Update on civil service law cases since the last EIPA civil service law conference on 4 December 2023

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PART I – SUBSTANTIVE LAW

Introduction (situation at 02.12.2024)

Since the last of these conferences in early December last year, we have had a total of 106 judicial decisions in staff cases, 20 from the Court of Justice (CJ) and 86 from the General Court (GC). Of the 106 decisions, there are several I shall not mention, since they are minor orders such as removal from the register. As for the rest, I shall only be referring to the most enlightening examples. The outline of this talk will be available from the organizers afterwards on e-mail request.

As in previous years, very few of the CJ's decisions involved a hearing. Several were decided by order, and even where the decision was in the form of a judgment, hearings were infrequent. Similarly, the GC disposed of numerous cases by order, and even in cases decided by judgment, makes frequent use of the provisions in its Rules of Procedure (RP) which allow it to decide without a hearing if no-one asks for one within the relatively short time permitted.

As to the institutions concerned, the breakdown of the 106 judicial decisions just mentioned is as follows (figures here include cases which were removed from register after settlement):

Institution	Number of cases
Commission	50
Agencies (collectively)	31
Parliament	8
European External Action Service (EEAS)	9
European Investment Bank (EIB)	4
Council	3
European Central Bank (ECB)	1
EPPO	1
Court of Auditors	1
Court of Justice	0
Ombudsman	0
European Data Protection Supervisor (EDPS)	0
Economic and Social Committee (Ecosoc)	0
Committee of the Regions (CoR)	0

NB figures do not tally perfectly with those above as some cases involved more than one institution

Particularly worth noticing are the following:

1. Apparently for the first time, the Courts have held one of the amendments to the SR adopted in 2004/2013 unlawful. In JC C-567-570/22 P, *Dumitrescu and Schwarz and ors v Commission*, 18.04.2024, EU:C:2024:336, CJ quashed the GC's judgments in T-531/16 etc. in which it had rejected the applications. The CJ held that all officials who receive expatriation allowance or foreign residence allowance are in a comparable situation, so that if the legislature makes a distinction between them which is arbitrary, it can be unlawful. Contrary to the GC, the CJ held that it amounts to an arbitrary distinction to pay annual travel costs on the basis of distance from the place of employment to the place of origin, for officials whose place is inside the EU, but on a basis which disregards distance when that place is outside it.

2. Sometimes, the Courts seem to say that the reason for rejecting an application, despite finding an irregularity in relation to the decision, was that *the applicant* had not shown that this could have affected the decision. In other cases, where the Courts did annul a decision, the judgments often suggest that it was for *the defendant* to explain why the infringement could not have affected the result. It is not always clear who has the burden or why it seems to move around from case to case. In T-49/23, *Angelidis v Parliament*, 29.05.2024, EU:T:2024:335, we find what looks like a more coherent presentation: it is indeed for the applicant to explain what arguments they might have put forward had they had the chance to do so, and to show how doing so could have affected the result. This is consistent with the general principle that it is always for applicants to prove their case, in the absence of any specific provision to the opposite effect. However, given that the GC concluded that the decision should be annulled in this case (since the applicant had explained how a meeting in person could have allowed him to dispel some negative assessments about his case which his written representations had clearly not allowed him to do), it appears that the burden on applicants is not great. This result appears to me to be consistent with the general rule as to burden of proof, but also with the principle of effective judicial protection.

3. T-49/23, *Angelidis v Parliament* is also interesting for what the GC holds concerning the meaning of the right to be heard in disciplinary cases: Parliament had not permitted a hearing in person, referring to various general decisions it had taken concerning maximum possible use of remote contacts during the Covid crisis. However, Articles 4 and 22(1) of Annex IX SR clearly mean that in disciplinary cases, there has to be a physical hearing and it is only when there are objective reasons preventing it that recourse may be had to written submissions or representation by a third party. Thus, as a result of these provisions, disciplinary hearings are an exception to the general rule established by the case-law that the right to be heard can be exercised either orally or in writing.

4. A rare case concerning the EU income tax regime: in T-369/22, *Hessler v Commission,* 20.12.2023, EU:T:2023:855 (appeal pending, C-137/24 P), the GC followed its earlier decision in T484/18, *XB v ECB*, EU:T:2020:90 that a tax rebate could not be granted under Article 3(4) of R 260/68 unless the taxpayer is also in receipt of the dependent child allowance itself under Article 2 of Annex VII SR – until now, the institutions have considered that the rebate could be granted independently of the allowance.

5. An interesting statement about the situation one occasionally meets where an official is subject both to disciplinary proceedings and an invalidity procedure. In T-38/23, *IB v EUIPO*, 10.04.2024, EU:T:2024:221, the GC held that in such a case, the official's interest requires the institution to decide either to close the invalidity procedure before adopting a decision to dismiss the official, or to allow that procedure to continue. The institution cannot leave the matter unresolved by declaring that the invalidity procedure no longer serves a purpose because of the dismissal.

6. Finally, terminating a CEOS contract is permissible even when the person is on parental leave, where the primary reason for termination is not being on such leave or having asked for it or taken it, but underperformance: C-546/23 P, *UG v Commission,* 21.11.2024, EU:C:2024:975

I. General principles of EU civil service law

a) sources of law

C-498/23 P, *AL v Commission*, Order 06.02.2024, no ECLI number at present
Article 2(4) allows admin some discretion in dealing with individual cases, which is justified by considerations of natural justice which admin must have in mind in applying this provision (4, quoting AG 9, wfr)

T-369/22, *Hessler v Commission,* 20.12.2023, EU:T:2023:855 (appeal pending, C-137/24 P)
A conclusion of HoA which indicates that the tax allowance for dependent children can be granted even where the child does not give a right to child allowance cannot confer a right since it is contrary to the terms of Article 3(4) of R 260/68, read with Article 2 of Annex VII SR (91-94, wfr)

T-448/22, *PW v EEAS*, 02.10.2024, EU:T:2024:664
Purpose of Article 8(1) of Annex VII is to allow staff member and family to maintain links with place of origin; however it does not reflect a higher principle of EU or international law and is thus only a choice by legislature in exercise of wide discretion, thus a fortiori it has wide discretion to determine conditions for such a benefit and how to calculate it (57-58, wfr)

b) SR and general EU law

T-793/22, *TU v Parliament*, 11.09.2024, EU:T:2024:614
While directives are formally addressed only to MS, they may still apply indirectly to the institutions' relations with their staff in particular cases. Thus, where Union has adopted directive on protection for whistleblowers in national law, institutions cannot have internal rules which provide a lesser degree of protection for whistleblowers under Article 22a SR (110-111, wfr)

T-494/23, *HG v Commission*, 16.10.2024, EU:T:2024:703
The Financial Regulation applies to recovery of debts due from the administration to officials and provides legal basis for recovering debts by way of withholding amounts from salary (40)

c) hierarchy of norms

T-448/22, *PW v EEAS*, 02.10.2024, EU:T:2024:664
Where relevant provisions do not indicate a cut-off date for applying for a statutory benefit such as annual travel costs, setting a date by means of an internal decision published on internet is reasonable and necessary to allow admin to handle large number of requests and pay benefit by date indicated in statutory provisions (65, 72)

d) interpretation of SR/CEOS and of EU law

C-561/23 P, *Thunus and ors. v EIB,* 11.07.2024, EU:C:2024:603
Court must consider terms used in relevant provisions, their context and purpose served by those provisions. Manner in which institution has applied provision is not decisive for interpretation of its scope (34, wfr; 38)

e) SR vs transparency and data protection

T-221/23, *WS v EUIPO*, 13.11.2024, EU:T:2024:820
While a fundamental right, data protection not plea which courts can raise *ex officio* (54, wfr)

f) Gillet principle (nature of statutory employment)

JC C-567-570/22 P, *Dumitrescu and Schwarz and ors v Commission*, 18.04.2024, EU:C:2024:336
Legal link between official and administration is based on SR not a contract, thus rights and obligations of officials and also of CEOS agents in relation to matters where SR apply to them by analogy can be altered at any time for future, subject to requirements of EU law, including equal treatment (64-65, wfr)

g) SR not exclusive

C-109/24 P, *van Oosterwijk v Commission*, Order 03.09.2024, EU:C:2024:754
Article 270 does not say relationship between staff member and institution is governed exclusively by SR/CEOS. Other provisions of EU law may also apply. Furthermore, various provisions of SR/CEOS refer to national law. However, Article 20 of Annex VIII applies exclusively to determine conditions for survivors' pensions in case of marriage after official leaves service (4, quoting AG 33-35, wfr)

h) principle of legality

T-371/21, *WV v EEAS,* 24.01.2024, EU:T:2024:35 (appeal pending, C-243/24 P)
No-one can invoke equal treatment to claim benefit of unlawful treatment accorded to others (195, wfr)

i) presumption of legality

C-546/23 P, *UG v Commission,* 21.11.2024, EU:C:2024:975
Acts of the institutions are presumed lawful so long as not withdrawn or annulled or declared invalid on an objection of illegality or in a preliminary ruling (123, wfr)

j) legal certainty

T-89/20, *PV v Commission*, 19.06.2024, EU:T:2024:402
Legal certainty is a general principle of Union law intended to ensure that legal relationships are foreseeable and stable and means that administrative acts which have legal effects must be clear and precise in order to allow those concerned to know their exact rights and obligations and plan to act accordingly (290, wfr)

k) Officials are deemed to know the SR

T-448/22, *PW v EEAS*, 02.10.2024, EU:T:2024:664
« it follows from the case-law that officials and other staff members are deemed to know the SR". Fact that internal decision published on internet is enough to demonstrate that staff are aware of it since they have access to it (68, 72, wfr)

l) Nulla poena sine lege

T-371/21, *WV v EEAS,* 24.01.2024, EU:T:2024:35 (appeal pending, C-243/24 P)
Article 21 SR does not set out exhaustively all forms which obligation to give assistance and advice may take (185, wfr)

m) Institutions are separate employers

T-367/22, *PT v Commission*, 25.09.2024, EU:T:2024:654
In the absence of any obligation laid down by the SR, measures adopted by one institution may not be invoked by staff members of another institution in order to allege unequal treatment (57, wfr)

n) equal treatment and non-discrimination, see also Article 1d SR

JC C-567-570/22 P, *Dumitrescu and Schwarz and ors v Commission*, 18.04.2024, EU:C:2024:336
Comparable situations must not be treated differently and vice versa, unless the treatment is objectively justified. Legislature enjoys wide discretion in amending SR, so only a breach of equal treatment if it makes a distinction which is arbitrary or manifestly inappropriate in relation to purpose being pursued. All officials who receive expat or foreign residence allowance are in comparable situation. Nationality can be objective element for determining entitlement to statutory benefit, particularly where benefit is intended precisely to compensate for disadvantages suffered by those assigned to a place of which they do not have nationality. However, where nationality is used to determine how benefit is calculated, with consequence that officials in comparable situations receive, if they have a place of origin outside the Union, amounts which bear no relation to distance to that place, unlike officials who have a place of origin within Union. Distance to capital of the MS of which one has the nationality is in that connection purely arbitrary. While need for financial consolidation and budgetary efficiency can justify limiting benefits to those most in need of them, cannot of themselves be an objective justification for a difference resulting from use of a criterion which is unrelated to the purpose of benefit. All officials who receive expat or foreign residence allowance are in a comparable situation in relation to the need to preserve a link with their place of origin, whether that place is in the Union or outside it, thus allowing one group

to benefit from payment of travel costs on the basis of actual distance but substituting a method entirely unrelated to distance for the other is a breach of equal treatment (67-69, 75, 78-79, 81, 91-95, wfr)

T-78/21*, PV v Commission,* 19.06.2024, EU:T:2024:403
Not necessary that situations be identical, only comparable, as determined by a concrete assessment in the light of purpose of relevant provisions. Comparable situations must not be treated differently and different situations must not be treated similarly unless treatment is objectively justified (315-316, wfr)

o) proportionality

T-689/22, *SN v Commission*, 23.10.2024, EU:T:2024:719
Proportionality requires that measures adopted by institutions not exceed what is appropriate and necessary to attain legitimate objectives; where there is a choice of measures, the least restrictive must be chosen (54-57, wfr)

p) legitimate expectations and withdrawal of acts creating rights

T-621/22, *SB v EEAS,* 13.12.2023, EU:T:2023:805
Three cumulative conditions must be met for legitimate expectations to apply: an express and unconditional promise by an authorised person; the statement must be of a kind capable of creating a legitimate expectation and it must be compatible with the applicable rules. Any promise to overlook an essential condition for appointment would be contrary to those rules. Even if other cases had been dealt with in the manner sought by applicant, a practice which is contrary to the relevant rules cannot create a legitimate expectation (102-104, wfr)

T-89/20, *PV v Commission*, 19.06.2024, EU:T:2024:402
Administration in principle entitled to withdraw, with retrospective effect, any act which was adopted unlawfully. In particular it may withdraw an act which is unfavourable to the addressee, provided that does not affect the legitimate expectations of the latter and subject to the principle of legal certainty. Withdrawal of decision dismissing official for disciplinary infringements means disappearance of legal effects of that act (like annulment), therefore the former employment relationship is revived – there is no creation of a new one (287-288, 408-411, wfr)

q) force majeure

T-159/23, *VN v Commission,* 10.01.2024, EU:T:2024:5
Force majeure has two aspects: (i) existence of abnormal and unforeseeable circumstances unrelated to the person concerned and (ii) must be such that acting in the required manner is not necessarily totally impossible but must represent an excessive sacrifice. The exact meaning of *force majeure* may vary from one area of Union law to another (53, wfr)

r) tempus regit actum

T-831/22, *TO v EUAA*, 19.06.2024, EU:T:2024:404 (appeal pending C-576/24 P)
Facts subsequent to decision cannot affect its legality (224)

s) effect of laws in time

T-494/23, *HG v Commission*, 16.10.2024, EU:T:2024:703
A new rule applies immediately, as from the date indicated in the act which creates it, to new situations and also to the future effects of situations which arose under the old rule and such application does not amount to retrospective application of the new rule. In principle, it does not apply to legal situations which arose and have become final under the old rule. New procedural rules normally apply at once as of their entry into force, whereas new substantive rules only affect situations which have already become final to the extent that such an effect is expressly envisaged by their terms, their purpose or their context. Where a staff member owes a debt to the Union which has not become final at the time of entry into force of a new rule laying down a time-limit for recovery, because the staff member has

challenged the debt and proceedings were still pending, the institution should not be regarded as having lost the right to recover it by reason of delay even where that date was three and a half years after the decision which created the debt; further, where the debt is contested both as to its existence and the amount, the time-limit can be regarded as not beginning to run until such time as the debt becomes final, by reason of a judgment on the challenge becoming final; this interpretation is moreover in conformity with the duty of care (22-23, 25, 29-30, wfr)

t) prevention of fraud

C-109/24 P, *van Oosterwijk v Commission*, Order 03.09.2024, EU:C:2024:754
Prevention of fraud is a legitimate objective of general interest which can justify the limited restriction of equal treatment created by the different minimum duration of a marriage according to whether entered into before or after official left service, under Articles 19 and 20 of Annex VIII SR, concerning survivors' pensions (4, quoting AG 13-14, wfr)

u) patere legem

C-5/23 P, *EUIPO v KD*, 04.07.2024, EU:C:2024:575
Where institution adopts a rule of conduct and publishes it, it thereby limits its discretion and may not normally depart from the rule without risking an infringement of equal treatment or the protection of legitimate expectations (33, wfr)

T-1050/23, *Markov v Commission*, 13.11.2024, EU:T:2024:824
Code of Good Administrative Behaviour is only a guide to good behaviour in institutions' relations with public and is not necessarily intended to create legal obligations (37, wfr)

v) internal decisions and directives

T-369/22, *Hessler v Commission,* 20.12.2023, EU:T:2023:855 (appeal pending, C-137/24 P)
Nothing prevents AA from adopting internal decisions of a general nature concerning the manner of using its discretion under the SR, such as conclusions of the HoA. However, in doing so, it must remain within certain limits, including the hierarchy of norms. A conclusion of HoA which indicates that the tax allowance for dependent children can be granted even where the child is not dependent for the purposes of the child allowance cannot confer a right since it is contrary to the terms of Article 3(4) of R 260/68, read with Article 2 of Annex VII SR (91-94, wfr)

w) right to be heard (cf. Article 41 Charter)

C-528/23 P, *EUIPO v KD*, Order 11.04.2024, EU:C:2024:311
Agent must be heard before any decision not to renew contract. Purpose is a) to allow for facts to be correctly determined and b) to protect the addressee, by allowing him or her to put forward matters relating to personal situation which argue in favour of decision being taken or not being taken, or in favour of its having a particular content, in particular matters favourable to that person (12-21, wfr)

C-218/23 P, *NS v Parliament*, 25.04.2024, EU:C:2024:358
There is no link between the right to be heard and the administration's duty to give reasons for its decisions, such that infringement of the former involves an infringement of the latter. The right to be heard guarantees all persons the opportunity to express their views meaningfully in the course of a procedure leading to the adoption of a decision capable of affecting their rights to their detriment. It also serves to facilitate the examination of the case by ensuring that the facts are correctly understood so that the person concerned is afforded effective judicial protection (49, 95-97, wfr)

C-546/23 P, *UG v Commission,* 21.11.2024, EU:C:2024:975
While institutions must afford any person liable to be the addressee of an attackable act the opportunity to express a view on the matter, they are not obliged to follow that view (134)

T-807/21, *QI v Commission,* 06.12.2023, EU:T:2023:786
No obligation to offer an opportunity to present oral observations as well as written (86-88, 90, wfr)

