that, therefore, those medical certificates did not authorise PV not to undergo the medical visits organised by the Commission.

136 The line of argument alleging distortion of the said documents must therefore be rejected as unfounded.

137 So far as concerns, second, the complaints by which PV, on the one hand, criticises the Commission for not having organised a medical check-up at his home, for having sent certain invitations for medical examinations belatedly and for having allegedly sent instructions to the Commission’s medical officer for drafting certain medical opinions and, on the other hand, relies on the non-existence of the list of arbitrating doctors, those complaints must be rejected as inadmissible, in accordance with the case-law of the Court of Justice cited in paragraph 84 of the present judgment, since PV did not raise them before the General Court.

138 Third, as the complaint directed against paragraph 114 of the judgment under appeal, according to which a note of non-appearance from the medical officer does not constitute an act adversely affecting the person concerned, has been rejected in paragraph 115 of the present judgment as unfounded, the complaints directed against the notes of non-appearance must be rejected as, in any event, ineffective.

139 Consequently, the first part of the fifth ground of appeal must be rejected as in part unfounded and in part inadmissible.

140 It follows that the fifth ground of appeal must be rejected in its entirety.

The sixth ground of appeal

Arguments of the parties

- 141 By his sixth ground of appeal, PV submits, in the first place, that the General Court distorted the file by finding, in paragraph 237 of the judgment under appeal, that the rule of correspondence between the administrative complaint and the subsequent action had not been complied with as regards the plea alleging infringement of the Belgian law principle of the defence of non-performance, even though that plea had been raised in complaint R/413/17.
- 142 In the second place, the General Court erred in law in finding, in paragraph 239 of that judgment, that the Belgian law principle of the defence of non-performance does not apply in the present case. PV asserts that that principle applies generally in contractual relationships.
- 143 In the third place, the General Court, in paragraph 241 of that judgment, rejected the line of argument in support of which PV invoked the said principle, ‘skewing’ the sequence of events. The General Court found, in paragraph 240 of the same judgment, that PV had relied on a decision subsequent to his refusal to join DG Interpretation in order to justify that refusal, whereas the event relied on by PV to that end predated the said refusal.
- 144 The Commission maintains that the sixth ground of appeal must be rejected.

Findings of the Court

- 145 As regards, first of all, the error of law allegedly committed by the General Court in paragraph 239 of the judgment under appeal, it must be held that the General Court was right to find, in that paragraph 239, that the Belgian law principle of the defence of non-performance is not applicable in relations between an official and his or her institution.
- 146 The employment relationship between an official and his or her institution is governed by the Staff Regulations. It is therefore governed by EU law. The Belgian law principle of the defence of non-performance is, however, a principle of Belgian civil law which, according to PV, is intended to apply in contractual relations. In those circumstances, without an express reference by the applicable provisions of EU law, such a principle cannot be regarded as applying to the employment relationship between an official and his or her institution.
- 147 That argument must therefore be rejected as unfounded.
- 148 Second, in the light of the foregoing considerations, even supposing, on the one hand, that the General Court distorted the file by finding that the plea alleging infringement of the Belgian law principle of the defence of non-performance had not been raised by PV in his complaint R/413/17 and, on the other hand, that the General Court ‘skewed’ the sequence of events, such errors would have no bearing on the rejection, in paragraph 241 of the judgment under appeal, of the plea alleging infringement of that principle.
- 149 Accordingly, PV’s line of argument alleging distortion of the file and a skewing of the sequence of events is, in any event, ineffective.
- 150 It follows that the sixth ground of appeal must be rejected as unfounded.

The seventh ground of appeal

Arguments of the parties

- 151 By his seventh ground of appeal, PV submits, first, that the General Court distorted PMO's pre-information letter of 21 September 2016 by finding, in paragraph 20 of the judgment under appeal, that the amount of the debt in that letter came to EUR 42 704.74, when it is apparent from a table annexed to the application at first instance in Case T-786/16 that the amount of that debt was EUR 58 837.20.
- 152 The General Court, second, distorted the facts by failing to consider the fraudulent nature of that table, which listed non-existent debts. PV submits, in that regard, that PMO breached its obligation to state reasons under Article 41 of the Charter and Article 25 of the Staff Regulations by failing to provide any supporting documents for the salary deductions made in settlement of those debts. Furthermore, the salary deduction decision of 15 September 2016 bears a false signature, which should have led the General Court to apply the principle *fraus omnia corrumpit*. Those distortions led the General Court to commit an error of law, in paragraphs 165 and 206 of the judgment under appeal, by finding that the debts had been established properly, when the overall debt of EUR 58 837.20 was based on irregularities.
- 153 PV also alleges, in that regard, violation of his rights of defence, as he was unable to contest those debts owing to PMO's breach of its obligation to state reasons.
- 154 The Commission contends that the seventh ground of appeal must be rejected.

