

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

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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

106 Decisions

20 Court of Justice

86 General Court

PART I – SUBSTANTIVE LAW

A first? Provision of 2014 SR reform held
unlawful:

JC C-567-570/22 P, *Dumitrescu and Schwarz and
ors v Commission*, 18.04.2024, EU:C:2024:336

Burden of proving an irregularity could have affected the decision – some clarity?

Right to be heard in disciplinary cases:

T-49/23, *Angelidis v Parliament*, 29.05.2024,
EU:T:2024:335

Conclusions of Heads of Administration cannot
go against higher rules – child allowance a
precondition of tax rebates:

T-369/22, *Hessler v Commission*, 20.12.2023,
EU:T:2023:855

Official subject to simultaneous disciplinary
proceedings and invalidity procedure –
institution must give final decision on invalidity
even if disciplinary procedure ends in
dismissal:

T-38/23, *IB v EUIPO*, 10.04.2024,
EU:T:2024:221

CEOS contract can be terminated even where
agent on parental leave:

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

Natural justice? Yes - C-498/23 P, *AL v Commission*, Order 06.02.2024, no ECLI number at present (4, quoting AG 9)

Conclusions of Heads of Administration? No: T-369/22, *Hessler v Commission*, 20.12.2023, EU:T:2023:855 (appeal pending, C-137/24 P) (91-94)

Higher principles of EU or international law – Yes: T-448/22, *PW v EEAS*, 02.10.2024, EU:T:2024:664

b) SR and general EU law

- T-793/22, *TU v Parliament*, 11.09.2024, EU:T:2024:614: directives – protection for SR/CEOS whistleblowers must be at least same as under general EU law (110-111)
- T-494/23, *HG v Commission*, 16.10.2024, EU:T:2024:703: Financial Regulation now provides basis for recovery of debts from staff salaries (40)

c) hierarchy of norms

- T-448/22, *PW v EEAS*, 02.10.2024, EU:T:2024:664: imposing a cut-off date for claiming benefits which does not appear in relevant SR provision is permissible (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: way rule has been applied in past does not influence interpretation (38)

e) *SR vs transparency and data protection*

- Infringement of data protection rules not an *ex officio* plea: T-221/23, *WS v EUIPO*, 13.11.2024, EU:T:2024:820 (54)

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: employment link is statutory - can be changed at any time for future (64-65)

g) SR not exclusive

- C-109/24 P, *van Oosterwijk v Commission*, Order 03.09.2024, EU:C:2024:754: Article 270 TFEU does not say only SR govern employment – other rules may apply too, but certain provisions can be interpreted as exclusive (4, quoting AG 33-35)

- g) *principle of legality*
- h) *presumption of legality*
- i) *legal certainty*

- Legality - T-371/21, *WV v EEAS*, 24.01.2024, EU:T:2024:35 (appeal pending, C-243/24 P): applicants cannot claim equal treatment with those who have obtained an advantage illegally (195)
- Presumption - C-546/23 P, *UG v Commission*, 21.11.2024, EU:C:2024:975: acts presumed lawful unless annulled, withdrawn or held invalid (123)
- Legal certainty - T-89/20, *PV v Commission*, 19.06.2024, EU:T:2024:402: general principle of EU law – administrative decisions must be clear and precise (290)

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j) Officials are deemed to know the SR

- T-448/22, *PW v EEAS*, 02.10.2024, EU:T:2024:664: officials deemed to know SR and publishing decisions on intranet allows this principle to be applied to them (68,72)

k) Nulla poena sine lege

- T-371/21, *WV v EEAS*, 24.01.2024, EU:T:2024:35 (appeal pending, C-243/24 P): provisions creating obligations do not set out possible infringements exhaustively (185)

l) Institutions are separate employers

- T-367/22, *PT v Commission*, 25.09.2024, EU:T:2024:654: staff cannot invoke differences of treatment with staff of other institutions (57)

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

n) *proportionality*

- JC C-567-570/22 P, *Dumitrescu and Schwarz and ors v Commission*, 18.04.2024, EU:C:2024:336: legislation – only unlawful if difference arbitrary or manifestly inappropriate, but having two entirely different methods for calculating same benefit for comparable groups is arbitrary (67-69, 75, 78-79, 81, 91-95)
- T-78/21, *PV v Commission*, 19.06.2024, EU:T:2024:403: identity of situation not required, only comparability (315-316)
- T-689/22, *SN v Commission*, 23.10.2024, EU:T:2024:719: measures must not exceed what is necessary to attain objective (54-57)

o) legitimate expectations and withdrawal of acts, incl. those creating rights

- T-621/22, *SB v EEAS*, 13.12.2023, EU:T:2023:805: explicit promise intended to create expectations; by person authorised to make it; compatible with relevant rules (102-104)
- T-89/20, *PV v Commission*, 19.06.2024, EU:T:2024:402: administration can withdraw unlawful acts subject to legitimate expectations and legal certainty (287-288)