T-49/23, *Angelidis v Parliament*, 29.05.2024, EU:T:2024:335
Whether the right has been infringed must be considered in the light of the rules governing the matter, which, in disciplinary cases, are set out in Article 22(1) of Annex IX SR, the terms of which must be strictly complied with. Article 4 of Annexe IX only allows for written observations or representation by a third party where there are objective reasons why the person cannot be heard; otherwise there must be an opportunity for an actual hearing. A mere reference to various general decisions providing for maximum use of remote working during the Covid epidemic does not meet the strict conditions of Article 22(1) of Annex IX, which requires objective reasons related to the individual case.
Infringement of the right to be heard only leads to annulment where the procedure could have had a different outcome in the absence of the irregularity. In order to show that this is so, applicants must explain what arguments and other matters they might have put forward if their rights had not been infringed and show if need be that those arguments and matters could have led to a different result; this question must be considered in the light of the circumstances of each case. Where a disciplinary decision contained a more serious penalty than proposed by the disciplinary board and contained subjective value judgments as to the gravity of the offence, it could not be *"reasonably excluded"* that the result would have been different had the applicant been heard in person, since value judgments are by nature open to being influenced (47-63, wfr; 66-71, wfr)

T-1050/23, *Markov v Commission*, 13.11.2024, EU:T:2024:824
Right to be heard/right of defence does not require institutions to reply to each and every argument, only that they put interested parties in position to defend their interests (27-28, 31, wfr)

II. Charter and EU civil service law

Article 34 – right to social protection

T-78/21*, PV v Commission,* 19.06.2024, EU:T:2024:403
Art 34 guarantees access to social security under relevant Union and national rules and practices and according to procedures laid down by that law. Conditions for a retirement pension are laid down by Article 77 SR and Art 2-3 of Annex VIII. Art 34 cannot be interpreted as giving officials a right to retirement pension contrary to the conditions laid down by those provisions (281-283)

Article 41 – impartiality

C-111/22 P, *Hamers v Cedefop*, 11.01.2024, EU:C:2024:5
Impartiality is intended to protect equal treatment which is the basis of the Union and concerns any circumstances which the official dealing with a case should reasonably understand to be of a kind which a third party might consider as liable to affect the official's independence. Impartiality is subjective and objective, the former meaning that no member of the institution should express any preconceived opinion or personal prejudice, the latter that the procedure should offer sufficient guarantees of objectivity so as to exclude any legitimate doubt that there might be such prejudice. The applicant need not prove actual partiality – it is enough that a legitimate doubt remains and cannot be dispelled. The fact that the person taking the decision has prior knowledge of the matter does not of itself mean that the person is partial, and is in some cases inevitable given the previous professional activities of the persons concerned; it is therefore necessary to provide objective reasons, such as an actual conflict of interest, which give rise to a legitimate doubt as to the impartiality of the procedure. The fact that the person deciding on a request for compensation after the applicant's acquittal of criminal charges brought on the institution's complaint had given evidence in support of the prosecution and had in particular stated that the applicant had personal knowledge of the alleged irregularities was a circumstance which could give rise to a legitimate doubt as to that person's impartiality in deciding on the request for compensation (46-50, wfr)

T-807/21, *QI v Commission,* 06.12.2023, EU:T:2023:786
Infringement of duty of care or of principle of impartiality can only lead to annulment where, in their

absence, procedure might have had a different outcome (75, wfr)

Article 41 - sound administration

T-159/23, *VN v Commission,* 10.01.2024, EU:T:2024:5
Duty of care reflects balance of reciprocal rights and obligations between staff members and institutions; admin must take account of all considerations likely to influence its decision, not only of the interest of the service, but also that of the staff member. Duty also flows from principle of sound administration under Article 41 Charter

T-353/22, *XH v Commission,* 07.02.2024, EU:T:2024:63 (judgment confirmed on appeal, C-256/24, *XH v Commission*, Order 03.10.2024, EU:C:2024:875, see below under appeals)
Duty to give reasons under Article 25 SR reflects terms of Article 296 TFEU but also arises as part of sound administration under Article 41 Charter, and is intended to allow those concerned to know justification for the measure in order to protect their rights and to allow Courts to review it (42, wfr)

T-123/23, *VA v Commission*, 05.06.2024, EU:T:2024:359
Principle is not infringed merely because admin, after an initial annulment for infringement of right to be heard, adopts the same solution, since the only consequence of such an annulment is that the admin may resume the procedure at the point where the irregularity occurred, but is not bound to take a different decision on the substance. In any event, even assuming a breach of sound administration, it is for applicant to show that that circumstance might have had an effect on the decision (71-72)

T-11/23, *XH v Commission*, 02.10.2024, EU:T:2024:665
Requirement to act within reasonable time is a general principle of EU law forming part of principle of sound administration. What is reasonable depends on circumstances of case and its context, number of procedural steps, conduct of parties, complexity of case etc. Two years for a final decision on non-promotion following an annulment is excessive but does not justify annulment where delay unlikely to have affected content of decision (81-88, wfr)

Article 47, access to justice and judicial protection

T-89/20, *PV v Commission*, 19.06.2024, EU:T:2024:402
Article 47 includes the principle of equality of arms before the courts, which means that each party must have the same opportunity of presenting its case, with supporting evidence, in circumstances which do not put it at a disadvantage as compared to the other party. However, disciplinary proceedings are administrative not judicial, thus the requirements applicable to judicial proceedings are not relevant and invocation of the principle of equality of arms is ineffective (237-241, wfr)

T-1050/23, *Markov v Commission*, 13.11.2024, EU:T:2024:824
No general obligation on institutions to inform addressees of attackable acts of judicial remedies available to them or of the relevant time-limits (37, wfr)

Article 48, rights of defence and presumption of innocence

C-111/22 P, *Hamers v Cedefop*, 11.01.2024, EU:C:2024:5 (pending before GC, T-159/20 RENV)
Presumption of innocence infringed where decision (including a court decision) implies that a person is guilty after being acquitted. A statement that *"applicant's acquittal on criminal charges did not exhaust question whether she nevertheless had some responsibility for the irregularities, even though that matter had not been determined by the criminal court"* cast doubt upon her innocence following acquittal, and thus infringed presumption. However, infringement of that kind in initial decision can be corrected by second decision which does not cast doubt on applicant's innocence (80, 87, 94-95, wfr)

T-89/20, *PV v Commission*, 19.06.2024, EU:T:2024:402
Presumption of innocence is a fundamental right protected by Article 48(1) Charter and means that anyone accused of an offence is presumed innocent unless and until guilt lawfully proved; applies to disciplinary proceedings, where means that throughout the disciplinary proceedings, authorities concerned must be circumspect in any statements they may make. Presumption only infringed if there

is evidence showing that the administration had decided at the outset to impose a penalty, whatever happened. Rights of defence are a fundamental principle under the Charter and apply even where relevant provisions do not expressly provide for them to any situation where administration intends to adopt an attackable act against the official; imply that there must be a "contradictory" procedure in which official can express view on allegations against him/her as to the facts and evidence used by the admin to allege an infringement. Rights of defence are ensured inter alia by obligation to inform official of results of inquiry and to hear him/her and give full access to file before going to disciplinary board, under Articles 2-3 of Annex IX (147-150, 184-190, wfr)

Article 50, *ne bis in idem*

T-669/22, *IP v Commission*, 02.10.2024, EU:T:2024:669
Ne bis in idem is general principle of EU law set out in Article 50 Charter, meaning no-one can be subject to criminal proceedings or penalty for offence of which s/he has already been acquitted or convicted. It also appears in Article 9(3) of Annex IX in relation to disciplinary proceedings. It only prohibits a new consideration of the substance of the offence, leading to a second penalty in addition to the first. When a first decision is annulled, it is deemed not to have existed, therefore a second decision imposing a penalty is possible, since it is not additional to the first (76-77, 82-83, wfr)

Article 52, restrictions on Charter rights

C-109/24 P, *van Oosterwijk v Commission*, Order 03.09.2024, EU:C:2024:754
Any limitation on Charter rights must be laid down by law and must preserve the essential content of those rights. Restrictions must be proportionate and necessary in order to attain objectives of general public interest or to protect the rights and freedoms of others (4, quoting AG 11)

III. General provisions of SR (Articles 1-6)

T-89/20, *PV v Commission*, 19.06.2024, EU:T:2024:402
Withdrawal of decision dismissing official for disciplinary infringements means disappearance of legal effects of that act (like annulment), therefore the former employment relationship is revived – there is no creation of a new one (408-411, wfr)

T-89/20, *PV v Commission*, 19.06.2024, EU:T:2024:402
Article 1e linked to Article 31(1) Charter, both providing that workers should have working conditions which preserve their health, safety and dignity (311)

IV. Internal organization, representation of officials (Articles 7-10 SR and Annex II)

C-546/23 P, *UG v Commission,* 21.11.2024, EU:C:2024:975
The obligation under Article 60 SR to seek authorization to be absent in order to attend meetings as a staff or union representative does not infringe the rights conferred on such representatives by the SR (80-87)

T-789/22, *PB v SRB*, 26.06.2024, EU:T:2024:426 (appeal pending, C-582/24 P)
Agencies have wide discretion in organizing their services in light of their tasks, provided any assignment is in interest of service and complies with requirement of equivalence of grade and function. Institutions must address individual decisions to officials in a language of which they have thorough knowledge but not obliged to use a language chosen by official or to respond to requests in the language used in request, which would impose an intolerable burden on administration (261, 365, 272-273, wfr)

V. Rights and Obligations (Articles 11-26a)

a) Generally

T-371/21, *WV v EEAS,* 24.01.2024, EU:T:2024:35 (appeal pending, C-243/24 P)
Article 21 SR does not set out exhaustively all the forms the obligation to give assistance and advice

may take (185, wfr)

b) duty of loyalty (cf. esp. Articles 11 and 21)

T-371/21, *WV v EEAS,* 24.01.2024, EU:T:2024:35 (appeal pending, C-243/24 P)
"un fonctionnaire ne saurait subordonner le respect de ses obligations statutaires à des conditions qu'il détermine unilatéralement ». Article 21 is specific manifestation of duty of loyalty which every official owes to institution and to his or her superiors. It must be complied with not only in carrying out specific duties given to the official but applies to all aspects of the relationship with the institution and may thus be compared with the similar requirements under Article 12 SR. Article 21 does not set out exhaustively all the forms the obligation to give assistance and advice may take (147, 175; 185-186, wfr)

T-831/22, *TO v EUAA*, 19.06.2024, EU:T:2024:404 (appeal pending C-576/24 P)
While staff members cannot be criticised for ensuring that their rights are given effect, even if they have not understood them correctly, starting numerous formal procedures within a short period, on the basis of allegations which later turn out to be baseless, is a breach of duty of loyalty (200, wfr)

T-3/23, *UA v EUAA*, 26.06.2024, EU:T:2024:419
Where staff member makes agreement putting an end to criminal proceedings on behalf of agency and using its resources to do so, although he had initiated the proceedings in his own name and to protect his personal interests, agency was entitled to consider that making agreement using its resources infringed Article 11 SR, and the fact that the agreement might incidentally have benefited the agency was irrelevant (98-105)

c) avoidance of conflicts of interest (Article 11a)

T-624/22, *RS v EIB*, 10.07.2024, EU:T:2024:461 (appeal pending, C-614/24 P)
A possible conflict of interest which could have affected validity of a different decision (concerning the opening of a harassment procedure) is irrelevant to legality of an apparently unrelated contested decision (such as non-renewal of contract) unless the applicant demonstrates that conflict could have influenced content of latter decision (100, wfr)

d) Prohibition of harassment (Article 12a SR)

C-615/22 P, *HV and HW v ECDC,* 07.12.2023, EU:C:2023:961
Duty of assistance against alleged harassment requires admin to intervene with all necessary vigour if confronted with incident prejudicial to good order of service, by attempting to establish facts and then taking appropriate action; must open inquiry if there is *prima facie* evidence to support allegations of harassment, and does not have a wide discretion as to that: however, not required to do so solely on basis of allegations by a staff member; justified not to do so where it had asked appellants (who had not formally asked for assistance under Article 24) for information, and they had not replied (44-49, wfr)

T-89/20, *PV v Commission*, 19.06.2024, EU:T:2024:402
Harassment can be result of series of individual instances which on their own might not be harassment but can be treated as such when considered globally. Review concerns whether administration has made a mistake of assessment of facts in relation to this definition, not manifest error. Difficult relations with superiors or colleagues are not proof of harassment; nor are medical reports as to official's state of health since they do not show that origin lay in harassment and are based on unilateral statements by official. Fact medical service obliged to send a series of invitations to medical checks not harassment but result of official's own failure to comply with his obligations, nor is a mere opinion that official is fit for work. Unfavourable staff reports are not harassment where they merely record unsatisfactory behaviour in objective terms; a negative evaluation is not of itself proof of harassment. Nor are decisions reassigning officials adopted in interest of the service, even if officials find them hard to accept (312-317, 324, 326, 340-341, 345-346, 369, wfr)

T-78/21*, PV v Commission,* 19.06.2024, EU:T:2024:403
Behaviour must be abusive and have some objective existence - must be such that a reasonable third

party would consider it improper; must exist over time, and can thus by definition consist of various kinds of behaviour which might not amount to harassment taken in isolation but could do so when considered together (240-242, wfr)

T-789/22, *PB v SRB*, 26.06.2024, EU:T:2024:426 (appeal pending, C-582/24 P)
Complainant in harassment case cannot rely on presumption of innocence since request for assistance procedure is not directed towards establishing complainant's guilt or his/her criminal or disciplinary responsibility. Complainant's alleged state of health is not of itself indication of harassment capable of requiring AA/AECE to open an inquiry. Same is true of medical reports, since, while these can confirm existence of a certain state of health, they cannot confirm origin of the condition, since doctor concerned will necessary have had to rely solely on the unilateral statements of the complainant. Alleged victim cannot, on basis of allegations of harassment, challenge legality of some other decision concerning him/her, except by demonstrating that the matters alleged to be harassment had influenced that decision (36-41, 95, 116, 130, 192, 222, 278-281, 286, 320-321, 339, 341, 345, 350-351, 358, 367-368, wfr)

e) external activities (Article 12b SR)

T-689/22, *SN v Commission*, 23.10.2024, EU:T:2024:719
Terms of Article 40(1a) SR indicate that Article 12b continues to apply during CCP thus officials who wish to engage in professional activities while on CCP must ask for permission and permission must be refused for activities involving lobbying or advocacy towards the official's institution which could lead to an actual or potential conflict of interest. In reviewing such decisions, including those which grant permission but subject to conditions, GC must verify whether AA remained within reasonable bounds and did not use powers in manifestly wrong manner. Potential risk is enough, AA not obliged to refer to individual cases (27, 37-39, 41-43, 45, 47, 49, 64-65, wfr)

f) obligation of professional secrecy and freedom of expression (Articles 17 and 17a SR)

T-371/21, *WV v EEAS,* 24.01.2024, EU:T:2024:35 (appeal pending, C-243/24 P)
Infringement of Article 17(1) arises from the sole fact of communicating information covered by the obligation of confidentiality to a third party, irrespective of official's motives for doing so. It is thus an infringement to have an internal document sent to one's hotel even for sole purpose of printing it out. A document remains subject to Article 17(1) even if it written by official him/herself (203-204)

T-624/22, *RS v EIB*, 10.07.2024, EU:T:2024:461 (appeal pending, C-614/24 P)
Breach of confidentiality does not justify annulment of a substantive decision such as non-renewal of a contract, only the possible opening of disciplinary proceedings against those responsible (113)

g) obligation to comply with lawful instructions (Articles 21 and 21a SR)

T-371/21, *WV v EEAS,* 24.01.2024, EU:T:2024:35 (appeal pending, C-243/24 P)
It is not enough to be physically present, one must be available to institution, which is not the case of an official who refuses to carry out instructions. Article 21 is a specific manifestation of duty of loyalty which every official owes to institution and to his or her superiors. It must be complied with not only in carrying out specific duties given to official but applies to all aspects of relationship with institution and may thus be compared with similar requirements under Article 12 SR. Article 21 does not set out exhaustively all forms obligation to give assistance and advice may take (175, 177-178; 185-186, wfr)

h) obligation to compensate for losses caused by serious personal fault (Article 22)

T-3/23, *UA v EUAA*, 26.06.2024, EU:T:2024:419
Article 22 SR refers to *"serious personal fault"* - not limited to cases of intentional acts or gross negligence or to acts aimed at personal gain or intentional harm to employer: where agency had not adopted Commission internal rules which included these restrictions, entitled to apply Article 22 in circumstances where none of situations identified in those internal rules had been proved (89-91, 111)

i) duty to report irregularities and whistleblowing (Article 22a)

T-831/22, *TO v EUAA*, 19.06.2024, EU:T:2024:404 (appeal pending C-576/24 P)
Having the status of a whistleblower does not exempt the person concerned from his or her other statutory obligations, and further depends on good faith, meaning that the person's motives in reporting the alleged irregularities are relevant. That person must also observe the utmost discretion in making any public reference to matters dealt with by OLAF. Even if an applicant meets the conditions for Article 22 to apply, he or she cannot claim that a decision adversely affecting him or her, which concerns a different matter from that reported to OLAF, infringes his or her rights under Article 22 unless he or she shows a link between the decision and the status or alleged status of whistleblower (76-82, wfr)

j) duty of assistance (Article 24 SR)

C-615/22 P, *HV and HW v ECDC,* 07.12.2023, EU:C:2023:961
Duty of assistance requires admin to intervene with all necessary vigour if confronted with an incident prejudicial to good order of the service, by attempting to establish the facts and then taking the appropriate action; must open inquiry if there is *prima facie* evidence to support allegations, and does not have a wide discretion as to that: however, not required to do so solely on basis of allegations by a staff member; justified not to do so where it had asked appellants (who had not formally asked for assistance under Article 24) for information, and they had not replied (44-49, wfr)