Findings of the Court

- 155 First, in terms of the alleged distortion of PMO's pre-information letter of 21 September 2016, it is worth recalling that, in accordance with the case-law cited in paragraph 134 of the present judgment, while a distortion of the evidence may consist in an interpretation of a document contrary to its content, it is not sufficient, in order to establish such a distortion, to show that that document could have been interpreted differently from the interpretation adopted by the General Court. To that end, it is necessary to establish that the General Court manifestly exceeded the limits of a reasonable assessment of that document, in particular by reading it in a manner contrary to its wording.
- 156 In the present case, PMO's pre-information letter of 21 September 2016, which was annexed to the application at first instance in Case T-786/16 and referred to by the General Court in paragraph 20 of the judgment under appeal, mentions a debt amounting to EUR 42 704.74. In addition, the same amount appears in the table annexed to that letter – also annexed to the application at first instance – in the column headed 'outstanding balance'.
- 157 Therefore, the finding made by the General Court, in paragraph 20 of the judgment under appeal, according to which the amount of the debt set out in the same letter came to EUR 42 704.74, does not appear to be manifestly incorrect in the light of the table produced by PV.
- 158 PV's argument alleging that that table was distorted must therefore be rejected as unfounded.

- 159 Second, the arguments relating to the fraudulent nature of that table and to the violation of PV's rights of defence are inadmissible, in accordance with the case-law of the Court of Justice cited in paragraph 84 of the present judgment, as they were not raised before the General Court.
- 160 As for PV's allegation that the General Court should have applied the principle *fraus omnia corrumpit* owing to the allegedly false signature on the salary deduction decision of 15 September 2016, it must, for the reasons set out in paragraphs 84 to 86 of the present judgment, be rejected as unfounded in respect of disciplinary procedure CMS 17/025 and as inadmissible in respect of the other acts at issue referred to in the seventh ground of appeal.
- 161 Accordingly, PV's line of argument, alleging the error of law supposedly committed by the General Court in paragraphs 165 and 206 of the judgment under appeal on account of the distortions alleged by PV in the seventh ground of appeal, must be rejected as unfounded.
- 162 It follows that the seventh ground of appeal must be rejected as in part inadmissible and in part unfounded.

The fourth ground of appeal

Arguments of the parties

- 163 By his fourth ground of appeal, which must be examined in the seventh place, PV submits, first, that the General Court committed, in paragraphs 6, 8, 17, 20, 54, 147, 162, 163, 164, 166, 173, 205, 206, 242 and 246 of the judgment under appeal, distortions and 'misrepresentations' of a number of elements, on the basis of which it found, wrongly, that psychological harassment had not been established.
- 164 In the first place, PV criticises the General Court for not having mentioned the psychological harassment to which he was subjected within DG Budget between July 2010 and December 2011, which he claims was established by his psychiatrist's expert reports.
- 165 In the second place, the General Court should have taken account of the fact that DG Human Resources and Security had approved and recommended the distancing measures proposed by a trusted person on whom PV had called during his period of assignment to DG Interpretation and of the latter DG's refusal to act on it.
- 166 In the third place, the General Court distorted the facts by finding, in paragraph 242 of the judgment under appeal, that the facts concerning the psychological harassment suffered by PV, as alleged by him in his written pleadings, were not corroborated by witnesses, when PV submitted the testimonies of two former colleagues who confirmed those facts.
- 167 In the fourth place, the General Court 'misrepresented' PV's statements, by using, particularly in paragraphs 6, 17, 20 and 54 of that judgment, the terms 'alleging' or 'allegedly' in relation to his claims, thereby implying that those claims were incorrect or made in bad faith.
- 168 The same is true of the assessment, in paragraph 166 of the said judgment, according to which no psychological harassment had been established within DG Interpretation.