p) force majeure

- T-159/23, *VN v Commission*, 10.01.2024, EU:T:2024:5: conditions (i) external circumstance independent of person's control (ii) must be such that impossible to avoid using normal prudence, or at least unavoidable except by unreasonable sacrifice (53)

q) *tempus regit actum*

r) *effect of laws in time*

- T-831/22, *TO v EUAA*, 19.06.2024, EU:T:2024:404 (appeal pending C-576/24): Facts subsequent to decision cannot affect its legality (224)
- T-494/23, *HG v Commission*, 16.10.2024, EU:T:2024:703: new rule applies to new situations and also to future effects of situations which began in the past. New procedural rules normally apply immediately including to existing situations (22-25)

s) prevention of fraud

- C-109/24 P, *van Oosterwijk v Commission*, Order 03.09.2024, EU:C:2024:754 : prevention of fraud is legitimate public interest which can justify a limited derogation from equal treatment (different minimum duration of marriage if contracted before or after leaving service, for purposes of qualifying for survivor's pension)(4, quoting AG 13-14)

t) *patere legem*

u) *internal decisions and directives*

- C-5/23 P, *EUIPO v KD*, 04.07.2024, EU:C:2024:575: where institution publishes rule for its own conduct, it must observe it unless it gives special reasons for doing otherwise (33)

T-1050/23, *Markov v Commission*, 13.11.2024, EU:T:2024:824: Commission Code of Good Administrative Behaviour is only a guide - not necessarily intended to create legal obligations (37)

- T-369/22, *Hessler v Commission*, 20.12.2023, EU:T:2023:855 (appeal pending, C-137/24 P): AA may adopting internal decisions on exercise of its discretion under SR but must remain within certain limits, in particular hierarchy of norms (91-92)

v) *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 (12)
- C-546/23 P, *UG v Commission*, 21.11.2024, EU:C:2024:975: AA must give staff member opportunity to be heard but not obliged to follow that person's view (134)
- T-49/23, *Angelidis v Parliament*, 29.05.2024, EU:T:2024:335: under Articles 4 and 22 of Annex IX SR, disciplinary hearings must be in person, unless there are reasons specific to the case for allowing written observations or representation by a third party. Infringement only leads to annulment where applicant can explain what s/he would have said and that it « *could not reasonably be excluded* » that it could have made a difference (47-63; 66-71)

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 according to procedures laid down by national or EU law. Art 34 cannot be interpreted as giving officials a right to retirement pension contrary to the conditions laid down by specific rules in Art 77 and Annex VIII SR (281-283)

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Article 41 – impartiality

- C-111/22 P, *Hamers v Cedefop*, 11.01.2024, EU:C:2024:5: subjective and objective impartiality. No need to prove actual partiality – persistence of legitimate doubt enough (46-50)
- T-807/21, *QI v Commission*, 06.12.2023, EU:T:2023:786: infringement only leads to annulment if it might have affected result (75)

Article 41 - sound administration and unreasonable delay

- 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): obligation to give reasons for decisions flows from duty of sound administration (42)
- T-11/23, *XH v Commission*, 02.10.2024, EU:T:2024:665: acting within reasonable time is part of sound administration. Reasonable time depends on circumstances but infringement only leads to annulment where might 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 principle of equality of arms- each party must have the same opportunity of presenting its case and evidence. Not applicable to disciplinary proceedings, which are administrative not judicial (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 their remedies or of relevant time-limits (37)

Article 48, rights of defence and presumption of innocence

- C-111/22 P, *Hamers v Cedefop*, 11.01.2024, EU:C:2024:5: Presumption of innocence infringed where a decision (including a court decision) implies that a person is guilty after being acquitted (or where a representative of administration makes statements implying guilt before any judicial decision) (80)
- T-89/20, *PV v Commission*, 19.06.2024, EU:T:2024:402: also applies in disciplinary proceedings, as provided in Annex IX SR. Rights of defence are ensured in disciplinary proceedings by obligation to inform official of results of inquiry, to hear him/her and give full access to file before going to disciplinary board (147-150, 184-190)

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 essential content of rights. Restrictions must be proportionate and necessary in order to attain objectives of general public interest or to protect 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: Article 1^e linked to Article 31(1) Charter - workers should have working conditions which preserve 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: while institution must not hinder staff representatives in carrying out their duties, latter must still seek authorization to be absent to carry out representative duties, on pain of being considered improperly absent under Article 60 SR (80-87)