T-789/22, *PB v SRB*, 26.06.2024, EU:T:2024:426 (appeal pending, C-582/24 P)
In Article 24 harassment proceedings, complainant is entitled, in order to be heard before decision on request, to receive at least a summary of statement by alleged harasser and of statements by other witnesses, drawn up in a manner ensuring confidentiality. Communication of non-confidential summaries is normally enough. If the institution can see from the request that there is no indication of proof, it can refuse to open an inquiry (36-41, 70, 94-95, 116, 192, 281, wfr)

k) duty of care

C-218/23 P, *NS v Parliament*, 25.04.2024, EU:C:2024:358
Duty of care reflects the balance of reciprocal rights and obligations for the administration and officials as set out in the SR. When the administration takes a decision concerning an official's position, it must take account of all relevant considerations, including that person's personal interests. In relation to a decision reassigning an official, taking account of those interests cannot mean prohibiting that reassignment even if the official objects to it, since the duty of care cannot prevent the administration from taking measures it considers necessary in the interest of the service. In reviewing decisions reassigning officials, the courts determine whether the administration has remained within reasonable limits and has not exercised its discretion in a manifestly incorrect manner (112-115, wfr)

T-807/21, *QI v Commission,* 06.12.2023, EU:T:2023:786
Infringement of duty of care or of principle of impartiality can only lead to annulment where, in their absence, procedure might have had a different outcome (75, wfr)

T-22/22, *AL v Council*, 10.04.2024, EU:T:2024:219
While duty of care might lead AA to mitigate penalty to take account of circumstances such as official's health or that of a family member, it cannot prevent AA from adopting decisions it considers necessary in interest of service, including a disciplinary decision dismissing an official (194-195, wfr)

T-124/23, *VB v ECB,* 08.05.2024, T:2024:294
Definition for ECB similar to that in T-159/23, above. Duty of care is subordinate to compliance with the statutory rules and cannot require administration to act contrary to the latter (73-74, wfr)

l) Right of association (Article 24b SR and Article 1 of Annex II SR)

C-546/23 P, *UG v Commission,* 21.11.2024, EU:C:2024:975
Article 60 SR only permits exceptions to the obligation to request authorization to be absent from duties

in case of illness or accident; if reason for absence is to take part in trade union meetings in his/her capacity as a staff representative or trade union delegate, the official or agent is therefore obliged to ask for authorization from his/her superior. A decision finding an infringement of Article 60 by reason of failure to do so is not contrary to Article 7 of Directive 2002/14 on information and consultation of workers (which requires that workers enjoy protection permitting them to carry out their duties as staff representatives), since it is not based on being a staff representative and did not amount to a restriction on staff representation activities, but on that failure. The obligation to seek authorization to attend meetings as a staff or union representative does not infringe the rights conferred on such representatives by the SR (80-87)

m) Obligation of reasoning (Article 25)

JC C-567-570/22 P, *Dumitrescu and Schwarz and ors v Commission*, 18.04.2024, EU:C:2024:336
Duty to give reasons is an essential procedural requirement to be distinguished from question whether reasons are correct in law. Reasoning consists of formal statement of the grounds on which decision based, and can be sufficient in law even if incorrect (which will instead vitiate substantive legality of decision) (46, wfr)

C-546/23 P, *UG v Commission,* 21.11.2024, EU:C:2024:975
No need to indicate all factual and legal considerations, since question whether reasoning is sufficient depends not only on the terms of the relevant decision but also on its context and the whole of the rules applicable to the matter concerned (139-141, wfr)

T-318/22, *Passalacqua v Commission,* 28.02.2024, EU:T:2024:1366 (appeal pending C-309/24 P)
Standardized reasons which contain no information about individual cases are equivalent to an absence of reasoning. However, AA need not inform officials who were not promoted of comparative assessment it made of their merits and those promoted, or explain in detail why it thought that the latter deserved promotion. Enough to indicate the individual relevant reasons why complainant was not promoted, by reference to individual criteria for promotion set out in Article 45 SR. Sufficiency of reasoning to be distinguished from correctness of reasons, which is matter of substantive legality (49-56, wfr)

T-232/23, *LW v Commission*, 17.07.2024, EU:T:2024:482
Staff reports are not decisions pursuant to Article 25 SR but are governed by Article 43. While they must be sufficiently reasoned to allow official to make comments, reporting officers who have wide discretion need not include all relevant factual and legal information supporting the evaluation. Enough to set out salient points under the various headings and to assess them (23, wfr)

T-1050/23, *Markov v Commission*, 13.11.2024, EU:T:2024:824
Code of Good Administrative Behaviour is only a guide to good behaviour in institutions' relations with public and is not necessarily intended to create legal obligations. No express provision of EU law imposes general obligation on institutions to inform addressees of attackable acts of judicial remedies available to them or of the relevant time-limits (37-41, wfr)

n) notification (Article 25 SR) and publication

C-317/23 P, *TO v EUAA*, Order 07.12.2023, EU:C:2023:977
Article 90(2) SR provides general acts must be challenged by complaint within three months of publication. No indication there or elsewhere of what publication means, thus institutions have discretion to choose any appropriate method within limits of Article 47 Charter: time cannot run until those concerned have been put in a position to take note of the act. Putting a general act on the institution's website is an appropriate method for this purpose, provided it is easy to find the act on it. This is particularly so for acts concerning an external competition with internal and external candidates, who are thus treated equally. The use of this method of publication should also be foreseeable for those concerned (AG 11-18, quoted in 4, wfr)

T-1136/23, *Lianopoulou v Commission*, 23.10.2024, EU:T:2024:748
Registered letter with advice of receipt is a reliable means of notification but is not the only possibility,

since relevant provisions prescribe no particular method; admin is free to use whatever means it considers appropriate in circumstances. Under principle of representation, where request is presented by lawyer acting for official, notification of reply solely to lawyer by e-mail is effective service on latter, even if request presented by post, at least where lawyer's electronic address appeared in his letter. In case of decision notified by e-mail, defendant must show when the message was sent and when received by other party and when that party was in a position to take note of it, which can be done e.g. by when it was received and that the addressee was looking in the in-box at that date. What matters is date when addressee was in a position to read message not when it was actually opened (18-24, 27-34, 38, wfr)

VI. Recruitment and appointment of Officials (Articles 27-34 and Annex III)

a) Conditions for recruitment, including languages (Article 27)

T-40/23, *Hatherly v EUAA,* 07.02.2024, EU:T:2024:64
Article 5 only lays down minimum conditions for recruitment and does not preclude more stringent criteria being set out in individual vacancy or competition notices. In the absence of any contrary provision applicable to recruitment competitions, or in the notice of competition, a requirement in a notice to have a university degree must be construed in light of definition of a degree in national legislation of State in which candidate studied for it. Court carries out full review of question whether a given diploma is recognised in the MS where it was issued and whether, in light of local legislation, it is of the level required by the notice. (40, 52, wfr)

T-623/18, *EO v Commission,* 20.03.2024, EU:T:2024:195 (appeal pending C-385/24 P)
Where Courts had held in proceedings against competition notice itself that language arrangements were unlawful to the extent Commission had not justified limitation to EN FR and DE for choice of second language and this had affected all tests in competition, an individual decision excluding a candidate on basis of the results of those tests is itself unlawful. However, a claim for annulment of reserve list requires Courts to take account of legitimate interests of third parties such as successful candidates; where competition had involved numerous candidates and a long time had elapsed since publication of reserve list, claim should be rejected, without prejudice to the Commission's obligation to comply with the present annulment in respect of the applicant (57-59, 63-69, wfr)

T-120/23, *UJ and ors. v Commission*, 10.07.2024, EU:T:2024:464
Indication in notice that EN and FR are essential as being the two languages used for communication in services for which reserve list intended and also for communication with third countries mainly concerned is justified where supported by statistics showing that these are most commonly used languages for purpose, and where applicants do not explain how exclusion as L2 of their personal official languages is supposedly disproportionate. Obligations of institutions under R1/58 on official languages in relation to competitions do not go beyond what is required by Art 1d SR concerning non-discrimination. Decision to assess candidates' linguistic abilities by means of practical exercise rather than by means of special linguistic examination was reasonable exercise of AA's wide discretion as to organisation of competition and had advantage that candidates' ability to communicate, including in L2, was tested in situations close to those which they would meet for real, if recruited (79-83, 87-88, wfr)

b) Competitions and selection procedures, Articles 27-30 and Annex III

T-147/23, *VI v Commission*, 15.05.2024, EU:T:2024:320
Every candidate must read competition notice carefully and provide, with completed application form, all information they consider useful for examining their application, particularly if expressly invited to do so in notice; accordingly, selection board not required to carry out its own research to determine whether a candidate meets conditions in notice (22, 57-60, 67, 71, 80, 90, 92, wfr)

T-216/23, *VT v Commission*, 10.07.2024, EU:T:2024:465
Current meaning of the principle of the stability of the selection board: board must ensure consistency of application of criteria to all candidates, by ensuring stability of its membership throughout procedure. However, consistency of marking can be guaranteed by other means. Hence members who are prevented from taking part can be replaced by alternates and by taking measures to guarantee consistency of

marking. These measures have to be assessed in the light of the particular characteristics of procedure and practical necessities of competition, so long as equal treatment is ensured and choice of candidates remains objective. It is possible to ensure comparative nature of assessment by ensuring stability only at certain stages of the competition, since it is not a goal in itself but only a means of ensuring equality and objectivity. This can be done by constructing the tests according to a predetermined methodology, applying the same criteria to all candidates, using the same subjects for the tests and organising tests of the same duration, ensuring that the chair or deputy chair of the board attends each test, even if briefly, organising frequent co-ordination meetings of the board during the evaluation centre stage and organising studies to ensure that marking remains consistent and providing specific training to all board members before they take up their duties. Replacing the chair by an alternate for some tests is not unreasonable when there are 750 candidates to be interviewed (218-228, wfr)

T-221/23, *WS v EUIPO*, 13.11.2024, EU:T:2024:820
In case of decisions by selection boards, obligation to give reasons must be reconciled with secrecy applicable to their proceedings under Article 6 of Annex III, which is intended to guarantee their independence and objectivity, by protecting them from external pressures and interference, thus precludes disclosure of positions taken by individual members and information about individual or comparative assessments of candidates; accordingly, it is enough to disclose their individual marks to candidates. Assessments by board are comparative and are an expression of value judgment. They thus fall within its wide discretion and review is limited to *"flagrant breach"* of rules governing its work. Assessment itself of candidates' knowledge and ability is not subject to review. Applicant's own belief in merits of his/her performance is not evidence of manifest error of assessment (70-73, 76, 78, wfr)

VII. Administrative positions (Articles 35-42 SR)

a) Generally

T-78/21*, PV v Commission,* 19.06.2024, EU:T:2024:403
An official who is not in one of the positions listed in Article 35 SR and thus pays no contributions cannot acquire pension rights for the period concerned (181-187, 192, wfr)

b) Leave on personal grounds ("CCP")(Article 40 SR)

T-689/22, *SN v Commission*, 23.10.2024, EU:T:2024:719
Article 12b continues to apply during CCP thus officials wishing to engage in professional activities on CCP must ask for permission which must be refused for activities involving lobbying or advocacy towards official's institution which could lead to actual or potential conflict of interest. In reviewing such decisions, including those which grant permission subject to conditions, GC must verify whether AA remained within reasonable bounds and did not use powers in manifestly wrong manner. Potential risk is enough, AA not obliged to refer to individual cases. CCP decision prohibiting advocacy before Commission itself, or assistance to private clients in EU courts as part of consultancy activities in competition law, when carried out by official of DG COMP on CCP can lawfully take account of such matters as: applicant's previous duties in Commission, tasks of consulting firm concerned and whether they involved such lobbying or participation, applicant's role in firm and how visible they were to outsiders, and particularly whether he occupied a senior position, whether firm's activities were in same field as the one he had worked in at Commission. Institution entitled to take a stricter view for future from that taken in previous CCP decisions – fact activities had been authorized in past creates no right to renewal on former favourable terms. Officials on CCP not in comparable situation to those who have left and different legal bases apply to each case (Article 40 for CCP, Article 16 SR for former staff) (27, 37-39, 41-43, 45, 47, 49, 64-65, wfr)

c) Parental leave (Article 42a SR)

C-546/23 P, *UG v Commission,* 21.11.2024, EU:C:2024:975
Article 42a SR, read with clause 5(4) of amended framework agreement on parental leave annexed to Directive 2010/18/EU, prevents employer from dismissing an official or agent for professional incompetence on ground that that person has requested parental leave and therefore from relying on dates of the requested leave to argue that they were incompatible with interest of the service, although

it does not prevent employer from refusing request. However, where finding of professional incompetence is also based on several considerations distinct from dates of proposed leave, it is not contrary to Article 42a SR. While general law relating to parental leave prohibits dismissal on the ground of having asked for parental leave, it does not prohibit and employer from dismissing employee for serious reasons, nor does it prevent employers from dismissing employees who have asked for or indeed taken parental leave, if dismissal is for other reasons (60-65, wfr)

VIII. Evaluation and Promotion (Articles 43-46)

a) Evaluation

C-5/23 P, *EUIPO v KD*, 04.07.2024, EU:C:2024:575
Report is value judgment of RO not of AA, thus Article 90(2) complaint not required before bringing action against report - may be brought directly once report becomes final. Art 43 SR obliges institutions to create internal appeal procedures, but does not permit them to make recourse to those procedures precondition of going to Court – that would be unlawful addition to SR themselves. Duty of care requires AA to take account of health problems of official when adopting staff report (19-25, 67, wfr)

T-232/23, *LW v Commission*, 17.07.2024, EU:T:2024:482
Staff reports are not decisions pursuant to Article 25 SR but are governed by Article 43. Must be sufficiently reasoned to allow official to make comments, but reporting officers, who have wide discretion, need not include all relevant factual and legal information supporting evaluation. Enough to set out salient points under various headings and assess them. Assessment must be individual not impersonal but RO need not provide specific examples, though care must be taken to give reasons particularly where report is less favourable than previous reports. If RO had no particular reason to think official's sick leave might have affected performance, cannot be criticised for not having mentioned it. Appeal assessor entitled to confirm report with no additional reasons. Given very wide discretion of RO, who must make value judgments not liable to objective verification, review is limited to regularity of procedure, absence of factual error and of manifest error of assessment or misuse of powers, burden of proof of such matters being on official. Holding dialogue after time laid down in relevant GIPs cannot justify annulment unless shown [presumably by applicant] that this *« may have had an influence on content of decision* » (23, 28-29, 32, 57, 70, wfr)

b) Promotion

T-353/22, *XH v Commission,* 07.02.2024, EU:T:2024:63 (judgment confirmed on appeal, C-256/24, *XH v Commission*, Order 03.10.2024, EU:C:2024:875, see below under appeals)
In case of promotion decisions, reasons need not be given in decision itself, but must be given in reply to any subsequent complaint, and can be limited to indicating how conditions in Article 45 SR applied to applicant's individual situation. That condition is met where decision rejecting complaint explains promotion system, and why applicant not promoted, by means *inter alia* of anonymised references to staff reports of some promoted officials, as compared to applicant's staff reports. Arguments concerning legality of earlier promotion exercises on which Court has already ruled in other proceedings are irrelevant for assessing legality of a subsequent exercise. AA has wide discretion as to respective importance to be given to each of the three criteria in Article 45 SR, which it is entitled to weight. However, it must carry out comparative examination of merits impartially and on an equal basis using comparable sources of information. Review limited to whether AA remained within reasonable bounds and whether it has not used powers in manifestly incorrect way. Courts cannot reexamine all files of all eligible candidates to see if it agrees with AA, which would exceed its jurisdiction by substituting its own assessment of merits (45-47, 62, 90, 94-97, wfr)

T-531/21, *QN v Commission,* 13.03.2024, EU:T:2024:166
Applicant cannot invoke alleged irregularities in a staff report to challenge legality of a subsequent non-promotion decision where report has become final. Use of languages and level of responsibility are listed in Article 45 as matters to take into account, in same way as appraisal report. AA has wide discretion in assessing merits, review limited to whether it remained in reasonable bounds and did not use powers in manifestly incorrect manner. Comparison must be undertaken on basis of equality, using

comparable sources of information. Article 45 allows AA certain discretion as to respective weight to be given to each of the three listed factors. For applicant to produce evidence of any alleged manifest error. Review of equal treatment under Article 45 SR confined to ensuring AA did not use a distinction which was arbitrary or manifestly inappropriate to the purpose. While officials have expectation of reasonable career prospects, that does not confer a personal right to promotion, even if they meet all conditions for it, since promotion is based on comparison of merits. In promotion decisions, AA not required to explain comparative assessment of merits of person not promoted by comparison with those promoted (21, 24, 29-32, 36, 42, 47, 54, 80-81, wfr)

T-315/23, *AL v Council*, 06.11.2024, EU:T:2024:771
Requirement in Article 45 SR for AA to compare merits of eligible officials before promotion decision is expression both of equal treatment and of principle of reasonable career prospects. In making comparative assessment which is precondition for promotion decisions, comparative merits is decisive. AA has wide discretion so review limited to whether it has remained within reasonable bounds and has not used its powers in a manifestly wrong manner. Court does not review merits of decision, which depend on complex value judgments which by nature are not capable of objective verification. AA has discretion to adopt whatever method of assessing comparative merits it considers appropriate. No obligation to adopt any particular system for appraisal and promotion. Since Article 45 includes expression *"in particular",* AA can take account of criteria other than three mentioned which are capable of indicating merit, nor is it limited to considering staff reports, but may take account of other information, such as a serious disciplinary penalty, even if misconduct had not occurred in service, since any misconduct is an indication of a person's merits. A request by AA to remove such a person's name from the list of those recommended for promotion and to make recommendation to replace that name with that of another eligible official is in line with sound administration since it is intended to exhaust the promotion possibilities for that year (28-31, 33-34, 45, 48-52, 82-83, wfr)

IX. Termination of service (Articles 47-53 SR)

a) Professional incompetence (Article 51)