- 169 In the fifth place, the General Court ‘misrepresented’ the scope of the medical reports submitted by PV, by finding, in paragraph 164 of the same judgment, that those medical reports did not make it possible to establish that PV’s problems were the result of psychological harassment.
- 170 The same is true of the finding, in paragraph 205 of the judgment under appeal, that PV had not provided any evidence concerning the psychological harassment alleged within DG Interpretation.
- 171 In the sixth place, the General Court deliberately disregarded the other evidence of psychological harassment that PV allegedly suffered within DG Interpretation, including the confessions of one of the persons concerned and the decision of a Belgian investigating judge to treat that person as a suspect, which led it to consider, wrongly, in paragraph 173 of that judgment, that the acts of psychological harassment alleged by PV had not been established to the requisite legal standard.
- 172 Paragraph 163 of the said judgment, by which the General Court found that the medical reports of PV’s attending doctor were not such as to establish, in themselves, the existence of psychological harassment, and paragraph 206 of the same judgment, in which the General Court held that PV had not adduced any evidence from which it could be concluded that he had been subjected to any psychological harassment whatsoever within DG Interpretation or that the unjustified absences leading to the adoption of the decisions at issue were the result of such harassment, are also vitiated by a distortion of the facts.
- 173 In the seventh place, the General Court should have taken into account, in paragraphs 8 and 162 of the judgment under appeal, the fact that the decision rejecting the complaint lodged by PV against the refusal to adopt the distancing measures requested is based on fraudulent concealment on the part of DG Interpretation, since the refusal of that DG to apply those distancing measures occurred before the internal investigation report, which concluded that there was no harassment, had been prepared.
- 174 Moreover, the General Court committed a manifest error of assessment by holding, in paragraph 162 of that judgment, that the decision rejecting the request for assistance submitted on 23 December 2014 had become final. According to PV, harassment is improper conduct which takes place over a period of time and which therefore does not necessarily end on the date on which a decision rejecting a request for assistance is adopted.
- 175 In the eighth place, the General Court distorted the facts by finding, in paragraph 147 of the said judgment, that PV had not adduced any evidence from which it could be concluded that the appointing authority had required proof of malicious intent on the part of the alleged harassers, even though that circumstance had been attested to by a letter received by PV on 12 December 2019.
- 176 Furthermore, the General Court misrepresented reality by considering, in paragraph 246 of the judgment under appeal, that certain conduct, even if it may appear inappropriate, is not sufficient for it to be classified as harassment.
- 177 Second, the General Court committed an error of law by not recognising, in the light of the elements adduced by PV in order to establish psychological harassment, that the rejection of the requests for a change of post and of the requests for assistance at issue amounts to an infringement of Articles 1, 3, 4 and 31 of the Charter and of Articles 1e and 12a of the Staff Regulations.

178 Third, the General Court should have annulled the rejections of the requests for assistance submitted by PV, on account of the violation of his right to be heard enshrined in Article 41(2)(a) of the Charter. Had PV been heard, he could have produced the results of the criminal investigations into the psychological harassment he had suffered within DG Interpretation, which might have led the appointing authority to adopt distancing measures.

179 The Commission contends that the fourth ground of appeal should be rejected.

Findings of the Court

180 It is appropriate, first, to examine the distortions and the ‘misrepresentations’ invoked by PV in the fourth ground of appeal.

181 In that regard, concerning, in the first place, PV’s line of argument according to which the General Court failed to mention, in the judgment under appeal, the alleged harassment that PV suffered within DG Budget, it should be noted, on the one hand, that the General Court found, in paragraph 150 of the judgment under appeal, that PV maintained that he had been the subject of a continuous process of harassment since 1 September 2008 and that he had suffered various separate episodes of psychological harassment within three different directorates-general, which includes, as is apparent from paragraphs 3 and 4 of that judgment, DG Budget, to which PV was assigned during the period from 1 October 2009 to 31 March 2013.

182 On the other hand, it is apparent from paragraph 155 of the said judgment, which is not criticised by the appeal, that PV’s allegation of psychological harassment perpetrated by his line managers is not sufficient to establish that any act adopted by those persons would be illegal and that it was necessary, in order to establish that illegality, for PV to demonstrate the impact of the conduct constituting psychological harassment on the content of each decision at issue.