T-789/22, *PB v SRB*, 26.06.2024, EU:T:2024:426 (appeal pending, C-582/24 P): wide discretion of agencies to organize services and to assign staff in interest of service and according to principle of correspondence of grade and function. Institutions must address decisions to staff in language of which they have thorough knowledge, but not obliged to use that used by the staff member (262-263, 272-273)

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

a) 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): Article 21 is specific manifestation of duty of loyalty and applies to all aspects of relations with institution. Provisions creating obligations need not list all possible forms of infringing behaviour (175, 185-186)
- T-831/22, *TO v EUAA*, 19.06.2024, EU:T:2024:404 (appeal pending C-576/24 P): making large number of requests and complaints over short period which later found groundless can be breach of duty of loyalty (200)

b) Prohibition of harassment (Article 12a SR)

- C-615/22 P, *HV and HW v ECDC*, 07.12.2023, EU:C:2023:961: AA must intervene on complaint of harassment if it is supported by some evidence but no duty to do so if the complaint is based solely on unilateral allegations (44-49)
- T-89/20, *PV v Commission*, 19.06.2024, EU:T:2024:402: instances of alleged harassment to be considered individually and globally. Difficult relations in service not proof of harassment in themselves; nor are medical reports submitted by complainant since they do not concern origin of state of health and depend on latter's unilateral statements; nor are reasonable criticisms in staff reports (312-317, 340-341, 345-346)

c) *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): Article 17 is infringed by an communication of internal information to a third party, irrespective of official's motives (203-204)

d) 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): not enough to be present at workplace, one must carry out instructions one is given there (175-178)

e) whistleblowing (Article 22a)

- T-831/22, *TO v EUAA*, 19.06.2024, EU:T:2024:404 (appeal pending C-576/24 P): being recognised as whistleblower does not exempt staff member from compliance with statutory obligations or give protection against negative decisions in unconnected matters (76-82)

f) duty of assistance (Article 24 SR)

- C-615/22 P, *HV and HW v ECDC*, 07.12.2023, EU:C:2023:961 (already mentioned under Article 12a, harassment)
- T-789/22, *PB v SRB*, 26.06.2024, EU:T:2024:426 (appeal pending, C-582/24 P): complainant must be heard before any decision rejecting request for assistance but for that purpose enough to communicate non-confidential summary of evidence from alleged harasser and any witnesses. No obligation to intervene if request discloses no evidence of harassment (36-41, 70, 94-95, 116, 192, 281)

g) *duty of care*

- C-218/23 P, *NS v Parliament*, 25.04.2024, EU:C:2024:358: standard definition (112-115)
- T-22/22, *AL v Council*, 10.04.2024, EU:T:2024:219: duty of care cannot prevent AA from taking decisions considered necessary in interest of service, including dismissal for disciplinary reasons (194-195)

h) 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: considering that staff representative's repeated absences were unauthorized under Article 60 SR does not infringe right of association, since staff representatives remain bound by normal statutory obligations (though administration cannot refuse requests for absence justified by representative duties) (80-87)

i) *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 essential procedural requirement to be distinguished from question whether reasons are correct in law (46)
- C-546/23 P, *UG v Commission*, 21.11.2024, EU:C:2024:975: No need to indicate all factual and legal considerations (only the essentials) (139-141, wfr)
- T-232/23, *LW v Commission*, 17.07.2024, EU:T:2024:482: staff reports governed by Article 43 SR, not 25 (23)

j) notification (Article 25 SR) and publication

C-317/23 P, *TO v EUAA*, Order 07.12.2023, EU:C:2023:977: putting a general act on institution's website is an appropriate means of publication causing time to run (4, quoting AG 11-18)

T-1136/23, *Lianopoulou v Commission*, 23.10.2024, EU:T:2024:748: AA free to use any appropriate method of notification, not limited to registered letter with advice of receipt. Where request made by applicant's lawyer, decision can be notified by e-mail to lawyer. Notification occurs when addressee was enabled to take note of communication not when actually opened (18-24, 27-34, 38)

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 lays down minimum conditions for recruitment - does not preclude more stringent criteria in individual vacancy or competition notices (40)
- T-120/23, *UJ and ors. v Commission*, 10.07.2024, EU:T:2024:464: limiting second languages in competition to EN/FR justified where supported by statistics showing these languages most commonly used in services concerned. Obligations of AA under R 1/58 on official languages no greater than those under principle of equal treatment under Article 1d SR (79-83)

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

T-216/23, *VT v Commission*, 10.07.2024, EU:T:2024:465: consistency of marking can be achieved by means other than stability of membership of selection board, for example by having predetermined criteria, specific training for board members, identical tests, frequent checks to ensure consistent marking etc. (218-228)

- T-221/23, *WS v EUIPO*, 13.11.2024, EU:T:2024:820: to reconcile obligation of reasoning with obligation of secrecy of work of selection board, disclosure of marks is sufficient reason for candidate's exclusion (70-78)

