Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

13 November 2014*

(Appeals — Member of the European Parliament — Allowances to cover costs incurred in the exercise of parliamentary duties — Recovery of undue payments — Recovery — Limitation — Reasonable time)

In Case C-447/13 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 2 August 2013,

Riccardo Nencini, residing in Barberino di Mugello (Italy), represented by M. Chiti, avvocato,

applicant,

the other party to the proceedings being:

European Parliament, represented by S. Seyr and N. Lorenz, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, K. Lenaerts, Vice-President of the Court, acting as Judge of the Second Chamber, J.-C. Bonichot (Rapporteur), A. Arabadjiev and J.L. da Cruz Vilaça, Judges,

Advocate General: M. Szpunar,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 3 April 2014,

after hearing the Opinion of the Advocate General at the sitting on 19 June 2014,

gives the following

Judgment

1 By his appeal, Mr Nencini seeks to have set aside the judgment of the General Court of the European Union in *Nencini* v *Parliament* (T-431/10 and T-560/10, EU:T:2013:290; 'the judgment under appeal'), firstly, in so far as that court, in Case T-560/10, dismissed his application, principally, for annulment of

* Language of the case: Italian.

the decision of the Secretary General of the European Parliament of 7 October 2010 regarding the recovery of certain expenses received by the appellant, a former Member of the European Parliament, in respect of travel and parliamentary assistance expenses unduly paid and the debit note of the Director General of the European Parliament's Directorate-General for Finances, No 315653 of 13 October 2010, and any other related and/or prior acts and, in the alternative, to remit the applications to the Secretary General of the European Parliament for a fair reassessment of the sum in respect of which recovery is sought and, secondly, in so far as that judgment ordered him to pay the costs in full of Case T-560/10 and in part of Case T-431/10.

Background to the dispute

2 The background to the dispute was set out at paragraphs 1 to 8 of the judgment under appeal and may be summarised as follows.

3 The appellant was a member of the European Parliament during the 1994 to 1999 legislative period.

4 Following an inquiry by the European Anti-Fraud Office (OLAF), in December 2006 the Parliament initiated a verification procedure as regards certain expenses in respect of travel and parliamentary assistance concerning, in particular, the appellant.

5 On 16 July 2010, the Secretary General of the Parliament adopted Decision No 311847 concerning a recovery procedure regarding the appellant relating to certain sums unduly paid as reimbursement of expenses in respect of travel and parliamentary assistance ('the first decision of the Secretary General').

6 In the first decision of the Secretary General, drafted in English, the view was taken that the total sum of EUR 455 903.04 (including EUR 46 550.88 for travel expenses and EUR 409 352.16 for the parliamentary assistance allowances; 'the contested amount'), had been paid, in breach of the rules concerning expenses and allowances for members of the Parliament, to the appellant during his parliamentary mandate. A debit note from the Director General of the Directorate-General for Finance of the Parliament, No 312331, dated 4 August 2010, concerning the recovery of the contested amount ('the first debit note') was notified to the appellant.

7 On 7 October 2010, the Secretary General of the Parliament adopted a decision, drawn up in Italian, replacing the first decision of the Secretary General ('the second decision of the Secretary General') and put together with debit note No 315653 of the Director General of the Directorate-General for Finances of the Parliament, dated the same day, replacing the first debit note for the contested amount ('the second debit note'). Those two documents were notified to the appellant on 13 October 2010.

The procedure before the General Court and the judgment under appeal

8 By application lodged at the Registry of the General Court on 24 September 2010, in Case T-431/10 the appellant contested the first decision of the Secretary General, the first debit note and any other related and/or prior acts.

9 By application lodged at the Registry of the General Court on 10 December 2010, in Case T-560/10 the appellant contested the second decision of the Secretary General and the second debit note, as well as the first decision of the Secretary General, the first debit note and any other related and/or prior acts.

10 The applications for interim rulings made in parallel by the appellant were rejected by the orders of the President of the General Court in *Nencini* v *Parliament* (T-431/10 R, EU:T:2010:441) and *Nencini* v *Parliament* (T-560/10 R, EU:T:2011:40).