183 None of the acts at issue referred to in paragraphs 129 and 130 of the judgment under appeal, however, was adopted during the period in which PV was assigned to DG Budget.

184 The General Court therefore took the view, implicitly but necessarily, that PV had not established the impact that the alleged harassment within DG Budget had on the examination of the actions for annulment brought by him. Consequently, the General Court cannot be criticised for not having found the existence of psychological harassment within that DG.

185 In the second place, so far as concerns the position adopted by DG Human Resources and Security on the distancing measures proposed by a trusted person on whom PV had called during his period of assignment to DG Interpretation, it should be recalled that, in accordance with the case-law of the Court of Justice cited in paragraph 78 of the present judgment, where an appellant alleges distortion of the evidence by the General Court, he or she must indicate precisely the evidence alleged to have been distorted by that Court and show the errors of appraisal which, in his or her view, led to that distortion.

186 It should be noted that, in his line of argument, PV does not identify any finding made by the General Court in the judgment under appeal which is vitiated by a distortion of the facts or evidence on the basis of the document on which he relies, such that that line of argument must be rejected as inadmissible.

- 187 In the third place, in terms of the alleged psychological harassment within DG Interpretation, PV relies on a number of documents which were produced at first instance.
- 188 However, in relying on those documents, which he claims were disregarded by the General Court in the judgment under appeal, PV is not seeking to establish a distortion or an error of law committed by the General Court in paragraph 173 of the judgment under appeal, but is inviting the Court of Justice to carry out a fresh assessment of that evidence, which does not fall within its jurisdiction.
- 189 In the fourth place, in support of the complaint according to which the General Court distorted the facts by rejecting, in paragraph 147 of the judgment under appeal, the allegation that the appointing authority required evidence of malicious intent on the part of the alleged harassers, PV relies on a letter which he states he received on 12 December 2019. However, as that letter was not produced before the General Court, that complaint must be rejected as unfounded.
- 190 In the fifth place, concerning the line of argument relating to the distortion of the facts allegedly committed by the General Court in paragraph 242 of the judgment under appeal, it must be rejected as, in any event, ineffective.
- 191 It is apparent from the Court of Justice's settled case-law, after all, that arguments directed against grounds included in a decision of the General Court purely for the sake of completeness cannot lead to the decision being set aside and are therefore ineffective (judgment of 2 October 2019, *Crédit mutuel Arkéa v ECB*, C-152/18 P and C-153/18 P, EU:C:2019:810, paragraph 68 and the case-law cited).
- 192 The General Court having rejected, in paragraphs 135 to 241 of the judgment under appeal, the entirety of the pleas relied on by PV in support of his action for annulment, the assertions in paragraph 242 of that judgment cannot invalidate that rejection. Accordingly, those assertions must be regarded as grounds included purely for the sake of completeness.
- 193 In the sixth place, PV's argument relating to the use, by the General Court, of the terms 'alleging' and 'allegedly' in relation to his statements, is based on a misreading of the said judgment, since the use of those terms is intended solely to make it clear that the matters to which they relate constitute allegations, without involving any assessment as to their validity or the good faith of their author. Accordingly, that argument must be rejected as unfounded.
- 194 As regards PV's arguments alleging fraudulent concealment on the part of DG Interpretation and violation of his right to be heard, as those arguments were not put forward at first instance, they must be rejected as inadmissible, in accordance with the case-law of the Court cited in paragraph 84 of the present judgment.
- 195 In the seventh place, with regard to the alleged distortions vitiating paragraphs 163, 164, 166, 205, 206 and 246 of the judgment under appeal, suffice it to note that PV has not established that the assessment of the facts or evidence made by the General Court in those paragraphs is manifestly incorrect.
- 196 In the eighth place, so far as concerns the argument relating to the manifest error of assessment allegedly committed by the General Court in paragraph 162 of the judgment under appeal, it should be noted that the grounds set out in paragraphs 163 to 165 of that judgment, which, as has been noted in paragraphs 161 and 195 of the present judgment, have not been successfully

challenged by PV in his appeal, are sufficient to justify the assessment, set out in paragraph 173 of the judgment under appeal, that PV did not establish to the requisite legal standard the acts of psychological harassment alleged within that unit of DG Interpretation.