**VII. Administrative positions (Articles
35-42 SR)**

- a) *Generally*
- b) *Leave on personal grounds (“CCP”)(Article 40 SR)*
- c) *Parental leave (Article 42a SR)*

- T-78/21, *PV v Commission*, 19.06.2024, EU:T:2024:403: Official absent without authorization not in any Article 35 SR position thus acquires no pension rights (181-187, 192, wfr)
- T-689/22, *SN v Commission*, 23.10.2024, EU:T:2024:719: Article 12b applies to officials on CCP who must request authorization for any professional activity during CCP, which can be refused or subjected to conditions, including conditions more severe than those imposed for a previous CCP (27, 64-65)
- C-546/23 P, *UG v Commission*, 21.11.2024, EU:C:2024:975: staff member can be dismissed for professional incompetence while on parental leave provided reason for dismissal is not being on leave or having asked for it (60-65)

**VIII. Evaluation and Promotion
(Articles 43-46)**

a) Evaluation

- C-5/23 P, *EUIPO v KD*, 04.07.2024, EU:C:2024:575: direction action possible against staff report, without prior complaint. Institution must create internal appeal procedure but cannot make recourse to it compulsory (19-25)
- T-232/23, *LW v Commission*, 17.07.2024, EU:T:2024:482: staff reports not subject to Article 25, what reasoning needed depends on Article 43 SR. Must be sufficiently reasoned to allow official to comment but no need to include all relevant information only salient points (23, 28-32)

b) Promotion

- T-531/21, *QN v Commission*, 13.03.2024, EU:T:2024:166: applicant cannot allege irregularities in staff report to challenge legality of subsequent non-promotion decision where report has become final. 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. No right to promotion, even if official meets all conditions for (21, 24, 29-32, 54, 80-81)
- T-315/23, *AL v Council*, 06.11.2024, EU:T:2024:771: merit under Article 45 not confined to three criteria mentioned and can include other matters relevant to merit, such as a disciplinary conviction (45, 48-52, 82-83)

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

a) *Professional incompetence (Article 51)*

b) *Upper age limit (Article 52)*

- T-160/23, *VO v Commission*, 06.11.2024, EU:T:2024:791: decision downgrading applicant for professional incompetence annulled for failure to allow enough time for applicant to react to improvement measures, contrary to administration's own internal rules (59-66)
- T-1123/23 R, *Meucci v Parliament and EEAS*, Order 05.01.2024, no ECLI number yet: no statutory right to work after normal compulsory retirement age (20, 23)
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**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)*
- b) *Sick leave (Article 59)*
- c) *Irregular absences (Article 60)*

- T-371/21, *WV v EEAS*, 24.01.2024, EU:T:2024:35 (appeal pending, C-243/24 P): official who comes to work but refuses to carry out instructions is not « *available to work* », so can be treated as irregularly absent (147-149, 177-178)
- T-38/23, *IB v EUIPO*, 10.04.2024, EU:T:2024:221: AA cannot treat absence as unjustified without first going through Article 59 procedure. Officials can be subject to medical checks at any time and are obliged to allow them to be carried out (46-47)
- C-546/23 P, *UG v Commission*, 21.11.2024, EU:C:2024:975: official who is staff representative who fails to ask for authorization to attend union meetings can be treated as unjustifiably absent under Article 60 (80-83)
- T-78/21, *PV v Commission*, 19.06.2024, EU:T:2024:403: AA has no discretion under Articles 59-60, and must apply Article 60 measures if absence found irregular (125-135)

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*, 06.10.2024, EU:T:2024:703: Financial Regulation applies to debts due from staff members, so debt can be recovered by deduction from remuneration (40)

b) family allowances

- T-369/22, *Hessler v Commission*, 20.12.2023, EU:T:2023:855 (appeal pending, C-137/24 P): Articles 2(2) and (3) of Annex VII must be read together, so upper age limit for education allowance also applies to child allowance (71-75)
- T-123/23, *VA v Commission*, 05.06.2024, EU:T:2024:359: receipt of child allowance is precondition for receipt of education allowance. For purposes of latter, child is in full-time education until receives results of final university examinations, not just until examinations have finished (32-34, 39-45)

c) *annual travel costs*

d) *daily allowance*

- JC C-567-570/22 P, *Dumitrescu and Schwarz and ors v Commission*, 18.04.2024, EU:C:2024:336: CJ considers Article 8 as amended unlawful, as containing an arbitrary or manifestly inappropriate distinction between officials qualifying for annual travel costs who have a place of origin in a MS and those who do not, since first group are reimbursed based on distance, the second not (70-79, 81)
- T-124/23, *VB v ECB*, 08.05.2024, T:2024:294: daily allowance intended 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; 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 (43-49)