11 Cases T-431/10 and T-560/10 were joined for the purposes of the oral procedure and the judgment.

12 At the hearing of 18 April 2012, the appellant informed the General Court that he withdrew his action in Case T-431/10.

13 In the judgment under appeal, the General Court noted the withdrawal of the appellant in Case T-431/10 and, in consequence, ordered it to be removed from the register.

14 Ruling in Case T-560/10, the General Court took the view that the appellant's claim for the annulment of 'any other related and/or prior acts' to the second decision of the Secretary General concerned merely preparatory acts and was therefore inadmissible.

15 In addition, it considered that the appellant's claim for the annulment of the second debit note concerned a measure purely confirmatory of the second decision of the Secretary General and, accordingly, was also inadmissible.

16 On the substance, the General Court rejected the claims of the appellant for the annulment of the second decision of the Secretary General.

17 By the judgment under appeal, the General Court ordered the appellant to pay the costs in Case T-560/10, including the costs of the interim proceedings, and ordered each of the parties to bear their own costs in Case T-431/10, including the costs of the interim proceedings.

The appeal

18 The appellant claims that the Court should:

— set aside the judgment under appeal in so far as it dismisses his claim for annulment of the second decision of the Secretary General;

— in the alternative, remit the case to the Secretary General of the Parliament so that he may fairly determine the amount of the sum due; and

— order the Parliament to pay the costs of the proceedings before the General Court in Cases T-431/10 and T-560/10 and the costs of the proceedings before the Court of Justice.

19 The Parliament contends that the Court should dismiss the appeal and order the appellant to pay the costs.

Consideration of the appeal

20 The appellant puts forward five grounds of appeal in support of his appeal. The first four grounds relate to the grounds on which the General Court rejected his line of argument seeking the annulment of the second decision of the Secretary General. His fifth ground of appeal relates to the orders as to costs made by the General Court in both Case T-431/10 and Case T-560/10.

21 The Parliament argues that those grounds of appeal are inadmissible or unfounded.

The form of order sought in the appeal in so far as it concerns the order as to costs in Case T-431/10

22 It must be borne in mind that, in accordance with the second paragraph of Article 58 of the Statute of the Court of Justice of the European Union, no appeal is to lie regarding only the amount of the costs or the party required to pay them.

23 In the present case, it must be noted that the operative part of the judgment under appeal includes, as regards Case T-431/10, paragraphs 3 and 4, pursuant to which that case is removed from the register of the General Court and each party is to bear its own costs of that case, respectively.

24 However, in the present appeal, the appellant disputes only the grounds of that part of the judgment under appeal which relate to paragraph 4 of the operative part thereof concerning the costs.

25 As follows from the abovementioned provision of the Statute of the Court of Justice, the review of the burden of costs lies outside the jurisdiction of that Court (see, inter alia, order in *Eurostrategies* v *Commission*, C-122/07 P, EU:C:2007:743, paragraph 24).

26 The form of order sought in the appeal, in so far as it seeks an order for costs in Case T-431/10, is inadmissible. The form of order sought in the appeal, in so far as it relates to that case, must, therefore, be rejected.

The form of order sought in the appeal in so far as it concerns Case T-560/10

Arguments of the parties

27 Since, at first instance, the appellant argued in vain that the debt claimed from him was time-barred, he submits, by the first ground of his appeal, that the General Court has contravened the limitation rules applicable in the present case. In order to determine the point from which time starts to run, the General Court, firstly, in effect, was mistaken in its interpretation of Article 73a of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1), as amended by Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 (OJ 2006 L 390, p. 1; 'the Financial Regulation'), and of Article 85b of Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 357, p. 1), as amended by Commission Regulation (EC, Euratom) No 478/2007 of 23 April 2007 (OJ 2007 L 111, p. 13; 'the Implementing Regulation').