- 197 It follows that the ground set out in paragraph 162 of that judgment, which tends to support that same assessment, is superfluous in relation to paragraphs 163 to 165 of the said judgment.
- 198 Accordingly, PV's line of argument relating to paragraph 162 of the same judgment is ineffective, in accordance with the case-law cited in paragraph 191 of the present judgment.
- 199 Second, it should be borne in mind that it follows from Article 256 TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union, Article 168(1)(d) and Article 169 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 the legal arguments specifically advanced in support of the appeal, failing which the appeal or ground of appeal concerned will be inadmissible (judgment of 29 September 2022, *ABLV Bank v SRB*, C-202/21 P, EU:C:2022:734, paragraph 34 and the case-law cited).
- 200 Thus, a ground of appeal supported by an argument that is not sufficiently clear and precise to enable the Court to exercise its powers of judicial review, in particular because essential elements on which the ground of appeal relies are not indicated sufficiently coherently and intelligibly in the text of the appeal, which is worded in a vague and ambiguous manner in that regard, does not satisfy those requirements and must be declared inadmissible (judgment of 3 March 2022, *WV v EEAS*, C-162/20 P, EU:C:2022:153, paragraph 45 and the case-law cited).
- 201 In the case at hand, it must be held that PV's line of argument according to which the General Court erred in law by not finding that the rejections of the changes of post and of the requests for assistance constituted infringements of Articles 1, 3, 4 and 31 of the Charter and of Articles 1e and 12a of the Staff Regulations does not contain any precise indications as to the paragraphs of the judgment under appeal that might be vitiated by such an error of law. Nor does PV indicate the legal arguments that specifically support that line of argument, which must, therefore, be declared inadmissible.
- 202 It follows that the fourth ground of appeal must be rejected as in part inadmissible and in part unfounded.

The eighth ground of appeal

Arguments of the parties

- 203 By his eighth ground of appeal, PV submits, in the first place, that the General Court committed an error of law by relying, in paragraph 81 of the judgment under appeal, on the set-off which the appointing authority had carried out between PV and the Commission's respective debts. According to PV, the withdrawal of the removal decision of 26 July 2016 eliminated all the consequences of that decision retroactively, in particular the findings of unjustified absences. The debt letters and deductions from his salary therefore no longer had a legal basis following that removal, meaning that a set-off could not be carried out.

- 204 In the second place, the General Court erred in law in holding, in paragraph 82 of that judgment, that, as the removal decision of 26 July 2016 had been withdrawn and its financial effects neutralised prior to the bringing of the action in Case T-786/16, the application for annulment of that decision was devoid of purpose.
- 205 The appointing authority did not offset the financial consequences of that decision, since it would have been necessary, to that end, for PV to receive material and non-material compensation.
- 206 The Commission contends that the eighth ground of appeal must be rejected.

Findings of the Court

- 207 As regards, first, the error of law allegedly committed by the General Court in paragraph 81 of the judgment under appeal, it should be noted that the irregular nature of PV's alleged absences was not one of the effects of the removal decision of 26 July 2016. Therefore, contrary to what PV claims, the withdrawal of that decision cannot have the effect of justifying those absences. It follows that the argument alleging that the General Court erred in law in paragraph 81 is unfounded.
- 208 Second, in terms of PV's line of argument relating to the error of law allegedly committed by the General Court in paragraph 82 of that judgment, it should be noted that the General Court also found, in the same paragraph, that, as the removal decision of 26 July 2016 had been withdrawn, PV no longer had an interest in bringing an action against that decision. Therefore, even supposing that the General Court had been wrong to hold, in paragraph 82 of that judgment, that the financial effects of that revocation decision had been neutralised prior to the bringing of the action in Case T-786/16, such an error cannot call into question the General Court's assessment, in paragraph 85 of the said judgment, according to which the application for annulment of that decision is inadmissible. That line of argument must therefore be rejected as, in any event, ineffective.
- 209 It follows that the eighth ground of appeal must be rejected as unfounded.