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): Article 2 must be read as a whole, thus child and education allowance must cease at age 26 for children in higher education; the tax rebate for dependent children under R 260/68 cannot be granted in respect of a child who does not give a right to child allowance (76-82)

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

a) *Acquisition of pension rights*

b) *Calculation and minimum subsistence amount*

- T-78/21, *PV v Commission*, 19.06.2024, EU:T:2024:403: Official who receives no remuneration because of irregular absence pursuant to Art 59-60 cannot acquire pension rights for periods of such absence (173, 181-187, 192)
- T-788/22, *PT v Commission*, 25.09.2024, EU:T:2024:655: where years acquired in EU scheme, including rights transferred, do not reach minimum subsistence amount, that amount applies instead. Pension scheme is based on solidarity and there is no principle that everyone must receive an amount corresponding precisely to what they put in. Staff are not “owners” of the amounts corresponding to their contributions (44, 52-53)

c) *Invalidity allowance*

d) *Survivors' pensions*

T-38/23, *IB v EUIPO*, 10.04.2024, EU:T:2024:221: where official is simultaneously subject to disciplinary proceedings and invalidity proceedings, administration must give a final answer to the latter and cannot simply close them without any decision on grounds they have become devoid of purpose following a disciplinary dismissal (40-41)

C-109/24 P, *van Oosterwijk v Commission*, Order 03.09.2024, EU:C:2024:754: distinction in Articles 19-20 of Annex VIII SR for purposes of grant of survivor's pension between marriages entered into before official left service and those after leaving service (minimum duration 1 year for former, 5 years for latter) is justified in order to prevent fraud, not being arbitrary or manifestly inappropriate (4, quoting AG 13-19, 22-25, 35)

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

T-50/22, *AL v Commission*, 10.04.2024, EU:T:2024:220: in order to escape the 5-year limitation period in Article 85, AA has burden of proving official intended to mislead it, which can be by failing to provide full information about their personal situation or changes to it. For recovery within 5 years, the administration need only show that the error was one which could not have escaped the notice of a normally diligent official who is deemed to know rules applicable to remuneration (62-63, 65; 125-127)

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

a) disciplinary procedure

- T-371/21, *WV v EEAS*, 24.01.2024, EU:T:2024:35 (appeal pending, C-243/24 P): conducting Article 3 hearing in applicant's absence lawful where absence imputable to latter. Stating in report to disciplinary board that AA considered trust irremediably lost does not mean AA had already decided to dismiss official, but is merely compliance with obligation under Article 12 of Annex IX to indicate all possible aggravating and mitigating factors and a preliminary opinion subject to procedure before board (80, 86-87, 110; 99-100; 104-106)
- T-49/23, *Angelidis v Parliament*, 29.05.2024, EU:T:2024:335: Articles 4 and 22 of Annex IX require hearing in person unless there are reasons specific to the case for acting otherwise (51-63)
- T-3/23, *UA v EUAA*, 26.06.2024, EU:T:2024:419: hearing can be in writing where travel for a normal meeting impossible (Covid lockdown) (63-64)

a) Disciplinary procedure (cont.)

- T-89/20, *PV v Commission*, 19.06.2024, EU:T:2024:402: AA entitled to resume proceedings after annulment for procedural reasons – possibility of reopening not confined to new facts. Allegations and evidence to be clearly identified in report to disciplinary board. Disciplinary proceedings not judicial so equality of arms does not apply. Article 25 n/a to case where criminal proceedings are not against official subject to disciplinary procedure but a third party, on complaint of official (141-142, 167-168, 173, 176, 179, 240-241, 402)
- T-669/22, *IP v Commission*, 02.10.2024, EU:T:2024:669: while disciplinary board opinion does not bind AA as to guilt or penalty, (re-)consultation of board is an essential procedural requirement, infringement of which leads automatically to annulment without any need to consider whether it could have affected result (121-141)

b) Delays

c) Penalties

- T-89/20, *PV v Commission*, 19.06.2024, EU:T:2024:402: no time-limit in Annex IX, but must be reasonable time. 4 years between facts and first disciplinary action reasonable, also 5 months for inquiry report in a complex case, also 4 months between that report and report to disciplinary board. Overall duration 20 months from start of inquiry to decision also reasonable (250-255, 263-274, 276-278)
- T-22/22, *AL v Council*, 10.04.2024, EU:T:2024:219: AA has wide discretion as to penalty but court carries out full review of proportionality. AA entitled to treat as aggravation risk posed by official's conduct for institution's reputation, w/o needing to prove that anyone outside institution actually noticed the conduct. Repetition can be aggravation but lack of repetition is not mitigation, since officials always obliged to comply with obligations. Good staff reports are not necessarily mitigation where offence particularly serious ((48-54, 111-114, 122, 160, 168-169, 171)
- T-669/22, *IP v Commission*, 02.10.2024, EU:T:2024:669: AA cannot invoke recidivism if the previous conviction has been removed from the official's individual file under Article 27 Annex IX (14-16)