T-160/23, *VO v Commission*, 06.11.2024, EU:T:2024:791
Decision downgrading applicant for professional incompetence after three unsatisfactory staff reports annulled because admin had failed to comply with own self-imposed rules on the procedure to be followed, since it had not adopted the prescribed improvement measures until a few months before the decision and had thus not allowed time for any improvement to become visible (see esp. 59-66)

b) upper age limit (Article 52)

T-1123/23 R, *Meucci v Parliament and EEAS*, Order 05.01.2024, no ECLI number yet
No statutory right to continue to work after retirement age, so alleged infringement cannot be invoked to justify urgency. Article 52 SR provides that departure on reaching that age is the norm, so any authorization to remain in the interest of the service is exceptional. To be distinguished from being placed on compulsory leave until normal date of retirement under Article 42c SR (20, 23, 27-30, wfr)

X. Working Conditions, Leave and Sick Leave (Articles 55-61, Annexes V and VI)

a) Working hours and leave (Articles 55-58 and Annexe V)

T-371/21, *WV v EEAS,* 24.01.2024, EU:T:2024:35 (appeal pending, C-243/24 P)
Not enough to be physically present, one must be available to institution, which is not case of official who refuses to carry out instructions, who may thus be considered absent (147, 149; 175, 177-178)

b) sick leave (Article 59)

T-38/23, *IB v EUIPO*, 10.04.2024, EU:T:2024:221
Presenting a medical certificate creates presumption that absence is justified. The administration cannot contest the validity of the certificate and decide that the absence is unjustified unless it has first carried out a medical verification pursuant to Article 59(1) second paragraph, which only produces legal effects as of the date when it is carried out. Pursuant to the third paragraph of Article 59(1), an official on sick leave can be subject to a medical check at the institution's initiative, at any time and if it cannot be carried out for reasons imputable to the official, the absence is considered unjustified. The obligation

on the institutions to carry out medical checks has as its necessary corollary the obligation on officials to allow them to be carried out, or at least to present a medical certificate which clearly states, with sufficient precision, that they are unable to travel for the purposes of the check (46-47, wfr)

c) Irregular absences (Article 60)

C-546/23 P, *UG v Commission,* 21.11.2024, EU:C:2024:975
Article 60 SR only permits exceptions to the obligation to request authorization to be absent from duties in case of illness or accident; if reason for absence is to take part in trade union meetings in his/her capacity as a staff representative or trade union delegate, the official or agent is therefore obliged to ask for authorization from his/her superior. A decision finding an infringement of Article 60 by reason of failure to do so is not contrary to Article 7 of Directive 2002/14 on information and consultation of workers (which requires that workers enjoy protection permitting them to carry out their duties as staff representatives), since it is not based on being a staff representative but on that failure (80-83)

T-371/21, *WV v EEAS,* 24.01.2024, EU:T:2024:35 (appeal pending, C-243/24 P)
Deducting leave days or withholding remuneration under Article 60 SR and then considering those days as irregular absences for purposes of disciplinary decision does not infringe *ne bis in idem*, since a) Article 60 SR expressly provides for compensation to be without prejudice to discip proceedings and b) case-law expressly confirms such compensation is not disciplinary measure or equivalent (214, wfr)

T-78/21*, PV v Commission,* 19.06.2024, EU:T:2024:403
AA has no discretion under Art 59-60: if absence found to be irregular, it must deduct days from leave entitlement and, when that has been exhausted, must withhold remuneration (125-135, 173, 181-187, 192, 301, wfr)

XI. Remuneration and Allowances (Articles 62-71 and Annexes VII and XI)

a) right to remuneration (Article 62 SR)

T-494/23, *HG v Commission*, 16.10.2024, EU:T:2024:703
The Financial Regulation applies to recovery of debts due from the administration to officials (40)

b) family allowances

C-498/23 P, *AL v Commission*, Order 06.02.2024, no ECLI number at present
Article 2(4) of Annex VII allows admin some discretion in dealing with individual cases, which is justified by considerations of natural justice which admin must have in mind in applying this provision, but it is obliged to determine whether conditions for any benefit are met, for which burden of proof is on official, in particular the conditions relating to actual support provided to the person concerned (4, quoting AG 9, 11, wfr)

T-369/22, *Hessler v Commission,* 20.12.2023, EU:T:2023:855 (appeal pending, C-137/24 P)
Individual paragraphs of Article 2 of Annex VII cannot be read in isolation. Thus fact that Article 2(2) does not mention any upper age-limit for being dependent child is not decisive since that provision must be read with Article 2(3) which does mention one. Legislature assumes that as of a certain age, children should be able to support themselves and should thus not be a charge on the EU budget (71-75)

T-50/22, *AL v Commission*, 10.04.2024, EU:T:2024:220
Child allowance is subject to the condition that the official actually supports the child, which it is for the official to prove. Where the official has not provided sufficient information to allow the administration to determine whether the relevant conditions for a benefit are met, he or she can be required to provide the necessary further information, such as full bank statements for a given period (109, 113, 115, wfr)

T-123/23, *VA v Commission*, 05.06.2024, EU:T:2024:359
Article 3 makes entitlement to education allowance dependent on receipt of Article 2 child allowance, and it is subject to the further condition that the child is in full-time education. To obtain child allowance for a child aged 18-26, official must prove that child is in full-time education and also that child is dependent on him/her. Concerning the former requirement, education should be considered as

continuing until the child receives the results of the final examinations, irrespective of any national provisions defining the academic year as continuing after that date. This interpretation is in line with the principle that provisions conferring benefits should be interpreted strictly, since the allowance is paid monthly and education continues until the month when the results are published, it being the official's duty to inform the administration as soon as that occurs (32-34, 36, 39-45, 55, wfr)

c) annual travel costs

JC C-567-570/22 P, *Dumitrescu and Schwarz and ors v Commission*, 18.04.2024, EU:C:2024:336
Purpose of Article 8 of Annex VII is to enable official and dependants to visit place of origin at least once a year in order to maintain family, social and cultural ties there, which is a general principle of the EU public service; Article 8(1) thus grants annual travel costs between place of employment and place of origin to all those who receive expat or foreign residence allowance. However, where place of origin is outside territories of MS and also outside territories in Annex II TFEU and EFTA States, flat rate payment determined on basis of geographical distance between place of employment and capital city of MS whose nationality the official has. Nationality can be an objective element for determining entitlement to a statutory benefit, particularly where the benefit is intended precisely to compensate for the disadvantages suffered by those assigned to a place of which they do not have the nationality. However, where nationality is used to determine how a benefit is calculated, with the consequence that officials in comparable situations (who all have expat or foreign residence allowance) receive, if they have a place of origin outside the Union, receive amounts which bear no relation to the distance to that place, unlike officials who have a place of origin within the Union. Distance to the capital of the MS of which one has the nationality is in that connection purely arbitrary. While need for financial consolidation and budgetary efficiency can justify limiting benefits to those most in need of them, cannot of themselves be an objective justification for a difference resulting from use of a criterion which is unrelated to the purpose of the benefit (70-73, 75-79, 81, wfr) [comment: this appears to be the first time that any of the EU Courts has held one of the 2004 or 2014 amendments to the SR to be unlawful]

d) daily allowance

T-124/23, *VB v ECB,* 08.05.2024, T:2024:294
Under Article 10 of Annex VII SR, conditions for daily allowance are that staff member has temporarily relocated to place of employment while temporarily maintaining his or her previous residence. Purpose of allowance is to compensate for additional costs and inconvenience resulting from unstable situation of probationer official who has to have temporary accommodation at place of employment while maintaining previous residence on a provisional basis, thus intended to encourage probationer to postpone transferring residence permanently to place of employment, since doing so could prove to be premature if probationary period unsuccessful. Allowance is linked to obligation to relocate to take up Union employment at a time when person is unable to give up previous residence (43, 45-49, wfr)

XII. EU income tax regime R 260/68

T-369/22, *Hessler v Commission,* 20.12.2023, EU:T:2023:855 (appeal pending, C-137/24 P)
Child must qualify as a dependent child under Article 2 of Annex VII SR in order to give a right to tax deduction under Article 3(4) of R 260/68. For this purpose Article 2 must be read as a whole, having regard to age-limit mentioned in Article 2(3). Thus, to give a right to deduction, child must also meet the conditions for payment of child allowance, as to which AA has no discretion if conditions met. Tax deduction supplements allowance itself, which is thus precondition for deduction. That is confirmed by Article 3(3) of R 260/68, which means that amount of the deduction cannot be calculated without knowing amount of allowance, which is not known for applicant, as he does not receive it (78-82, wfr)

XIII. Social Security (Articles 72-76)

T-755/22, *TG v Commission*, 08.05.2024, EU:T:2024:294
Under common rules on sickness insurance, recognition of serious illness requires detailed and factual examination of person's state of health and of characteristics of treatment for relevant condition, based upon report by person's doctor, and criteria laid down in rules on basis of an opinion of medical council. Thus, while medical adviser and AECE must decide, if necessary after consulting specialists, on basis of scientific literature, examination of request for recognition of serious illness cannot overlook actual

and general state of health of person concerned. While court cannot review medical assessments properly so called, it must ensure that medical adviser's opinion has been adopted on basis of a full and detailed examination of person's general state of health, on basis of a global assessment of the four criteria for serious illness to be recognised. The medical adviser cannot simply confine him/herself to an examination in isolation of some of individual criteria set out in the common rules, or to considering only those conditions considered as not being met (29-32, 42-43, wfr)

XIV. Pensions (Articles 77-84 and Annex VIII)

a) Acquisition of pension rights

T-78/21*, PV v Commission,* 19.06.2024, EU:T:2024:403
Applicant claimed Art 59-60 only concern suspension of remuneration not acquisition of pension rights – rejected, since acquisition of rights is subject to payment of contributions by official: Art 3 of Annex VIII provides that acquisition or pension rights depends on a) length of service in one of positions mentioned in Art 35 a)-c) e)-f) (or length of Art 42/50 allowance or invalidity allowance) and b) on his/her contributions to pension scheme; further, Art 36-37 of Annex VIII provide that any payment of salary gives rise to obligation to pay contributions, and indicate which situations other than normal service give rise to pension rights (e.g. secondment etc.). Only situation where rights are acquired w/o this contribution is parental leave under Article 42a SR, since it expressly provides for whole of contribution to be paid by employer during such periods. Official who receives no remuneration because of irregular absence pursuant to Art 59-60 cannot acquire pension rights. Art 34 Charter guarantees access to social security under relevant Union and national rules and practices. Conditions for a retirement pension are laid down by Article 77 SR and Art 2-3 of Annex VIII. Art 34 cannot be interpreted as giving officials a right to retirement pension contrary to conditions laid down by those provisions. Art 3(3) TUE concerning prevention of social exclusion cannot be interpreted as giving officials unconditional right to retirement pension whatever the circumstances, since it must be interpreted as allowing application of reasonable and proportionate conditions intended to protect the balance of pension scheme. Art 77 SR requires payment of contributions for 10 years – not enough that service did not cease during 10 years or more (173, 181-187, 192, 281-285, 293, wfr)

b) Contributions

T-148/23, *VK v Commission*, 09.10.2024, T:2024:684
Where staff member cannot request a transfer "in" to EU pension scheme (e.g. because request was late) relevant national rights are not lost since MS are obliged under R 883/2004 to take account for purposes of national pension rights of years worked for EU institutions (90-91, wfr)

c) calculation and minimum subsistence amount

T-788/22, *PT v Commission*, 25.09.2024, EU:T:2024:655
Pension scheme is based on solidarity and there is no principle to the effect that everyone must receive an amount corresponding precisely to what he or she put in. The contributions made by officials to the EU pension scheme, whether as a result of their service or as a result of a transfer of rights acquired elsewhere, is intended to finance the future pension pursuant to the relevant statutory provisions and is not intended to constitute a capital sum available to the staff member. Those persons are not the "owners" of the amounts corresponding to their contributions (52-53, wfr)

d) transfer of pension rights

T-367/22, *PT v Commission*, 25.09.2024, EU:T:2024:654
Staff members who have decided to have their national pension rights transferred to EU scheme are not in same position as those who have decided not to do so. While transfer of such rights has no bearing on the calculation of the pension based on the minimum subsistence amount, that does not mean that the transfer of rights has not been taken into account, since Art 77 SR and Art 2 of Annex VIII mean that the pension is based on number of years acquired multiplied by the percentage indicated in Art 77, par 2, subject to the possible ceiling there indicated, the number of years being years in service plus any years corresponding to rights transferred . Art 11(2) of Annex VIII sets out parameters for converting

national rights into EU years , namely the person's age, basic salary and the exchange rate at the date of transfer. Where the years acquired, including rights transferred, do not reach the minimum subsistence amount, that amount applies instead (38-44, wfr)

e) Invalidity allowance

T-38/23, *IB v EUIPO*, 10.04.2024, EU:T:2024:221
Where a disciplinary procedure is pending at the same time as an invalidity procedure, in relation to the same official, the interest of the latter requires the institution to decide either to close the invalidity procedure before adopting a decision to dismiss the official, or to allow it to continue. Recognition of invalidity has an incidence on the official's financial situation since Article 9 of Annex IX SR provides that officials or former officials who are unable to work for health reasons have the guarantee of receiving at least the necessary minimum income even in the event of dismissal. The institution may not simply declare the invalidity procedure devoid of purpose in view of the dismissal, since that has the consequence that the question of the right to invalidity allowance is left unanswered (40-41, wfr)

f) Survivors' pensions

C-109/24 P, *van Oosterwijk v Commission*, Order 03.09.2024, EU:C:2024:754
The distinction made in Articles 19 and 20 of Annex VIII between marriages entered into before or after the official left the service preserves the essential content of the right to equal treatment in conformity with Article 52 Charter, since it only bears on the limited question of the minimum duration of the marriage and does not otherwise prevent survivors in the former group from benefiting from a survivor's pension, and since prevention of fraud is a legitimate objective of general interest. Where a difference is laid down by the legislature, it will only be held disproportionate if it is arbitrary or manifestly inappropriate in relation to the intended purpose of the legislation. That is not the case of the distinction in question, since there are greater incentives to sham marriages in the case of older persons particularly where the former official has left the service on grounds of invalidity. Moreover, the distinction is justified by fact that in marriages while the official is in service, invalidity is not foreseen but is at most a hypothetical future possibility, whereas in the case of subsequent marriage it is an existing fact. Since the criterion of five years is objective and applies to all persons in that situation, it can be applied automatically with no need to verify absence of fraudulent intention case by case. Furthermore, the fact that certain individual cases may be treated less favourably by a general and abstract rule is not a reason for considering the distinction improper. Cohabitees cannot be assimilated to married persons, and the majority of MS continue to distinguish between them. Article 20 of Annex VIII is the only rule governing access to survivors' pensions, to the exclusion of any other rule of Union or national law (4, quoting AG 13-19, 22-25, 35, wfr)

XV. Recovery of Overpayments and Subrogation (Articles 85-85a)

T-50/22, *AL v Commission*, 10.04.2024, EU:T:2024:220
The exception to the five-year limitation period in Article 85 SR (where the official can be considered as having deliberately misled the administration with a view to obtaining the relevant amount) applies in particular where the official has not agreed to provide the administration with all the necessary information about his or her personal situation, or has failed to inform it of changes in that situation, or has taken steps to make it more difficult for the administration to discover that the payment was not due, for example by providing incorrect information. It is for the administration to prove that the official intended to mislead it. As to the conditions for recovery when the five-year period has not expired, the AA must show either that the recipient actually knew that the payment was not due, or that the fact that it was not due was so obvious that he or she could not have been unaware of it. The expression *"patently such"* used in Article 85 does not mean that the official need not make any effort to check the justification, only that repayment is required where the error is one which would not escape the notice of an official exercising ordinary care, who is deemed to know the rules applicable to his or her remuneration. The position of the administration, which has to make thousands of payments of salary and allowances, cannot be compared with that of an individual official, who has a personal interest in checking sums received every month; the question is whether the error should have been obvious to the official, not whether it was obvious to the administration (62-63, 65; 125-127, wfr)

XVI. Discipline and inquiries, including OLAF (Article 86 and Annex IX)

a) OLAF

T-831/22, *TO v EUAA*, 19.06.2024, EU:T:2024:404 (appeal pending C-576/24 P)
Under Art 5(5) of R 883/2013 on OLAF, where after initial investigations OLAF decides not to open internal inquiry itself, it may send relevant information to institution concerned so it can take appropriate action and it is not an infringement of the confidentiality of OLAF inquiries mentioned in Art 10 of the Regulation for CA to refer to OLAF's initial findings in CA's final decision, where CA gave no publicity to the OLAF investigation, which had not been divulged to the public, where the investigation was the result of the agent herself having alleged the matters investigated fraud and where the only matters mentioned in the decision were OLAF's conclusions, but not the source of the information. The case-law recognising the institution's right to mention the conclusions of an OLAF final report after a full inquiry can be applied by analogy to its conclusions after a preliminary investigation (64-72, wfr)

b) disciplinary procedure

T-371/21, *WV v EEAS,* 24.01.2024, EU:T:2024:35 (appeal pending, C-243/24 P)
Conducting a hearing on inquiry report under Article 3 of Annex IX SR in absence of applicant not infringement of right to be heard where applicant had been offered four possible dates, and where she had not produced a medical certificate justifying absence on date finally chosen, and had not taken up the offer of appearing by videoconference which was also made. For AA to state in report to disciplinary board that confidence in applicant had been irremediably destroyed does not mean it had already decided to dismiss her, since it merely reflects requirement under Article 12 of Annex IX to indicate all relevant circumstances, including any aggravating or mitigating factors; further, it is only a preliminary opinion which preceded a full exchange of views and which allowed applicant to express her position on the allegations against her. Disciplinary board has wide discretion as to conduct of inquiries, in particular as to assessing whether witnesses are co-operative and the usefulness of their evidence and could thus lawfully decide, in the absence of any evidence suggesting partiality, to hear only one of the numerous witnesses suggested by the official concerned. In disciplinary proceedings under SR, right to be heard guaranteed by Article 41 Charter is implemented by Articles 4, 16(1) and 22(1) of Annex IX SR, which provide official to be heard by disciplinary board, either orally or in writing, personally or via a representative and then by AA before decision, and also that if official cannot be heard personally, may be invited to send representative or submit written observations. Moreover, a decision should not be annulled for failure to hear official if the failure was the result of official's own conduct; AA cannot put off decision indefinitely (80, 86-87, 110; 99-100, wfr; 104-106, wfr)