The ninth ground of appeal

Arguments of the parties

- 210 By his ninth ground of appeal, PV submits, in the first place, that the General Court distorted the facts by finding, in paragraph 25 of the judgment under appeal, that his employment relationship with a private employer had started in July 2017, when that employment relationship had begun on 26 June 2017. That distortion allowed the General Court to disregard the fact that that employment relationship had begun prior to the withdrawal of the removal decision of 26 July 2016.
- 211 In the second place, the General Court erred in law in finding, in paragraph 170 of that judgment, that PV was to be reinstated in DG Interpretation following the withdrawal of the removal decision of 26 July 2016. Reinstating him would have required the conclusion of a new

employment relationship, since PV had made a commitment to another employer before the withdrawal of that decision, which would imply that his consent had to be obtained prior to his reinstatement in that DG. However, he did not consent to that reinstatement.

- 212 Moreover, the Commission did not compensate the loss of salary suffered while PV was unemployed following his removal, which enabled him to apply the Belgian law principle of the defence of non-performance. Furthermore, PV did not have the technical skills necessary to perform the new function to which he had been assigned. The General Court's finding that PV had to be reinstated in DG Interpretation following the withdrawal of his removal thus also infringes Article 15 of the Charter.
- 213 In the third place, the General Court distorted the facts by failing to mention PV's lodging of a complaint against the removal decision of 21 October 2019.
- 214 The Commission contends that the ninth ground of appeal must be rejected.

Findings of the Court

- 215 Concerning, first, the complaint alleging distortion of the applications at first instance, which is set out in paragraph 25 of the judgment under appeal, it must be pointed out that PV stated, in paragraph 131 of his application in Case T-786/16 and in paragraph 23 of his application in Case T-224/18, that he could not be reinstated in DG Interpretation due to the existence of another work commitment since July 2017. PV cannot therefore validly complain that the General Court repeated that finding in paragraph 25 of the judgment under appeal. That complaint of distortion is therefore unfounded.
- 216 Second, in respect of the error of law allegedly committed by the General Court in paragraph 170 of that judgment, the withdrawal of an act entailing the elimination of the effects of that act, the General Court was entitled to hold, in that paragraph 170, that, following the withdrawal of the removal decision of 26 July 2016, PV was a fully fledged official with the rights and obligations inherent in that status.
- 217 Accordingly, PV's line of argument alleging that the General Court erred in law in paragraph 170 of that judgment must be rejected as unfounded.
- 218 Third, PV's line of argument relating to the failure to mention the complaint brought against the removal decision of 21 October 2019 is inadmissible, in accordance with the case-law cited in paragraphs 199 and 200 of the present judgment, for want of specifying how such a failure would constitute a distortion of the facts.
- 219 It follows that the ninth ground of appeal must be rejected as in part inadmissible and in part unfounded.

The tenth ground of appeal

Arguments of the parties

- 220 By his tenth ground of appeal, PV submits, in the alternative, that the General Court violated the prohibition on ruling *ultra petita*, by ruling, in the last sentence of paragraph 246 of the judgment under appeal, on a point which had not been put to him.
- 221 The Commission contends that the tenth ground of appeal should be rejected.

Findings of the Court

- 222 It follows from the rules governing the procedure before the EU Courts, in particular Article 21 of the Statute of the Court of Justice of the European Union and Article 76 and Article 84(1) of the Rules of Procedure of the General Court, that the dispute is in principle determined and circumscribed by the parties and that the Courts of the European Union may not rule *ultra petita*. Thus, since the Court reviewing the legality of an act cannot rule *ultra petita*, it cannot grant an annulment which goes beyond that sought by the applicant (judgment of 22 December 2022, *Parliament v Moi*, C-246/21 P, not published, EU:C:2022:1026, paragraphs 55 and 56).
- 223 In the case at hand, it is common ground that the General Court dismissed the action, so it did not grant any annulment and cannot, therefore, have ruled *ultra petita*.
- 224 Furthermore, the General Court having rejected all the pleas relied on by PV in support of his actions for annulment in paragraphs 135 to 241 of the judgment under appeal, the findings set out in the last sentence of paragraph 246 of that judgment must be regarded as being grounds included purely for the sake of completeness.
- 225 It follows that the tenth ground of appeal must be rejected as unfounded.

Costs

- 226 In accordance with Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court is to make a decision as to the costs.
- 227 Under Article 138(1) of those rules, applicable to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.
- 228 Since the Commission has applied for costs and PV has been unsuccessful, the latter must be ordered to bear his own costs and to pay those incurred by the Commission.

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

- 1. Dismisses the appeal;**
- 2. Orders PV to bear his own costs and to pay those incurred by the European Commission.**

[Signatures]