d) *Ne bis in idem*

- T-371/21, *WV v EEAS*, 24.01.2024, EU:T:2024:35 (appeal pending, C-243/24 P): ne bis in idem does not prevent AA from deducting leave and pay for unauthorized absences and bringing disciplinary proceedings for those absences – (i) this is expressly provided for in Article 60 SR and (ii) obligation to make compensation is not a disciplinary penalty (214)
- T-89/20, *PV v Commission*, 19.06.2024, EU:T:2024:402: conditions – (i) must be a previous penalty which is final and (ii) new proceedings or decision must concern same facts. Does not prevent administration from resuming procedure after annulment or withdrawal of previous decision for procedural reasons, since the original penalty no longer exists (127-130, 135-138)

d) *Ne bis in idem (cont.)*

T-78/21, *PV v Commission*, 19.06.2024, EU:T:2024:403: refusal of EU pension on grounds of insufficient length of contributions as a result of unjustified absences and suspension of pay, when those absences have also been subject of a disciplinary penalty, does not infringe *ne bis in idem* or *nulla poena sine lege* since this is result of withholding of salary which is automatic under Article 60 SR, which expressly states that it is not a disciplinary measure (202-203, 207-218, wfr)

T-315/23, *AL v Council*, 06.11.2024, EU:T:2024:771: refusing a promotion is not a disciplinary penalty mentioned in Article 10 of Annex IX and is the consequence of an examination of officials' comparative merits, in which AA entitled to take account of disciplinary convictions (93-95)

XVI. 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/agent and administration is based on SR/CEOS not a contract, thus rights and obligations can be altered at any time for the future, subject to requirements of EU law, including equal treatment (64-65)

b) Renewal and non-renewal of contracts

c) Termination

- C-528/23 P, *EU IPO v KD*, Order 11.04.2024, EU:C:2024:311: CEOS agent must be heard before any decision not to renew (12)
- 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)
- T-24/23, *UF v Commission*, 08.05.2024, EU:T:2024:293: AA can choose between termination with notice and termination without notice after disciplinary proceedings. If AA invokes particular facts to justify decision, court must examine correctness of facts (54-58)

PART II – PROCEDURE AND REMEDIES

a) in C-317/23 P, *TO v EUAA*, Order 07.12.2023, EU:C:2023:977: putting a general act on the institution's website is an appropriate means of publishing it – time then runs

- b) T-1136/23, *Lianopoulou v Commission*,
23.10.2024, EU:T:2024:748: e-mailing a
decision to applicant's lawyer by e-mail
is good service

- c) T-793/22, *TU v Parliament*, 11.09.2024,
EU:T:2024:614: there is no general rule
that irregularly obtained evidence must
be excluded

d) T-595/22, *Ferrer de Macedo Silva v Frontex*, Order 05.02.2024, EU:T:2024:79: pleas and arguments must be comprehensibly set out in the application itself

- e) C-5/23 P, *EUIPO v KD*, 04.07.2024,
EU:C:2024:575: officials can bring a
direct action against a staff report
without a prior complaint

1. Jurisdiction in staff cases

- C-109/24 P, *van Oosterwijk v Commission*, Order 03.09.2024, EU:C:2024:754: while Article 270 TFEU gives EU courts exclusive jurisdiction over staff disputes under SR/CEOS, it does not state that only those instruments regulate relations between staff and institutions (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): 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 precondition for receiving benefit B, without reference to applicant's personal situation, it is not attackable (29-33)
- T-766/22, *Canel Ferreiro v Council*, 29.05.2024, EU:T:2024:336: administrative inquiry report which leads to disciplinary proceedings is not attackable (except indirectly via action against final decision) (22-24)

3. Interest in action

- T-322/21, *TB v ENISA*, Order 22.12.2023, EU:T:2023:877 (non-lieu): resignation normally deprives agent of interest in annulment of decision appointing another perso (though not possible damages claim) (22-26)
- 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: publishing decision on institution's website is effective publication, so time runs from publication. Exception for excusable error to be interpreted narrowly (4, quoting AG 13-16, 30)
- T-322/21, *TB v ENISA*, Order 22.12.2023, EU:T:2023:877 (non-lieu): party may not challenge the legality of an act which has itself become final, since not challenged within the time-limit. However, party who has not challenged an act which has become final may challenge inferences drawn from that act in a subsequent act which has been challenged in time (33-34)
- T-1136/23, *Lianopoulou v Commission*, 23.10.2024, EU:T:2024:748: for party alleging lateness to prove it. For an e-mail can be done by proving when message reached addressee's in-box and fact that addressee was using e-mail that day (15-16, 27-33)