T-22/22, *AL v Council*, 10.04.2024, EU:T:2024:219
Where the AA has already adopted a disciplinary decision imposing a penalty before the official was informed that he or she was the subject of national criminal proceedings, there is no infringement of Article 25 of Annex IX SR. When, at the date of the decision, the official was subject only to preliminary inquiries or judicial investigations, which are not covered by the expression "criminal prosecution" used in Article 25. It is only when the official is actually subject to prosecution that the AA is obliged to suspend its decision. The time-limit in Article 22 of Annex IX is not mandatory but is only a rule of sound administration intended to avoid unjustified delay in adopting the final decision. A slight overstepping of the time-limit can be justified in particular where the case is complex and/or the official has been granted several opportunities to be heard and has made several oral and written submissions following the notification of the disciplinary board's opinion (25-27, 38-42, wfr)

T-49/23, *Angelidis v Parliament*, 29.05.2024, EU:T:2024:335
Whether the right to be heard has been infringed must be considered in the light of the rules governing the matter, which, in disciplinary cases, are set out in Article 22(1) of Annex IX SR, the terms of which must be strictly complied with. Article 4 of Annexe IX only allows for written observations or representation by a third party where there are objective reasons why the person cannot be heard; otherwise must be an opportunity for an actual hearing. A mere reference to various general decisions

providing for maximum use of remote working during the Covid epidemic does not meet strict conditions of Article 22(1) of Annex IX, which requires objective reasons related to individual case.
Infringement of the right to be heard only leads to annulment where the procedure could have had a different outcome in the absence of the irregularity. In order to show that this is so, applicants must explain what arguments and other matters they might have put forward if their rights had not been infringed and show if need be that those arguments and matters could have led to a different result; this question must be considered in the light of the circumstances of each case. Where a disciplinary decision provided for a more serious penalty than proposed by the disciplinary board and contained subjective value judgments as to the gravity of the offence, it could not be *"reasonably excluded"* that the result would have been different had the applicant been heard in person, since value judgments are by nature open to being influenced (51-63, wfr; 66-71, wfr)

T-89/20, *PV v Commission*, 19.06.2024, EU:T:2024:402
While Article 28 of Annex IX SR allows AA/AECE to reopen proceedings in the event of new facts supported by relevant evidence, it does not limit AA/AECE's power to reopen proceedings to that one situation. Proceedings may therefore be reopened, *inter alia*, after an annulment or withdrawal for procedural reasons. Allegations and supporting facts must be clearly identified in report to the disciplinary board, since AA/AECE is obliged under Annex IX to state the allegation and identify the relevant statutory provisions. The AA/AECE's report to the disciplinary board made after hearing the official, is intended only to determine the facts and to classify them in relation to the official's statutory obligations and is simply a preparatory act in a procedure in several stages and the conclusions of the report do not represent the AA/AECE's final position and are not a decision imposing a penalty, nor does it bind the disciplinary board. Disciplinary proceedings are administrative not judicial, thus invocation of the principle of equality of arms is ineffective. Article 25 concerns situations where the same person faces criminal proceedings and disciplinary proceedings for the same facts. It does not apply to situations where the official has initiated the criminal proceedings by his or her own complaint, and they concern a third party (141-142, 167-168, 173, 176, 179, 240-241, 402, wfr)

T-3/23, *UA v EUAA*, 26.06.2024, EU:T:2024:419
While Article 3 of Annex IX SR provides that staff member must be heard by AA/AECE before opening any disciplinary procedure, Article 4 provides that this may be done in writing where for objective reasons a meeting is impossible, which was the case at the relevant time, in April 2020, when travel was forbidden as a result of the Covid pandemic. The choice of a written procedure in such circumstances is not only for the official, and the administration may also decide to resort to it. Conducting the hearing before the disciplinary board by videoconference was likewise permissible, given that this was in December 2020 during the second phase of lockdown for the same reasons, and given that the applicant had not alleged that this method had prevented him from expressing his point of view, his concerns as to security and the ability to consult his lawyer confidentially during the virtual meeting having been dealt with by the use of an encrypted platform and the possibility for the defence to communicate privately by other means during the meeting or during interruptions (63-64, 68-71)

T-669/22, *IP v Commission*, 02.10.2024, EU:T:2024:669
DB opinion does not bind AA/AECE either as to facts or penalty, as latter entitled to take a different view of the seriousness of the offence from that of DB. However, obligation to consult DB is a procedural obligation, since a) expressly required by Annex IX if AA/AECE envisages a penalty more severe than the two lowest; b) AA/AECE bound to take account of DB opinion in its decision, particularly if it intends to impose a more severe penalty than that recommended; c) having DB examine case is an essential procedural guarantee to protect rights of defence, as confirmed by procedural conditions such as minimum time to prepare defence, right to challenge members etc. Not reconsulting DB after annulment based on reference in decision to a previous conviction which had been removed from personal file, when AA/AECE should have realised that the reference to this document could have affected DB opinion, meant DB had been deprived of opportunity to express view of case based on absence of any reference to recidivism. Infringement of an essential procedural requirement leads to annulment without any need to inquire whether it could have affected result (121-141, wfr)

c) decisions

T-766/22, *Canel Ferreiro v Council*, 29.05.2024, EU:T:2024:336
Merely quoting in a disciplinary decision a passage of an inquiry report which refers to e-mails which supposedly infringed Articles 12 and 21 SR, without indicating which passages of the e-mails the AA has in mind, while mentioning these communications *"in particular"*, but without identifying any other supposedly infringing acts, does not meet obligation to stage charge clearly, at least when no further explanations have been provided in the decision rejecting the complaint against the decision, despite the complainant's having made precisely these objections as to lack of precision (64-67 wfr, 74-75, 82)

d) delays

T-89/20, *PV v Commission*, 19.06.2024, EU:T:2024:402
Annex IX SR does not lay down any time-limit for opening disciplinary proceedings (although 2019 internal rules in COM now lay down an overall 10-year rule for start of an inquiry, which can be taken as a point of reference for evaluating delay in earlier cases), thus must be a reasonable time. Must also be conducted with reasonable diligence and assessment of that can be influenced by any delay in opening proceedings. As to initial period, what is reasonable depends on individual circumstances, importance of case, complexity, behaviour of parties etc. Less than four years between facts and first disciplinary action is reasonable given in particular new 10-year rule and fact that some of the allegations concerned unjustified absences, which cannot be charged until the special and time-consuming procedures under Articles 59-60 SR have been carried out. Five months for the administrative inquiry was reasonable in a complex case, which in any case could not have affected rights of defence or AA/AECE ability to prove the facts; likewise four months between the inquiry report and the report to the disciplinary board was reasonable. Delays before the board not to be criticised since resulted largely from applicant's repeated requests for postponement of hearings, then his failure to appear at all. Overall duration of 20 months between start of inquiry and final decision was reasonable in circumstances (250-255, 263-266, 267-268, 269, 270-274, 276-278, wfr)

e) Penalties, aggravation and mitigation

T-371/21, *WV v EEAS,* 24.01.2024, EU:T:2024:35 (appeal pending, C-243/24 P)
Lawfulness of penalty presupposes allegations have been proved, which is a matter which Courts must review in full, even where involved complex matters of assessment by admin. Article 10 of Annex IX SR provides that penalty must be proportionate to seriousness of infringement. SR lays down no fixed relationship between penalty and offence, though Article 10 sets out some criteria for aggravating and mitigating factors. Choice of penalty must be based on overall assessment of facts and surrounding circumstances by AA, which must explain why it has chosen this penalty rather than another. Court reviews whether facts and circumstances amount in law to aggravation or mitigation and whether AA has weighed them proportionately. Officials of EEAS are by reason of its mission constantly under observation by third parties outside it and are thus required to act with greatest circumspection, particularly in their external dealings (127-129, 217-225, wfr; 244)

T-22/22, *AL v Council*, 10.04.2024, EU:T:2024:219
Once facts established, given AA's broad discretion as to penalty, review limited to absence of manifest error of assessment or misuse of powers; Court only intervenes if penalty disproportionate to matters found, which is however subject to full review, in order to ensure compliance with Article 47 Charter. Article 10(b) of Annex IX allows AA to treat as aggravation risk which official's conduct created for institution's reputation or interests, without it being required to demonstrate whether anyone outside it were actually aware of conduct, or how many such persons there were. Officials must avoid any conduct objectively liable to affect image of institutions or public trust in them, pursuant to duty of loyalty. Lack of any visible remorse can be treated as aggravating factor. While repetition of misconduct can amount to aggravation, that does not mean that lack of repetition is mitigation since official always required to avoid any conduct which could reflect on his/her position. Even if official had positive staff reports over career, AA can still find that this cannot be treated as mitigation, given seriousness of misconduct, particularly if it took place over a long period – under Article 10 of Annex IX, conduct must be assessed as whole - not limited to good conduct in service (48-54, 111-114, 122, 160, 168-169, 171, wfr)

T-38/23, *IB v EUIPO*, 10.04.2024, EU:T:2024:221
Recognition of invalidity has an incidence on the official's financial situation since Article 9 of Annex IX SR provides that officials or former officials who are unable to work for health reasons are guaranteed receiving at least the necessary minimum income even in event of dismissal. Institution may not simply declare invalidity procedure devoid of purpose in view of dismissal (40-41, wfr)

T-669/22, *IP v Commission*, 02.10.2024, EU:T:2024:669
Disciplinary decision cannot invoke recidivism under Article 10(h) of Annex IX where previous penalty has been removed from individual file under Article 27 of Annex IX, since decisions cannot be based on matters not in file; any other interpretation would deprive Article 27 of any useful effect (14-16, wfr)

f) Ne bis in idem

T-371/21, *WV v EEAS,* 24.01.2024, EU:T:2024:35 (appeal pending, C-243/24 P)
Deducting leave days or withholding remuneration under Article 60 SR and then considering those days as irregular absences for purposes of a disciplinary decision does not infringe principle, since a) Article 60 SR expressly provides for compensation to be without prejudice to disciplinary proceedings and b) case-law expressly confirms that compensation is not disciplinary measure or equivalent (214, wfr)

T-89/20, *PV v Commission*, 19.06.2024, EU:T:2024:402
Principle *ne bis in idem* applies to criminal proceedings under Article 50 Charter - extended to disciplinary proceedings by Article 9(3) of Annex IX SR. Two conditions: must be a previous decision which has become final and facts must be same in that decision and new decision or proceedings. Unlike revocation, withdrawal of act normally has same effect as annulment, thus producing effects *ex tunc*. *Ne bis in idem* only prohibits new assessment of substance of infringement, with view to a second penalty additional to first, or to imposing penalty when none had been imposed by first decision or there had been an acquittal. It does not of itself prevent administration from resuming proceedings for same facts after annulment of the original decision for procedural reasons, without any ruling on substance, since in such a case there is no acquittal within meaning of *ne bis in idem*; same applies where original decision was withdrawn for procedural reasons (127-130, 135-138, wfr)

T-78/21*, PV v Commission,* 19.06.2024, EU:T:2024:403
Refusal of pension rights due to insufficient length of actual service as result of periods of irregular absence, combined with dismissal for disciplinary infringement related to that absence and withholding of remuneration, is not infringement of *ne bis in idem* rule or of principle that all penalties must be explicitly provided for, since a) *ne bis in idem* only applies to criminal matters under Art 50 Charter or to actual disciplinary penalties under Art 9(3) of Annex IX SR, and withholding of salary is not a disciplinary penalty as it is expressly stated in Art 59(3) and 60 SR to be automatic and separate from a disciplinary penalty; as it leads automatically to non-acquisition of pension rights for period concerned, the latter is not a disciplinary penalty either and b) since these "civil" consequences of irregular absence also found in a disciplinary decision are expressly provided for by Art 59-60 (202-203, 207-218, wfr)

T-669/22, *IP v Commission*, 02.10.2024, EU:T:2024:669
Principle only prohibits new consideration of substance of offence, leading to second penalty in addition to first. When first decision is annulled, it is eliminated from legal order and is deemed not to have existed, so second decision imposing penalty is possible, since not additional to first (76-77, 82-83, wfr)

T-315/23, *AL v Council*, 06.11.2024, EU:T:2024:771
Under Article 9(3) of Annex IX, a single infringement must not give rise to more than one penalty. Deferment of advancement in step is a penalty listed in Article 9(1) but refusing a promotion, which is not mentioned there, is not a penalty since it results instead from a comparison of officials' merits and the AA is entitled to take account of a disciplinary penalty for purposes of the comparison (93-95, wfr)

XVII. CEOS

a) general - nature of employment and categories of staff

JC C-567-570/22 P, *Dumitrescu and Schwarz and ors v Commission*, 18.04.2024, EU:C:2024:336
Legal link between official and administration is based on SR not a contract, thus rights and obligations of officials and also of CEOS agents where SR apply to them by analogy can be altered at any time for the future, subject to requirements of EU law, including equal treatment (64-65, wfr)

b) Renewal and non-renewal

C-528/23 P, *EUIPO v KD*, Order 11.04.2024, EU:C:2024:311
Agent must be heard before any decision not to renew contract. Purpose is a) to allow for facts to be correctly determined and b) to protect addressee, by allowing him/her to put forward matters relating to personal situation which argue in favour of decision being taken or not being taken, or in favour of its having a particular content, in particular matters considered favourable to that person. Applicant cannot be criticised for failing to explain how infringement of right could have affected decision if decision itself, while indicating that matter on which applicant was not heard, such as a staff report, was taken into account in decision, does not explain how this was done (12-21, wfr)

T-624/22, *RS v EIB*, 10.07.2024, EU:T:2024:461 (appeal pending, C-614/24 P)
No right to renewal, which is only a possibility, if in interest of service, subject to wide discretion of employer, particularly where renewal would result in indefinite contract. Review limited to manifest error of assessment, misuse of powers, error of fact or law and duty of care (55-56, wfr)

c) Termination

C-546/23 P, *UG v Commission,* 21.11.2024, EU:C:2024:975
Termination with notice under Article 47 c) i) CEOS is at wide discretion of AECE, review limited to absence of manifest error or misuse of powers. For AECE in first instance to assess competence of staff. Manifest error is one readily detected; plea of manifest error must be rejected if, despite matters put forward by applicant, assessment in decision still appears justified and coherent, acts of institutions being presumed lawful so long as not withdrawn or annulled or declared invalid on an objection of illegality or in preliminary ruling (120-123, wfr)

T-24/23, *UF v Commission,* 08.05.2024, EU:T:2024:293
Given its wide discretion in the event of fault which could justify dismissing agent, AECE not obliged to start disciplinary proceedings rather than terminating contract with notice. Only obliged to open disciplinary proceedings if it intends dismissing agent without notice. While AECE cannot substitute its assessment for that of agent's superiors concerning loss of confidence, it must check correctness of alleged facts and verify whether request to terminate contract is compatible with fundamental rights and does not constitute misuse of powers. If institution decides to terminate contract and refers to particular facts as a justification, the court must examine correctness of those facts (54-55, 57-58, wfr)

PART II – PROCEDURE AND REMEDIES

Some interesting points have arisen:

a) in C-317/23 P, *TO v EUAA*, Order 07.12.2023, EU:C:2023:977, CJ confirmed that putting a general act on the institution's website is an appropriate means of publishing it, which thus determines when a time-limit begins to run

b) T-1136/23, *Lianopoulou v Commission*, 23.10.2024, EU:T:2024:748 confirms that while a registered letter with advice of delivery is a good method for notifying decisions, it is not the only one and the administration can use whatever method it deems appropriate, including notification by e-mail to the party's lawyer, rather than to the party personally. The date of notification is not when the addressee actually reads the decision but when s/he is put in a position to take notice of it – you cannot gain time by not opening a message you suspect of being a decision if you are consulting your in-box on that day and looking at other messages, since that would contradict the principle that time-limits are imperative and are not at the disposal of the parties or of the courts

c) Confirmation of the rather curious case-law on the use of improperly obtained evidence. The general principle established in earlier cases is apparently that if the evidence is the only evidence for a certain fact or allegation, it will be considered but if that matter can also be proved by other material, the offending evidence can be removed. Now the Courts say that there is no rule that such material must be removed from the case file: T-793/22, *TU v Parliament*, 11.09.2024, EU:T:2024:614

d) A restatement of an important procedural principle, in T-595/22, *Ferrer de Macedo Silva v Frontex,* Order 05.02.2024, EU:T:2024:79: *"it is necessary, for an action to be admissible, that the basic legal and factual particulars on which it is based be indicated coherently and intelligibly in the text of the application itself"* (39, wfr)

e) C-5/23 P, *EUIPO v KD*, 04.07.2024, EU:C:2024:575: like decisions of selection boards in recruitment competitions, staff reports are an exception to the rule that the applicant must make an Article 90(2) complaint before going to Court. The reason is that they express a value judgment by the reporting officer which the AA is not in a position to interfere with (19-25, wfr)

1. Jurisdiction in staff cases

C-109/24 P, *van Oosterwijk v Commission*, Order 03.09.2024, EU:C:2024:754
Article 270 TFEU gives CJ sole jurisdiction over disputes between staff members and the Union on conditions laid down by SR/CEOS, where dispute originates in the employment relationship; also applies to any person claiming rights arising out of that relationship. However, Article 270 does not state that the relationship between the staff member and the institution is governed exclusively by SR/CEOS. Other provisions of Union law may also apply. Furthermore, various provisions of SR/CEOS refer to national law (4, quoting AG 30-34, wfr)