5. Notification of decisions

T-1136/23, *Lianopoulou v Commission*, 23.10.2024, EU:T:2024:748: sending decision by e-mail to official's lawyer is valid notification, even if lawyer sent request by post. What counts is when addressee in position to read message, not when 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): no obligation on AA under Article 90 to reply to request (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)

7. Complaints

- C-5/23 P, *EUIPO v KD*, 04.07.2024, EU:C:2024:575: staff reports can be the subject of direct court action without prior complaint (19-25)
- T-369/22, *Hessler v Commission*, 20.12.2023, EU:T:2023:855 (appeal pending, C-137/24 P): complaint before expiry of time-limit for reply is inadmissible (44)
- T-89/20, *PV v Commission*, 19.06.2024, EU:T:2024:402: only one complaint possible against any one act – any subsequent « complaints » are mere reminders (101, 108-109)
- T-120/23, *UJ and ors. v Commission*, 10.07.2024, EU:T:2024:464: although decisions of selection boards can be attacked directly without prior complaint, if applicant does make complaint, it is subject to all procedural rules applicable to complaints (144-151)

8. Request or complaint?

- T-621/22, *SB v EEAS*, 13.12.2023, EU:T:2023:805: if alleged loss results from decision, applicant must make complaint including claim for compensation, if loss results from non-decisional behaviour of institution, must begin with request, followed by complaint (31-32)
- T-4/23, *PS v EEAS*, Order 23.01.2024, EU:T:2024:43: party who has failed to challenge decision in time cannot present request for compensation for loss allegedly caused by decision, as that would amount to allowing a challenge to decision out of time (37-44)

9. Reply to complaint

- T-621/22, *SB v EEAS*, 13.12.2023, EU:T:2023:805: reasons in reply to complaint to be considered in reviewing legality of contested decision (42)
- 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 thorough knowledge but are not obliged to use language chosen by official or to respond to requests in language used in request/complaint, which would impose 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: plea in application must have been in complaint, though not necessarily in same form. AA must not interpret complaints restrictively (27-29, wfr)
- T-669/22, *IP v Commission*, 02.10.2024, EU:T:2024:669: presenting in application claim for damages unrelated to decision is inadmissible for non-concordance (149-152)

11. Pleas and arguments

- T-148/23, *VK v Commission*, 09.10.2024, EU:T:2024:684: plea directed against a given ground of decision ineffective where decision supported by other, lawful, grounds (87)
- T-221/23, *WS v EUIPO*, 13.11.2024, EU:T:2024:820: infringement of data protection is not an *ex officio* plea (54, wfr)
- C-309/23 P, *SE v Commission*, 05.09.2024, EU:C:2024:693: in proceedings for annulment of an individual act, provisions of general act which form basis of that individual act can be challenged by objection of illegality, cf. Article 277 TFEU (26)

12. Misuse of powers and manifest error

- T-621/22, *SB v EEAS*, 13.12.2023, EU:T:2023:805: use of powers for purposes other than that for which they were conferred – to be proved by objective and consistent evidence; mere assertions or vague indications 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 their arguments 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 special case of misuse of powers (210, wfr)

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

- 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 - mere abstract statement without supporting argument is not enough (72-73, 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)

14. *Lis pendens and res judicata*

- T-788/22, *PT v Commission*, 25.09.2024, EU:T:2024:655: action inadmissible for *lis pendens* if (i) same parties (ii) same purpose (iii) based on same pleas as case already pending (18-23)
- T-89/20, *PV v Commission*, 19.06.2024, EU:T:2024:402: where situation not strictly covered by *res judicata* nevertheless concerns same parties and essentially same allegations as were considered in an earlier case, the court cannot ignore reasoning it followed in dealing with that case (330-331, 333)

15. Evidence and burden of proof

- C-5/23 P, *EUIPO v KD*, 04.07.2024, EU:C:2024:575: parties cannot be required to prove a negative (47)
- 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): medical reports on applicant's state of health are not proof that the origin was harassment, particularly since they are based on unilateral statements of applicant (320-321)

16. Evidence which may have been obtained improperly

- T-793/22, *TU v Parliament*, 11.09.2024, EU:T:2024:614: no general principle that irregularly obtained evidence must be removed from case file. Court should balance interests of parties and also consider whether evidence in question is only evidence of a certain matter (61-64, 69)

17. 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 rule on need for such measures (127-128)