2. Attackable act

T-369/22, *Hessler v Commission,* 20.12.2023, EU:T:2023:855 (appeal pending, C-137/24 P)
The only acts which are attackable are those which have immediate and direct effects on the applicant's interests by significantly altering his or her legal position. Whether this is so depends on the substance of the act, by reference to its content and the context and the relevant powers of the institution concerned. Fact that institution indicated that a given note was not a decision does not prevent it from being attackable. However, if a note contains only a general statement that benefit A is the precondition for receiving benefit B, without reference to the applicant's personal situation, it is not attackable. Admin should not include statements that a given act is not a decision since such statements are not

conclusive and may therefore be misleading (29-33, 48, wfr)

T-147/23, *VI v Commission*, 15.05.2024, EU:T:2024:320
In actions against a decision refusing to admit a candidate to a competition, the attackable act is the selection board's decision after reconsideration (22, wfr)

T-766/22, *Canel Ferreiro v Council*, 29.05.2024, EU:T:2024:336
Preparatory acts are not attackable and can only be challenged indirectly by means of an action against the final decision. The report of administrative inquiry leading to subsequent disciplinary proceedings cannot itself be subject of action or request for annulment. Applicant may challenge decision rejecting complaint where it raises an issue specific to the complaint procedure (22-24, 31, wfr)

T-120/23, *UJ and ors. v Commission*, 10.07.2024, EU:T:2024:464
Under Article 277 TFEU, applicants cannot attack general act such as competition notice but can attack an individual act of which the general act is the basis. In a recruitment procedure which consists of a series of acts, applicant can in an application against a subsequent act rely on alleged illegality of a previous act which is closely linked to it, such as a competition notice, where the reasons for the later decision are based upon the previous act (36-37, 39-40, wfr)

3. Interest in action

T-322/21, *TB v ENISA,* Order 22.12.2023, EU:T:2023:877 (non-lieu)
For a party to retain an interest, annulment sought must be capable of procuring a benefit for applicant up to time of judgment – for applicant to prove. Court may raise question of continuing interest at any time of own motion. Resignation *prima facie* deprives applicant of interest in challenging decision to appoint another person to a post, though may retain interest in claim for damages (22-26, wfr)

T-623/18, *EO v Commission,* 20.03.2024, EU:T:2024:195 (appeal pending C-385/24 P)
Applicant must continue to have a personal interest in the annulment, otherwise no need to adjudicate. Whether this is so depends on the circumstances and the damage allegedly suffered. *In casu,* this meant assessing whether annulment of the decision excluding the applicant would procure a benefit for her given that the competition notice itself had already been annulled. However, Courts had not annulled the reserve list itself, meaning that, while the annulment of the exclusion decision would not automatically lead to the applicant's recruitment, it could still confer a benefit on her, since it was not impossible that the Commission would decide to offer her the chance to resit the tests. This is a sufficient interest. Further, ruling out the existence of an interest would legitimise the failure to take any measure to comply with the annulment judgment in relation to the applicant and thus to repeat the infringement which led to the annulment (43-49, wfr)

T-572/23, *France v Commission*, Order 18.09.2024, no ECLI number at present (non-lieu)
Application must continue to have a purpose, meaning that final decision must be capable of conferring a benefit on applicant. This also applies to privileged applicants such as MS who do not need to demonstrate an interest in order to bring an action (19-20, wfr)

T-34/24, *CA v Court of Auditors*, 23.10.2024, EU:T:2024:723
Official cannot act in public interest and can only put forward arguments relating to personal situation (26, wfr)

4. Time-limits

C-317/23 P, *TO v EUAA*, Order 07.12.2023, EU:C:2023:977
Article 47 Charter requires predictability, thus time for challenging a general act cannot run until those concerned have been put in a position to take note of it. Putting a general act on the institution's website is an appropriate method for this purpose, provided it is easy to find the act on it. Exception for excusable mistake to be interpreted narrowly, and only concerns exceptional circumstances, especially where the institution has acted in such a way as could mislead a normally prudent person exercising reasonable diligence (AG 13-16, 30, quoted in 4, wfr)

C-546/23 P, *UG v Commission,* 21.11.2024, EU:C:2024:975
Decisions which have become final because not challenged in time cannot be challenged indirectly in an action against a subsequent decision (e.g. a staff report not challenged at the time cannot be called into question in a later action against a decision terminating a contract under Article 47 CEOS for underperformance (158, wfr)

T-322/21, *TB v ENISA,* Order 22.12.2023, EU:T:2023:877 (non-lieu)
A party may not challenge the legality of an act which has itself become final, since not challenged within the time-limit. However, a party who has not challenged an act which has become final may nevertheless challenge the inferences drawn from that act for the purposes of a subsequent act which has been challenged in time (33-34, wfr)

T-89/20, *PV v Commission*, 19.06.2024, EU:T:2024:402
Time-limits are imperative and are not at the disposal of the parties or the court which must, if necessary *ex officio*, verify whether they have been complied with. Action against a confirmatory decision is inadmissible only if the confirmed decision has become final for lack of timely challenge (68-69, wfr)

T-148/23, *VK v Commission,* 09.10.2024, EU:T:2024:684
Where a statutory provision creates an ordinary time-limit and not an absolute bar, applicant may show that s/he was prevented from complying with it by exceptional circumstances outside his or her control; if the provision does create an absolute bar, only *force majeure* can excuse non-compliance. In former case, applicant need only prove abnormal external circumstances, but in latter, must prove that s/he had taken reasonable care to protect self from such events, Being unable to show the existence of an exceptional circumstance means *a fortiori* inability to show *force majeure*. Covid pandemic starting in February 2020 could not be an exceptional circumstance justifying failure to comply with a ti,e-limit which ran between 01.09.2021 and 28.02.2022, when pandemic was subsiding and where in any event request could have been made electronically from home (55, 61, 65-66, wfr)

T-1136/23, *Lianopoulou v Commission*, 23.10.2024, EU:T:2024:748
Admissibility of application depends upon pre-litigation procedure having been followed correctly. Time-limit for complaints is imperative and is not at disposal of parties or the courts, who must verify, even *ex officio*, whether it has been complied with. It is for party who alleges that it has not been complied with to prove when time began to run. In case of decision notified by e-mail, defendant must show when the message was sent and when received by the other party and when that party was in a position to take note of it, which can be done e.g. by when it was received and that the addressee was looking in the in-box at that date. What matters is date when addressee was in a position to read the message not when it was actually opened (15-16, 27-33, wfr)

5. Notification of decisions

T-1136/23, *Lianopoulou v Commission*, 23.10.2024, EU:T:2024:748
Registered letter with advice of receipt is a reliable means of notification but is not the only possibility, since relevant provisions prescribe no particular method; admin is free to use whatever means it considers appropriate in circumstances. Under principle of representation, where request is presented by lawyer acting for official, notification of reply solely to lawyer by e-mail is effective service on latter, even if request presented by post, at least where lawyer's electronic address appeared in his letter. In case of decision notified by e-mail, defendant must show when the message was sent and when received by the other party and when that party was in a position to take note of it, which can be done e.g. by when it was received and that the addressee was looking in the in-box at that date. What matters is date when addressee was in a position to read the message not when it was actually opened (18-24, 27-34, 38, wfr)

6. Requests

T-369/22, *Hessler v Commission,* 20.12.2023, EU:T:2023:855 (appeal pending, C-137/24 P)
Article 90 does not oblige admin to adopt an express decision in reply to a request, since it remains free not to act and simply allow the request to be rejected implicitly after four months. Administration has

no obligation to indicate remedies in an act which is not attackable (51-52)

T-78/21*, PV v Commission,* 19.06.2024, EU:T:2024:403
Possibility of a request under Article 90(1) does not allow applicant to avoid a time-limit for a complaint or action which has expired (51, wfr)

T-789/22, *PB v SRB*, 26.06.2024, EU:T:2024:426 (appeal pending, C-582/24 P)
Institutions must address individual decisions to officials in a language of which they have a thorough knowledge but are not obliged to use a language chosen by the official or to respond to requests in the language used in request, which would impose an intolerable burden on administration (272-273, wfr)

7. Complaints

C-5/23 P, *EUIPO v KD*, 04.07.2024, EU:C:2024:575
Given that staff report under Art 43 SR is a value judgment of the RO not the view of the AA, making an Article 90(2) complaint is not required before bringing an action against the report, which may be brought directly as of the date when the report becomes final. While Art 43 SR states that institutions shall adopt rules creating internal appeal procedures, it does not permit institutions to make recourse to that procedure compulsory as a precondition of going to Court and any such requirement would be an unlawful addition to the procedural requirements laid down in the SR themselves (19-25, wfr)

T-369/22, *Hessler v Commission,* 20.12.2023, EU:T:2023:855 (appeal pending, C-137/24 P)
Complaint made before expiry of time-limit for reply to request is inadmissible (44)

T-89/20, *PV v Commission*, 19.06.2024, EU:T:2024:402
Any given act can only be the subject of one complaint by the official. If there are two complaints having the same purpose, only the first is to be considered, the second being a mere reminder which cannot have the effect of extending time-limits. In such a case, any reply to second complaint is merely confirmatory, in the absence of any new fact. T-89/20, *PV v Commission*, 19.06.2024, EU:T:2024:402
Applicant cannot normally complain of infringement of right to be heard in course of complaint procedure since complaint is itself exercise of that right (101, 108-109, 304, wfr)

T-120/23, *UJ and ors. v Commission*, 10.07.2024, EU:T:2024:464
Decisions of selection boards are an exception to general requirement for a prior complaint since AA has no power to alter such decisions given the independence of the board, thus complaint should be regarded as purely optional in such cases. However, where an applicant does opt for a prior complaint, the principles relevant to complaints apply, including the rule of concordance, which thus determines the admissibility of the pleas in any subsequent application, even if the complaint is rejected implicitly rather than explicitly. However, by way of exception to this latter rule, the plea of illegality is not subject to the requirement of concordance (144-151, wfr)

T-1136/23, *Lianopoulou v Commission*, 23.10.2024, EU:T:2024:748
Admissibility of application depends upon pre-litigation procedure having been followed correctly. Time-limit for complaints is imperative and is not at disposal of parties or the courts, who must verify, even *ex officio*, whether it has been complied with (15-16, wfr)

8. Request or complaint?

T-621/22, *SB v EEAS,* 13.12.2023, EU:T:2023:805
Pre-litigation procedure for compensation depends on whether alleged loss results from a decision or non-decisional conduct of admin. In first case, applicant must make complaint against decision, in second must begin with request, followed by complaint. In either case, applicant cannot bring action without an express or implied decision rejecting complaint (31-32, wfr)

T-4/23, *PS v EEAS,* Order 23.01.2024, EU:T:2024:43
Pre-litigation procedure for damages claims differs according to whether alleged loss results from an attackable act or not. If it does, applicant must present a complaint, if not, must present a request,

followed by a complaint against any rejection. Claim for economic or non-economic loss to be rejected if closely linked to claim for annulment which has been rejected. Party who has not attacked an adverse decision within time-limit cannot rectify that omission by subsequently presenting claim for compensation for losses allegedly arising from that decision, since that would be an attempt to procure an extension of an already-expired time-limit (35-37, 44, wfr)

9. Reply to complaint

T-621/22, *SB v EEAS,* 13.12.2023, EU:T:2023:805
Since complaint procedure is a process, reasoning in decision rejecting complaint must be taken into account in assessing legality of attackable act (42, wfr)

T-353/22, *XH v Commission,* 07.02.2024, EU:T:2024:63 (judgment confirmed on appeal, C-256/24, *XH v Commission*, Order 03.10.2024, EU:C:2024:875, see below under appeals)
Where express decision rejecting complaint notified only after expiry of four months from date of complaint, or even after bringing of action, fact that the implicit decision was unreasoned at that time does not lead to annulment, nor should the express decision be annulled on ground of lateness, since the consequence could only be the adoption of a new decision, this time with reasons, which would however be identical with the late express rejection of the complaint. Such an annulment could therefore not benefit the applicant. Further late communication of reasons for a decision does not of itself affect the legality of the latter (48-51, wfr)

T-789/22, *PB v SRB*, 26.06.2024, EU:T:2024:426 (appeal pending, C-582/24 P)
Institutions must address individual decisions to officials in a language of which they have a thorough knowledge but are not obliged to use a language chosen by the official or to respond to requests in the language used in request, which would impose an intolerable burden on administration (272-273, wfr)

10. Rule of concordance

T-595/22, *Ferrer de Macedo Silva v Frontex,* Order 05.02.2024, EU:T:2024:79
For plea to be admissible, must have appeared in complaint, to ensure AA informed of criticisms of decision. This does not prevent applicant from presenting pleas and arguments which do not appear in same form in complaint, but they must still be closely linked to complaint. AA must not interpret complaints restrictively (27-29, wfr)

T-120/23, *UJ and ors. v Commission*, 10.07.2024, EU:T:2024:464
Decisions of selection boards are an exception to general requirement for a prior complaint since AA has no power to alter such decisions given the independence of the board, thus complaint should be regarded as purely optional in such cases. However, where an applicant does opt for a prior complaint, the principles relevant to complaints apply, including the rule of concordance, which thus determines the admissibility of the pleas in any subsequent application, even if the complaint is rejected implicitly rather than explicitly. However, by was of exception to this rule, the plea of illegality is not subject to the requirement of concordance. Moreover, an argument which did not appear explicitly in the complaint but which is necessarily linked to an argument which did appear should be considered admissible (144-151, 194-195, 228-232, wfr)

T-669/22, *IP v Commission*, 02.10.2024, EU:T:2024:669
Introducing at the stage of the application a second claim for damages, based upon alleged conduct of the institution not connected with the decision, is inadmissible for non-concordance (149-152, wfr)

11. Pleas and arguments

T-148/23, *VK v Commission,* 09.10.2024, EU:T:2024:684
Where a decision is based on several grounds, a plea directed at still other grounds invoked in decision is ineffective since it cannot lead to annulment of the decision (87, wfr)

T-1050/23, *Markov v Commission*, 13.11.2024, EU:T:2024:824
Pleas and arguments which concern rules which were not applicable to the case are ineffective (79-80, 87, 99-101, 137-138)

12. *Ex officio* pleas

T-221/23, *WS v EUIPO*, 13.11.2024, EU:T:2024:820
Pleas which court should raise *ex officio* include lack of jurisdiction of the deciding authority, infringement of essential procedural requirements and failure to state any reasons, or sufficient reasons. However, although protection of personal data is a fundamental right, it does not fall into any of those categories (54, wfr)

13. Objection of illegality

C-309/23 P, *SE v Commission*, 05.09.2024, EU:C:2024:693 (no AG opinion)
In proceedings for annulment of an individual act, provisions of a general act which form the basis of that individual act can themselves be challenged by objection of illegality pursuant to Article 277 TFEU (26, wfr)

14. Misuse of powers and manifest error

T-621/22, *SB v EEAS,* 13.12.2023, EU:T:2023:805
Abuse of power has a precise meaning, and refers to the use of an authority's powers for purposes other than that for which they were conferred, which must be proved by objective and consistent evidence; mere assertions or vague indications are not enough (116-118, wfr)

T-831/22, *TO v EUAA*, 19.06.2024, EU:T:2024:404 (appeal pending C-576/24 P) .
Burden of proof is on applicant who must show that his or her arguments are at least plausible, otherwise the explanations given by the institution may not be questioned (170, wfr)

T-793/22, *TU v Parliament*, 11.09.2024, EU:T:2024:614
Abuse of procedure is a special case of misuse of powers which has a precise meaning, namely the use of powers for a purpose other than those for which authority was granted, which requires objective, relevant and corroborative evidence that decision was taken solely or preponderantly for a purpose other than that invoked or in order to avoid carrying out procedures provided for by SR/CEOS (210, wfr)

15. Admissibility of application (lack of jurisdiction, requirement of intelligibility etc.)

T-595/22, *Ferrer de Macedo Silva v Frontex,* Order 05.02.2024, EU:T:2024:79
"it is necessary, for an action to be admissible, that the basic legal and factual particulars on which it is based be indicated coherently and intelligibly in the text of the application itself" (39, wfr)

T-40/23, *Hatherly v EUAA,* 07.02.2024, EU:T:2024:64
Application must set out pleas and arguments relied on and a summary, which must be clear enough to allow defendant to present defence and Court to rule on it, if necessary without further information. Must indicate nature of grounds on which based, so a mere abstract statement without supporting argument is not enough (72-73, wfr)

T-516/23, *Lucaccioni v Commission*, Order 06.06.2024, no ECLI number at present
An application which does not indicate a single identifiable plea in law is inadmissible, even allowing for the principle that the court should interpret a party's pleas by reference to their substance, not the terminology used. While Article 89 RP GC allows court to ask parties to explain precise scope of their claims, this is limited to obtaining explanations on particular points and cannot be used to rectify ambiguities and gaps in the application or to free the applicant from his/her procedural obligations. Court cannot itself attempt to identify pleas and discover the arguments which are supposed to support each one, since that could lead it to decide *ultra petita* or to fail to rule on a claim (20-21, 23-24, wfr)

T-89/20, *PV v Commission*, 19.06.2024, EU:T:2024:402
The action must be brought during the time-limit running from the express or implied decision rejecting the complaint; if brought sooner, inadmissible, as premature (113, wfr)

T-78/21*, PV v Commission,* 19.06.2024, EU:T:2024:403
A plea which is merely announced in table of contents of application and in title of plea but is not developed in exposition of the application does not satisfy the requirements in Art 76 d) RP GC as interpreted by the Courts that the essential matters of fact and law be set out clearly and understandably in the text of the application which must explain the content of any given plea (167-168, wfr)

T-634/22, *ZR v EUIPO*, 23.10.2024, EU:T:2024:746
To meet requirement of intelligibility under Article 76(d) RP GC, application must indicate evidence from which institution's alleged behaviour giving rise to claim for compensation can be identified and also the nature and extent of loss and the reasons for considering that there is a causal link between the two (102-103, wfr)

T-221/23, *WS v EUIPO*, 13.11.2024, EU:T:2024:820
Where defence and rejoinder show defendant able to understand plea and arguments in question, that indicates that they must be considered as intelligible thus admissible (37, wfr)

16. *Lis pendens*

T-788/22, *PT v Commission*, 25.09.2024, EU:T:2024:655
Action must be rejected as inadmissible for *lis pendens* if it involves same parties and has same purpose, being based on same pleas as a case already brought. Not enough for applicant to claim that one case is brought under general law while other is a staff case under Article 270 TFEU, where both cases by their content are clearly staff cases. However, there is no identity of purpose or of pleas where one case challenges determination of the amount of pension by invoking alleged illegality of relevant provisions of SR and the other is a claim for restitution of amounts of national pension rights allegedly not taken into account to determine that amount, based on a plea of unjust enrichment of institution (18-23, wfr)

17. *Res judicata*

T-78/21*, PV v Commission,* 19.06.2024, EU:T:2024:403
« sans être lié au sens strict sous l'angle de l'autorité de la chose jugée, dès lors que l'objet des recours n'est pas identique à celui du présent recours, il convient de relever que le Tribunal et la Cour ont déjà eu l'occasion de se prononcer sur l'absence de faits constitutifs de harcèlement moral. Dès lors, il ne saurait être fait totalement abstraction du raisonnement développé à l'occasion des arrêts du 23 mars 2023, PV/Commission (C640/20 P, EU:C:2023:232), et du 30 janvier 2020, PV/Commission (T786/16 et T224/18, non publié, EU:T:2020:17). En effet, le principe même du pourvoi et la structure juridictionnelle hiérarchique qui en est le corollaire recommandent en principe au Tribunal de ne pas remettre lui-même en cause des points de droit tranchés par une décision de la Cour (...). De plus, les faits qui ont manifestement déjà été soumis à l'appréciation du juge de l'Union ne peuvent être de nouveau analysés sans prendre en compte l'appréciation effectuée antérieurement (...) Néanmoins, il est possible d'apprécier des faits postérieurs à la lumière du contexte antérieur, dont les deux arrêts mentionnés au point 244 ci-dessus font partie, sans pour autant que cela les remette en cause (...) » (244-245, wfr)

T-89/20, *PV v Commission*, 19.06.2024, EU:T:2024:402
Where a situation, though not strictly covered by *res judicata* nevertheless concerns the same parties and essentially the same allegations (of harassment) as were considered in an earlier case, the court cannot ignore the reasoning it followed in dealing with that case (330-331, 333, wfr)

T-669/22, *IP v Commission*, 02.10.2024, EU:T:2024:669
Judgments of EU courts which annul acts are covered by *res judicata*, which applies not only to the operative part but also to the reasons which support it which cannot be dissociated from it; however, it only applies to matters of fact and law which have actually been decided, expressly or by necessary implication. Where the prior annulment was only because the AECE had based the previous decision on recidivism, whereas it could not do so once the reference to the first offence had been removed from

the individual file, *res judicata* did not prevent the AECE from implementing the judgment by means of resuming the procedure at the stage where the error had occurred, where the previous judgment was based only on this error and did not pronounce on whether the facts were proved or on any other matter affecting the legality of the decision. Where the new decision imposing the same penalty was not based on recidivism, there was no infringement of *res judicata* (56-57, 63-65, 67-69, wfr)

18. Evidence and burden of proof

C-5/23 P, *EUIPO v KD*, 04.07.2024, EU:C:2024:575
« the rules of EU law do not require a person to prove a negative (…. judgment of 24 March 1988, Commission v Italy, 104/86, EU:C:1988:171, paragraph 11) » (47)

T-371/21, *WV v EEAS,* 24.01.2024, EU:T:2024:35 (appeal pending, C-243/24 P)
Party requesting production of documents must not only identify them but provide at least some indications as to why they might be useful for the case. Cannot simply make a general assertion that they could allow a full examination of the case and give the fullest information to the Court. Admin cannot be expected to produce documents which it claims do not exist, where applicant has provided no indications suggesting that they might exist. For Court alone to decide whether it is necessary to obtain further information about the case (269-273, wfr)

T-531/21, *QN v Commission,* 13.03.2024, EU:T:2024:166
For Court alone to decide on need for a given document to be produced and what value to place on facts and evidence already produced, and whether there is any need for further evidence (106-107, wfr)

T-89/20, *PV v Commission*, 19.06.2024, EU:T:2024:402
Acts which do not involve a final determination of an allegation, such as fraud, are not of themselves proof of those matters (394, wfr)

T-789/22, *PB v SRB*, 26.06.2024, EU:T:2024:426 (appeal pending, C-582/24 P)
The complainant's alleged state of health is not of itself the beginnings of proof of harassment capable of requiring the AA/AECE to open an inquiry. The same is true of medical reports, since, while these can confirm the existence of a certain state of health, they cannot confirm the origin of the condition, since the doctor concerned will necessary have had to rely solely on the unilateral statements of the complainant (320-321, wfr)

19. Evidence which may have been obtained improperly

T-793/22, *TU v Parliament*, 11.09.2024, EU:T:2024:614
A document need not be removed from the file simply because it is confidential or because it has been obtained improperly. There is no general principle of EU law prohibiting courts from taking account of improperly obtained evidence, instead court should balance the parties' interests in the light in particular of whether this evidence is of a decisive kind (ie the only evidence available of the matter in question) (61-64, 69, wfr)

20. Oral and written procedure

T-353/22, *XH v Commission,* 07.02.2024, EU:T:2024:63 (judgment confirmed on appeal, C-256/24, *XH v Commission*, Order 03.10.2024, EU:C:2024:875, see below under appeals)
Article 106(3) RP GC, as implemented by point 142 of the Practice Rules, allows GC to decide to rule without a hearing if there has been no request for one within the time allowed, such request having to be supported by reasons, indicating what points the party particularly wishes to deal with. These requirements are not satisfied by a request for a hearing which refers to the supposed need to examine witnesses, which is covered by Articles 93-94 RP GC. If the GC considers that, despite the request to hear witnesses, it has sufficient information to decide without a hearing, it can do so. Article 86(1) RP GC allows applicant, where original decision replaced by another having same subject-matter, to amend application to take account of new decision, within time-limit for applications under Article 91(3). This also applies where implicit decision replaced by an express decision. Arguments and evidence which could have been submitted in application but was only raised/produced in reply should be rejected as

inadmissible under Articles 84-85 RP GC (19-28, 76, wfr)

T-22/22, *AL v Council*, 10.04.2024, EU:T:2024:219
Under Article 84 RP GC, parties may not put forward new pleas unless they are based on matters of fact or law which have come to light in the course of proceedings. Even if a party was not aware of all relevant circumstances at time of presenting application, under Article 84, he or she cannot in any event wait for several months after becoming aware of relevant matters before raising new plea (23-24)

T-89/20, *PV v Commission*, 19.06.2024, EU:T:2024:402
Article 84 RP GC does not allow a party to present new claims, thus changing subject-matter of case. Under Article 85(1) RP GC, evidence must be produced in first round of written pleadings, unless any late production is duly justified, reasons offered being subject to court's control (46-48, 52-53, wfr)

T-78/21*, PV v Commission,* 19.06.2024, EU:T:2024:403
Under Art 6 of GC decision of 110.7.2018 concerning lodging and notification of acts by e-curia (OJ L 240/72), addressees are informed by e-mail of acts which concern them and that notification occurs when they ask for access to them in e-curia, or failing such request, on 7th day after sending of e-mail. Under Articles 76 and 84(1) RP GC, applicant cannot raise new pleas or arguments in reply unless they are based on matters which have only come to light during the proceedings or are merely developments of matters already mentioned or implied in application. In latter case, the plea or argument in the reply must relate in its substance to content of application; not enough that title of the plea or argument in application is of a very general and wide-ranging kind. Nor can a new judgment justify such a new plea or argument if judgment simply confirms law as it existed at time of application (31-33, 97-100, wfr)

T-793/22, *TU v Parliament*, 11.09.2024, EU:T:2024:614
Where applicant admittedly produced document late, it can nevertheless be accepted if the difficulty in producing it sooner is the consequence of acts or omissions of the other party: applicant managed to find document by other means after having requested it several times from Parliament, with no result.

21. Measures of organisation of procedure and of inquiry, witnesses etc.

C-546/23 P, *UG v Commission,* 21.11.2024, EU:C:2024:975
GC has sole jurisdiction to decide if such measures are necessary in view of the subject-matter of the case, since the probative value, or otherwise, of the material in the file is matter for GC alone, except in the event of distortion (127-128, wfr)

22. Powers of Courts and limits of judicial review

a) no power to issue instructions or make declarations

T-621/22, *SB v EEAS,* 13.12.2023, EU:T:2023:805
Court has no jurisdiction to make general statements about matters outside the scope of the dispute before it, and cannot make declaratory judgments in cases under Article 270 TFEU (23, wfr)

T-369/22, *Hessler v Commission,* 20.12.2023, EU:T:2023:855 (appeal pending, C-137/24 P)
A claim that the institution should be directed to pay the contested benefit may be considered admissible since Article 91(1) confers full jurisdiction on Court in financial matters, which includes any dispute about payment of a benefit to a staff member pursuant to SR or any other provisions governing their working relationship. However, such claims must be rejected on the merits where they are closely linked to claims for annulment which have been rejected (98-102, wfr)

b) Decisions in competition and vacancy procedures

T-221/23, *WS v EUIPO*, 13.11.2024, EU:T:2024:820
Assessments by board are comparative and are an expression of a value judgment. They thus fall within its wide discretion and review is limited to *"flagrant breach"* of the rules governing its work. The assessment itself of candidates' knowledge and ability is not subject to review. The applicant's own

belief in the merits of his/her performance is not evidence of manifest error of assessment (76, 78, wfr)

c) staff reports

T-232/23, *LW v Commission*, 17.07.2024, EU:T:2024:482
Given very wide discretion of RO, who must make value judgments not liable to objective verification, review is limited to regularity of procedure, absence of factual error and of manifest error of assessment or misuse of powers, burden of proof of such matters being on official (32, 57)

d) promotion

T-353/22, *XH v Commission,* 07.02.2024, EU:T:2024:63 (appeal pending, C-256/24 P)
AA has wide discretion as to respective importance to be given to each of the three criteria in Article 45 SR, which it is entitled to weight. However, it must carry out comparative examination of merits impartially and on an equal basis using comparable sources of information. Review limited to whether AA remained within reasonable bounds and whether it has not used powers in manifestly incorrect way. Courts cannot reexamine all files of all eligible candidates to see if it agrees with AA's conclusions, which would exceed its jurisdiction by substituting its own assessment of merits (94-97, wfr)

e) Opinions of statutory medical bodies

T-38/23, *IB v EUIPO*, 10.04.2024, EU:T:2024:221
In an action for annulment of a decision refusing to continue with an invalidity procedure by way of implementation of a previous judgment on the same matter, the applicant cannot request the court to appoint a third doctor to the invalidity committee, since the relevant procedure is laid down under Article 7(3) of Annex II SR, and provides for the appointment of the third doctor by the President of the Court in the event of failure to agree by the other two doctors within two months, and the General Court has no power to make such an order in the course of litigation (78)

T-755/22, *TG v Commission*, 08.05.2024, EU:T:2024:294
Court can only carry out a limited review of the substantive medical justification for a decision refusing recognition of a serious illness (48, wfr)

f) decisions re interest of service, organization of services and reassignment

C-218/23 P, *NS v Parliament*, 25.04.2024, EU:C:2024:358
In reviewing decisions reassigning officials, the courts determine whether administration has remained within reasonable limits and has not exercised its discretion in a manifestly incorrect manner (115, wfr)

g) decisions implementing judgments

T-634/22, *ZR v EUIPO*, 23.10.2024, EU:T:2024:746
Court cannot order administration to take specified measures to implement a judgment annulling one of its decisions (82, wfr)

23. Non-contractual liability and damages; financial claims

JC C-567-570/22 P, *Dumitrescu and Schwarz and ors v Commission*, 18.04.2024, EU:C:2024:336
Article 91(1) SR gives Courts unlimited jurisdiction in disputes of financial character, which include those concerning payment to a staff member of sums that person considers due to him or her under SR or any other provision governing employment conditions. This allows Courts to order institution, where appropriate, to pay a specified sum to a staff member. Where Courts have upheld a plea of illegality against a provision of SR – *in casu* second paragraph of Article 8(2) of Annex VII as amended in 2014 – the consequence must be to order the institution to pay the applicants the difference between the amount paid, calculated on that unlawful basis, and the amounts paid to the other members of the comparable group, calculated on a correct basis (107-113, wfr)

T-621/22, *SB v EEAS,* 13.12.2023, EU:T:2023:805
Damages claim must show unlawful conduct, existence of loss and causal link between the two; if any condition not met, claim rejected (40, wfr)

T-322/23, *VN v Commission,* 10.01.2024, EU:T:2024:4
Claims for damages for economic or non-economic loss to be rejected where they are closely linked to claims for annulment which have been dismissed as inadmissible or unfounded (63, wfr)

T-623/18, *EO v Commission,* 20.03.2024, EU:T:2024:195 (appeal pending C-385/24 P, *Commission v EO*)
Given that being on reserve list confers no right of recruitment, and given that eligibility only becomes an opportunity of recruitment from date when a post becomes vacant to which applicant might reasonably expect to have been recruited, claim for loss of earnings resulting from annulled decision excluding candidate from reserve list must be rejected if applicant fails to show the existcnce of a likely vacant post. However, the applicant should receive compensation for non-economic loss of 6000 euros, to reflect the difficulty of putting the applicant in the position in which she should have been, given that she could not do the tests in her first language without this infringing equal treatment of other candidates (77-84)

T-49/23, *Angelidis v Parliament*, 29.05.2024, EU:T:2024:335
Usual rules as to intelligibility (cf. section 12 above) apply to damages claims. Merely claiming a specified amount for non-economic harm, without further explanation, is inadmissible (78-83, wfr)

24. Action for unjust enrichment

T-788/22, *PT v Commission*, 25.09.2024, EU:T:2024:655
Two conditions: 1) proof of unjust enrichment with no valid basis in EU law and 2) impoverishment of the other party connected with 1). However, no need to prove illegal conduct or service-related fault by defendant. An allegation of an infringement of principle of equal treatment is therefore ineffective *("inopérant")* in support of an action for unjust enrichment (35-36, 50, wfr)

25. No need to adjudicate *("non-lieu à statuer")*

T-171/23, *VR v Parliament,* Order 21.02.2024, no ECLI number yet (non-lieu)
Where admin withdraws the contested act, that puts an end to the subject-matter of the action, since it brings about the result intended by the applicant; as the interest in the action has disappeared in the course of proceedings, there must be a non-lieu (13-15, wfr)

T-1160/23, *AS v EEAS*, Order 18.04.2024, no ECLI number at present
Purpose of action and interest in it must continue to exist until the moment of the judicial decision, in the sense that the action should remain capable of conferring an advantage on the party who brought it. If the purpose of the action disappears during the proceedings, the court cannot rule on the substance since doing so would confer no benefit on the applicant. Such disappearance occurs in particular where the contested act has been withdrawn or replaced in the course of the proceedings (9-11, wfr)

26. Interim measures (IM)

T-1123/23 R, *Meucci v Parliament and EEAS*, Order 05.01.2024, no ECLI number yet
Conditions for suspension cumulative, if either is not met, request for suspension to be rejected. Purpose is to ensure effectiveness of final judgment, so urgency requires proof of need for interim decision in order to ward off imminent irreparable harm. Where harm alleged is impossibility of continuing to work after retirement age, but applicant merely asserts this without producing evidence of harm arising from this, that is not enough. There is no statutory right to continue to work after retirement age, so alleged infringement cannot be invoked to justify urgency (20, 23, 27-30, wfr)

27. Delays by Courts

C-546/23 P, *UG v Commission,* 21.11.2024, EU:C:2024:975
While excessive delays before the Union courts can lead to a claim for damages against the Union under Articles 268 and 340 TFEU, they cannot lead to annulment of a judgment in the absence of any indication that the delays could have had a bearing on the result in the case (130, wfr)

28. Judgments

T-353/22, *XH v Commission,* 07.02.2024, EU:T:2024:63 (judgment confirmed on appeal, C-256/24, *XH v Commission*, Order 03.10.2024, EU:C:2024:875, see below under appeals)
Where express decision rejecting complaint notified only after expiry of four months from date of complaint, or even after bringing of action, fact that the implicit decision was unreasoned at that time does not lead to annulment, nor should the express decision be annulled on ground of lateness, since the consequence could only be the adoption of a new decision, this time with reasons, which would however be identical with the late express rejection of the complaint. Such an annulment could therefore not benefit the applicant. Further late communication of reasons for a decision does not of itself affect the legality of the latter (48-51, wfr)

T-38/23, *IB v EUIPO*, 10.04.2024, EU:T:2024:221
The unlimited financial jurisdiction pursuant to Article 91(1) SR allows the court to provide a complete solution to the disputes coming before it and allows it, even in the absence of admissible requests to that effect, not only to annul a measure but also, if necessary, to order the institution *ex officio* to pay compensation for non-economic loss *("dommage moral")* resulting from a service-related fault, provided it first invites the parties to submit their views on the matter. The court has unlimited jurisdiction where the applicant seeks annulment of a decision affecting his or her financial rights under the SR, such as a decision refusing to carry out an invalidity procedure. The existence of a loss can be deduced from the sole fact that the institution has acted unlawfully, generating a sense of injustice and anxiety on the part of the official who has been forced to take proceedings to have his or her rights recognised. That is particularly so where the decision being challenged concerns the implementation of a previous judgment annulling a decision, in which the administration has acted in a similarly illegal manner to that which resulted in the first annulment (33, 67, 69-70, wfr)

T-147/23, *VI v Commission*, 15.05.2024, EU:T:2024:320
While it is for the parties to determine the subject-matter of the dispute, which the court cannot alter, it is for the court to interpret the pleas in the light of their substance rather than the labels given them by the parties. Thus a plea announced as concerning an entire paragraph of a statutory provision may be interpreted as concerning only one sub-paragraph if the content of the argument is directed essentially to that passage (26-27, wfr)

T-669/22, *IP v Commission*, 02.10.2024, EU:T:2024:669
Infringement of essential procedural requirement (here, failure to reconsult disciplinary board in retaking a disciplinary decision after a first annulment for procedural reasons) leads to annulment without applicant having to show that the irregularity might have affected content of decision (140-141, wfr)

29. Judicial obligation of reasoning

C-218/23 P, *NS v Parliament*, 25.04.2024, EU:C:2024:358
The reasoning must appear clearly and unambiguously so that interested parties may understand the justification for the decision and so that the Court can carry out its review. The GC is not obliged to follow the parties' arguments one by one and its reasoning may be implicit so long as it allows the parties to understand the reasons why the GC did not uphold their arguments and provides the Court with sufficient material for its review (85, wfr)

C-561/23 P, *Thunus and ors. v EIB,* 11.07.2024, EU:C:2024:603
Requirement of reasoning in Article 296 TFEU is an essential procedural requirement, to be

distinguished from the correctness of the reasoning which goes to the substantive legality of the act. GC's reasoning must allow those concerned to understand why it gave the judgment or made the order and allow CJ to review it. GC need not deal one by one with all the parties' arguments and its reasons can be implicit so long as they allow parties to understand why it did not agree with them. Errors in reasoning affect the substantive legality of the judicial decision but not the adequacy of the reasoning, which may still be adequate even if it contains errors (45-47, wfr)

30. Implementation of judgments

T-563/22, *VP v Cedefop,* 07.02.2024, EU:T:2024:72 (appeal pending, C-209/24 P)
For institution whose measure annulled to take necessary steps to comply (Article 266 TFEU), having regard not only to operative part but also to reasoning of judgment, and not reproducing in new measures the irregularities which led to the annulment. If annulled act has already been implemented, its effects must be set aside so as to put applicant in same position as before act adopted, but new measure may be based on grounds other than those of initial act (31-33, wfr).