18. Powers of Courts and limits of judicial review

- 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)
- T-221/23, *WS v EUIPO*, 13.11.2024, EU:T:2024:820: decisions of selection board are value judgments for which it has a wide discretion. Review limited to “*flagrant breach*” of the rules governing its work (76)
- T-232/23, *LW v Commission*, 17.07.2024, EU:T:2024:482: staff reports – review limited to regularity of procedure, absence of factual error and manifest error of assessment or misuse of powers (32, 57)
- T-755/22, *TG v Commission*, 08.05.2024, EU:T:2024:294: review of medical justification for decision refusing recognition of a serious illness can only be limited (58)

19. Non-contractual liability and damages; action for unjust enrichment

- 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)
- T-49/23, *Angelidis v Parliament*, 29.05.2024, EU:T:2024:335: usual rules as to intelligibility apply to damages claims. Merely claiming a specified amount for non-economic harm, without further explanation, is inadmissible (78-83)
- T-788/22, *PT v Commission*, 25.09.2024, EU:T:2024:655: two conditions for claim for unjust enrichment: (i) proof of unjust enrichment with no valid basis in EU law and (ii) impoverishment of other party connected with (i). No need to prove illegality/fault by defendant (35-36, 50)

20. 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 contested act, subject-matter of action disappears, since this 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)

21. Interim measures (IM)

- T-1123/23 R, *Meucci v Parliament and EEAS*, Order 05.01.2024, no ECLI number yet: 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 alleged right does not exist, cannot be invoked to claim urgency (20, 23, 27-30)

22. Delays by Courts

C-546/23 P, *UG v Commission*, 21.11.2024, EU:C:2024:975: excessive delays before EU courts can lead to damages against Union under Articles 268 and 340 TFEU, cannot lead to annulment of judgment in absence of any indication that delays could have affected result (130)

23. 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): where express rejection of complaint notified too late, but reasons appear justified, decision not to be annulled for lack of reasoning, since result would only be adoption of new decision, with reasons, with rejection of any action against it – no annulment, since it could therefore not benefit applicant (48-51)
- T-38/23, *IB v EUIPO*, 10.04.2024, EU:T:2024:221: unlimited financial jurisdiction under Article 91(1) SR allows court to provide complete solution to disputes - even in the absence of admissible requests to that effect, can order institution *ex officio* to pay compensation for non-economic loss (“*dommage moral*”) resulting from service-related fault, provided it first invites parties to submit views (33, 67, 69-70, wfr)
- T-669/22, *IP v Commission*, 02.10.2024, EU:T:2024:669: infringement of essential procedural requirement (here, obligation to reconsult disciplinary board before adopting disciplinary penalty after initial annulment) automatically leads to annulment, no need to how result might have been different without it (140-141)

24. Judicial obligation of reasoning

- C-218/23 P, *NS v Parliament*, 25.04.2024, EU:C:2024:358: GC not obliged to follow parties' arguments one by one - reasoning may be implicit so long as it allows parties to understand why GC did not uphold their arguments and provides CJ with sufficient material to allow review (85)

25. Implementation of judgments

T-669/22, *IP v Commission*, 02.10.2024, EU:T:2024:669: where decision annulled, AA must to take measures necessary to implement judgment, by identifying them through operative part and grounds of judgment. Procedure for replacing act annulled for procedural reasons should be resumed at exact stage where previous illegality occurred. Annulment does not normally affect the preparatory acts but in any action against new decision, court must consider whether preparatory steps were affected by the annulment (58-61, 63-65, 106-107, 115-119)

T-634/22, *ZR v EUIPO*, 23.10.2024, EU:T:2024:746: if there are two or more ways of implementing judgment, Article 266 TFEU 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 service and need to protect applicant's rights (41-45)

26. Effects of judgments

- T-623/18, *EO v Commission*, 20.03.2024, EU:T:2024:195 (appeal pending C-385/24 P): Annulment takes effect *ex tunc* and retroactively removes measure from legal order. However annulment of 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)

27. 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 website is question of fact not subject to appeal except for distortion (4, quoting AG 22-23)

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 supporting arguments. Where CJ sets aside GC judgment, CJ can rule itself if 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-309/23 P, *SE v Commission*, 05.09.2024, EU:C:2024:693: merely repeating arguments submitted to GC without questioning GC's reasons for rejecting them, is inadmissible. GC's assessment of facts and evidence not reviewable by CJ except for distortion. Failure of GC to take account of an argument presented to it is admissible ground of appeal (52-53, 65-66, 71, 78, 81, 84)

28. 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 illegal, institutions ordered to pay all costs at first instance and on appeal (116)

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

b) Amount of costs

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 - can form own view of what was objectively necessary given length of pleadings, number of pleas, difficulty of issues. GC only considers hourly rate if manifestly excessive, which not case of 250 euros/hour, 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)

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. 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. 242 hours reduced to 75 and hourly rates of 380, 280 and 150 euros replaced by assumed average of 270/hour (20-21, 36-38, 42-49, 60-65, 70)