T-623/18, *EO v Commission,* 20.03.2024, EU:T:2024:195 (appeal pending C-385/24 P, *Commission v EO*)
Commission had not withdrawn competition notice annulled in T-401 and 443/16, *Italy and Spain v Commission*, confirmed on appeal, C-635/20 P and had not given effect to it by inviting applicant to sit the tests in question in her first language, as that would have infringed the principle of equal treatment, all other candidates having done it in their second language. This meant that an applicant who had contested a decision to exclude her from the reserve list retained an interest in challenging that decision, since the Commission remained obliged to take measures to implement the judgment annulling the notice, in respect of the applicant, and it was not impossible that this might include allowing the applicant to re-sit the tests (39-48, wfr)

T-38/23, *IB v EUIPO*, 10.04.2024, EU:T:2024:221
To implement a judgment, institution must determine in exercise of its discretion what measures are needed to do so, in compliance with the operative part of the judgment and also the reasons for it, which are indispensable for determining the meaning of what has been held by the Court

T-49/23, *Angelidis v Parliament*, 29.05.2024, EU:T:2024:335
Court cannot address injunctions to administration. If an act is annulled, the latter is bound to take the measures necessary to implement it. Removing a disciplinary penalty which has been annulled from the individual file is a necessary measure of that kind (as is the return of any sums withheld under the decision), but are for the defendant to take, not the Courts (74-77, wfr)

T-669/22, *IP v Commission*, 02.10.2024, EU:T:2024:669
Where decision annulled, AA obliged by Article 266 TFEU to take measures necessary (and only those) to implement judgment, by identifying them through the operative part and the grounds of judgment. Where the prior annulment was only because the AECE had based the previous decision on recidivism, whereas it could not do so once the reference to the first offence had been removed from the individual file, *res judicata* did not prevent the AECE from implementing the judgment by means of resuming the procedure at the stage where the error had occurred, where the previous judgment was based only on this error and did not pronounce on whether the facts were proved or on any other matter affecting the legality of the decision. Procedure for replacing the act should be resumed at the exact stage where the previous illegality occurred, it being understood that the annulment does not normally affect the preparatory acts. The authority which took the original decision must therefore put itself at the moment in time when it took that decision, in order to adopt the new act. In any action against the latter, court must consider whether the preparatory steps are affected by the annulment judgment. Where disciplinary board had referred in first opinion to the earlier penalty – the reference to which in the decision had led to the annulment since that decision had been removed from the file – the opinion was affected by the illegality. AECE therefore should have reconsulted board but on basis of a report which did not refer to the first disciplinary penalty (58-61, 63-65, 106-107, 115-119, wfr)

T-634/22, *ZR v EUIPO*, 23.10.2024, EU:T:2024:746
After annulment, institution must under Article 266 TFEU take measures necessary to eliminate effects of illegalities found by court, so as to put applicant in legal position s/he was in before the act was

adopted. If there are two or more ways of implementing judgment, Article 266 gives administration discretion to choose, provided that it acts consistently with grounds of judgment and any applicable principles of EU law, in order to reconcile interests of the service and the need to protect applicant's rights. For purpose of implementing an annulment judgment in the case of a competition for a reserve list, those rights are sufficiently protected if institution reconsiders its decision and seeks a fair solution without calling into question all the results of the competition or the appointments already made from the list, in order to protect the legitimate expectations of the candidates concerned. The implementing measure must avoid reproducing the same errors which had led to the first annulment. Where the error was that the board had not been sufficiently stable, organizing a new oral examination is normally not appropriate since its composition would still not be the same as that of the board which had seen other candidates. Nevertheless, such a measure can be accepted where it can be regarded as the one which puts the applicant in a position as close as possible to that s/he was in before the original exclusion decision, without creating an undue advantage for the applicant as compared to other candidates. Where the institution decides not to organize new tests since equal treatment could not be ensured, it may instead apply a correcting factor to the applicant's results, provided that factor is based on transparent and objective criteria, meaning that the administration must identify which groups had been unfairly advantaged by the irregularity and who had suffered from it and then correcting the latter group's results. Any such factor cannot be such as to place the applicant automatically on the list since that would be contrary to the notice and to Article 27 SR and would also infringe equal treatment since successful candidates had only succeeded because they had passed the competition in competitive circumstances. Where institution has rejected other possible solutions, applicant should be awarded a sum of money by way of compensation for the loss suffered. However, in a recruitment case where the applicant seeks compensation for loss of opportunity to be recruited as an official, s/he must show that the loss of opportunity really existed and that it was final; those conditions are met wehre the applicant shows that s/he was the candidate with the highest mark immediately after the last candidate placed on the list and that as a result s/he had lost the opportunity of being appointed on the basis of this particular competition. Court cannot order administration to take specified measures to implement a judgment annulling one of its decisions. However, since they have unlimited financial jurisdiction, they can assess compensation and order institution to pay it, in order to provide a complete solution to the dispute and ensure the effectiveness of the annulment judgment. This normally involves calculating the extent of the loss, which means evaluating the likelihood of recruitment as a percentage; however, such a calculation may be impossible in a case where annulment arose from instability of the selection board since even if the applicant had the highest mark of those not placed on the list, this might not have been the case since other candidates also negatively affected by the instability might have obtained a higher mark in the absence of the defect. In such a case, the only possibility is to award damages *ex aequo et bono*, which in this case amounted to 10000 euros (41-45, 48-49, 53-57, 59, 71, 76, 82-84, 90, wfr)

31. Effects of judgments

T-623/18, *EO v Commission,* 20.03.2024, EU:T:2024:195 (appeal pending C-385/24 P, *Commission v EO*) (Case had been suspended pending judgments in T-401 and 443/16, *Italy and Spain v Commission*, and appeal C-635/20 P, concerning the language regime of the competition)
Annulment takes effect *ex tunc* and retroactively removes the measure from the legal order. However annulment of a general measure such as competition notice does not automatically lead to annulment of individual decisions taken under it, such as decisions excluding a candidate. Institution concerned must in any case take necessary measures to comply with judgment, including compensation for any loss, such measures being themselves subject to review (35-38, wfr)

T-123/23, *VA v Commission*, 05.06.2024, EU:T:2024:359
The only consequence of an annulment for infringement of a procedural requirement such as the right to be heard is that the admin may resume the procedure at the point where the irregularity occurred, but is not bound to take a different decision on the substance (71)

T-11/23, *XH v Commission*, 02.10.2024, EU:T:2024:665
Where a previous non-promotion decision was annulled on grounds of AA having taken account of reports on probation period, AA entitled, in order to implement judgment, to resume procedure at point where irregularity occurred (46, wfr)

32. Appeals and cross-appeals

C-317/23 P, *TO v EUAA*, Order 07.12.2023, EU:C:2023:977
Whether there is an established practice of publishing general acts by putting them on the institution's website is a question of fact not subject to appeal except in the case of distortion (AG 22-23, quoted in 4, wfr)

C-615/22 P, *HV and HW v ECDC,* 07.12.2023, EU:C:2023:961
Whether there was sufficient evidence to have created an obligation to open an inquiry is a question of fact for the GC's final determination, not subject to appeal save in the event of distortion. Appellant may not raise a new plea for first time on appeal (58-59, 65, wfr)

JC C-567-570/22 P, *Dumitrescu and Schwarz and ors v Commission*, 18.04.2024, EU:C:2024:336
Appeal must contain pleas in law and arguments relied on, thus an appeal which seeks setting aside of GC's rejection of certain heads of claim but does not contain any argument to support that request is inadmissible in relation to the rejection of those claims. Where CJ sets aside GC judgment, the state of the case allows CJ to give judgment itself if the relevant issues have been the subject of exchanges of pleadings in GC and there is no need for any further measure of organization of procedure etc. (34-36, 99, wfr)

C-217/24 P, *TO v EEA*, Order 23.07.2024, EU:C:2024:632
To show distortion of evidence, not enough to show a document could have been interpreted differently from the way in which GC interpreted it – appellant must show that GC went manifestly beyond any reasonable interpretation, particularly by reading it in a manner contrary to its actual terms (4, quoting AG 27, wfr)

C-309/23 P, *SE v Commission*, 05.09.2024, EU:C:2024:693 (no AG opinion)
Merely repeating arguments submitted to GC without questioning GC's reasons for rejecting them, is inadmissible. GC's assessment of facts and evidence is not a question of law reviewable by CJ except for the case of distortion. Failure of GC to take account of an argument presented to it is an admissible ground of appeal (52-53, 65-66, 71, 78, 81, 84, wfr)

T-89/20, *PV v Commission*, 19.06.2024, EU:T:2024:402
A plea directed against previous similar decisions of GC amounts to an attempt to appeal against them, for which GC has no jurisdiction, appeals being for CJ (377-378)

T-221/23, *WS v EUIPO*, 13.11.2024, EU:T:2024:820
For first instance court alone to determine usefulness or otherwise of proposed MoP or MoI, and parties' only remedy is to challenge its decision on appeal (87, wfr)

33. Costs

a) Award of costs

C-498/23 P, *AL v Commission*, Order 06.02.2024, no ECLI number at present
Where appeal rejected by order *ex parte*, so defendant had incurred no costs, appellant ordered to bear own costs (6)

JC C-567-570/22 P, *Dumitrescu and Schwarz and ors v Commission*, 18.04.2024, EU:C:2024:336
Where institutions succeeded at first instance but judgment set aside on appeal and provisions challenged at first instance held inapplicable for illegality, institutions ordered to pay own costs at first instance and on appeal, and those of appellants (116)

T-369/22, *Hessler v Commission,* 20.12.2023, EU:T:2023:855 (appeal pending, C-137/24 P) Although application rejected, equity clause in Article 135 RP GC applied where defendant had created a situation of uncertainty for the applicant by claiming that certain communications were not decisions, while the action was in fact admissible on the basis of an implied rejection of the applicant's request (106-107)

T-417/23, *TO v EEA*, Order 11.01.2024, no ECLI number yet (appeal pending, C-217/24 P)
Expenses incurred in court proceedings are not a loss separable from award of costs in the case, so cannot be claimed as a separate head of loss. Nor can costs of pre-litigation procedure be claimed, since there is no causal link, recourse to a lawyer not being required at that stage, such recourse thus being a personal choice of the party concerned (43-44, wfr)

T-171/23, *VR v Parliament,* Order 21.02.2024, no ECLI number yet (non-lieu)
Where the disappearance of the subject-matter of the dispute is the result of the defendant's late recognition that the claim for annulment is justified, costs may be awarded in a non-lieu order against the defendant under Article 137 RP GC (20)

T-1160/23, *AS v EEAS*, Order 18.04.2024, no ECLI number at present
Under Article 137 RP GC, where the action has become devoid of purpose, the court has full discretion as to the costs. Where the defendant had withdrawn the contested decision after the action was brought and had admitted that it was incorrect, that party ordered to bear all the costs of both sides (15-16)

T-120/23, *UJ and ors. v Commission*, 10.07.2024, EU:T:2024:464
Though application rejected *in toto*, equity clause applied because Commission might have contributed to case being brought, since there had been technical difficulties during the competition procedure which had some bearing on the applicants' participation and since the Commission had failed to give an express reply to the complaint on this particular point. Each party thus to bear own costs (234-235)

T-669/22, *IP v Commission*, 02.10.2024, EU:T:2024:669
Where applicant's claim for annulment succeeded but claims for damages failed (one as inadmissible), each party ordered to bear own costs under Article 134(3) RP GC (166-167

T-634/22, *ZR v EUIPO*, 23.10.2024, EU:T:2024:746
Applicant put forward four pleas for annulment of decision implementing previous annulment judgment, plus claim for damages for loss allegedly separate from decision. GC rejected that claim, said no need to rule on fourth plea, rejected first two and only upheld third (for compensation) for loss of opportunity of being recruited as official, which resulted in compensation being increased from 5000 euros in implementing decision to 10000 euros. Despite all this, GC considers that defendant had *"essentially been unsuccessful"* and orders it to pay all costs (109)

b) Amount of costs

C-54/20 P-DEP, *Missir v Commission*, Order 21.12.2023, no ECLI number yet
Applicants claimed 99 380 euros for first instance and appeal, Commission said should be 6477. CJ orders 18000 for appeal alone. Under Article 170 RP GC, for GC to determine costs at first instance, so that part of claim remitted to GC under Article 54 StCJ. As to costs of appeal, limited to questions of law, but the main question (whether brother and sister of deceased official could claim damages from institution for fault related to death) was new and complex. What matters is total number of hours rather than number of lawyers (22, 38-39)

C-162/20 P-DEP, *WV v EEAS*, Order 08.02.2024, EU:C:2024:208
Any rate over 200 euros/hour assumes a highly-qualified and experienced specialist who should be able to deal with case particularly efficiently, so number of hours claimed subject to special scrutiny. However, 6031.07 euros for 25.5 hours for two stages of a case of some financial importance and involving a new question of law was justified. On the other hand, a claim for a 30% supplement for general costs was not justified in the absence of explanations, and would be reduced to 5% (36-48)

C-601/19 P DEP, *BP v FRA*, Order 03.09.2024, EU:C:2024:712
FRA claimed 8500 euros for defending an appeal, granted in full. Article 145 RP CJ does not lay down any time-limit for request for taxation, though must be in a reasonable time. 19 months between judgment and first request not unreasonable and did not deprive FRA of right to recovery. BP could not raise issues of award of costs which have already been determined in judgment and are inadmissible in dispute as to amount of costs (32-33, 35-40, 43-50, 55-56, 58-60, wfr)

T-65/22 DEP, *PS v EIB*, Order 02.07.2024, no ECLI number at present
Result of case is irrelevant to determining reasonable amount of costs. GC not bound by number of hours claimed and can form own view of what was objectively necessary given length of pleadings, number of pleas, difficulty of issues. How many persons represented a party irrelevant to recoverability of costs though may affect assessment of amount. GC only considers hourly rate if manifestly excessive, which 250 euros/hour is not, but that rate implies that number of hours to be assessed strictly. Given characteristics of case, only 40 hours needed for defence, rejoinder and hearing, not 72 (15-24, 29-33, 41-44, 54, wfr)

T-502/16 DEP, *Missir v Commission*, Order 09.09.2024, no ECLI number yet
Applicants requested 59700 euros for first instance, GC fixes at 21060 including costs of DEP case. EU courts do not tax fees payable by parties to own lawyer but determine reasonable recoverable amount to be paid by party ordered to pay costs, taking account of amount of work, difficulty and significance of case and financial interests at stake. Case of particular legal importance and raised questions of some complexity, and was admittedly of considerable financial importance. Primary consideration is total number of hours. Applicants claimed 242 hours in total, 103 being by junior lawyers, the most senior lawyer being charged at 380 euros/hour, the second at 280/hour and the juniors at 150/hr. Where various tasks are shared between several lawyers, there is necessarily some duplication and there were signs of this in the billing. Reduction is because i) applicants had not justified use of three lawyers, ii) applicants had not justified, save in one case, use of numerous assistants, iii) several of the lawyers were familiar with the case after being involved in earlier cases arising out of the same facts. GC reduced hours from 242 to 75. As to hourly rates, high rate means number of hours is examined very strictly. GC does not comment directly on rates claimed but applies average rate of 270/hr, thus 20250. GC adds 3 hours for taxation request, thus 810 euros at the above rate (20-21, wfr; 36-38, 42; 19, 39; 44-45; 47, 49; 60; 62-65; 70, wfr)