28 According to the appellant, and without disregarding the principles of legal certainty and effective judicial protection, the five-year limitation period provided for by the superior rule of law, namely Article 73a of the Financial Regulation, is, inasmuch as it applies to the period during which the right to a debt must be determined, different in nature from that of the time-limit referred to in Article 85b of the Implementing Regulation, which applies only to the period during which a procedure to recover that debt must be initiated. The starting point of those two time-limits cannot, therefore, be the same, contrary to the findings of the General Court.

29 Although the interpretation thus suggested was not accepted, the appellant claims, secondly, by way of exception, that those two regulations are unlawful inasmuch as they disregard the general principles governing limitation and the principles of legal certainty, effective judicial protection, and the rights of the defence from which the debtor benefits. Thirdly, the appellant complains that the General Court examined as a separate argument his submission made in support of the plea in law alleging infringement of the limitation period rules which was based on the Parliament's failure to establish the debt within a reasonable period.

30 The Parliament submits that this ground of appeal is inadmissible in that, firstly, the appellant makes the same arguments as those which he put forward at first instance, that is to say, that there are two limitation periods. Secondly, the plea of illegality is made for the first time in the present appeal.

31 The Parliament argues that, in any event, that ground of appeal is unfounded, since the General Court correctly applied the perfectly clear provisions of Articles 73a of the Financial Regulation and 85b of the Implementing Regulation, which articles were relied on by the appellant himself.

Findings of the Court

– Admissibility of the first ground of appeal, in so far as it concerns the interpretation of Articles 73a of the Financial Regulation and 85b of the Implementing Regulation

32 It follows from Article 256 TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice and Article 169 of its Rules of Procedure that an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal. That requirement is not satisfied by an appeal which, without even including an argument specifically identifying the error of law allegedly vitiating the contested judgment, confines itself to repeating or reproducing the text of the pleas in law and arguments previously submitted to the General Court.

33 By contrast, provided that the appellant challenges the interpretation or application of EU law by the General Court, the points of law examined at first instance may be discussed again in the course of an appeal. Indeed, if an appellant could not thus base his appeal on pleas in law and arguments already relied on before the General Court, an appeal would be deprived of part of its purpose.

34 The first ground of appeal seeks to call into question precisely the interpretation given by the General Court to the Financial Regulation and the Implementing Regulation when rejecting the first plea in law put forward at first instance. The applicant thus questions the answer which that court expressly gave to a question of law in the judgment under appeal, which may be reviewed by the Court of Justice on appeal.

35 The first ground of appeal must therefore be held to be admissible inasmuch as it concerns the General Court's interpretation of Articles 73a of the Financial Regulation and 85b of the Implementing Regulation.

– The merits of the first ground of appeal inasmuch as it concerns the General Court's interpretation of Articles 73a of the Financial Regulation and 85b of the Implementing Regulation

36 It must be borne in mind, firstly, that, in accordance with Article 73a of the Financial Regulation, '[w]ithout prejudice to the provisions of specific regulations and the application of the Council Decision relating to the [European Union's] own resources system, entitlements of the [European Union] in respect of third parties and entitlements of third parties in respect of the [European Union] shall be subject to a limitation period of five years. The date for calculating the limitation period and the conditions for interrupting this period shall be laid down in the implementing rules'. Secondly, in accordance with the first subparagraph of Article 85b(1) of the Implementing Regulation, '[t]he limitation period for entitlements of the [European Union] in respect of third parties shall begin to run on the expiry of the deadline communicated to the debtor in the debit note'.

37 To reject the appellant's plea alleging that, at the date of the adoption of the second decision of the Secretary General, 7 October 2010, the Parliament's action seeking to recover the contested amount was time-barred under Article 73a of the Financial Regulation, the General Court, firstly, considered,

in essence in paragraphs 39 and 40 of the judgment under appeal, that, applying the combined provisions of that article and those of Article 85b of the Implementing Regulation, the limitation period had started to run only from the time-limit of which the appellant was informed in the second debit note, namely 20 January 2011. It concluded therefrom, in paragraph 41 of the judgment under appeal, that, as at 7 October 2010, the limitation period had not started to run and that at that date had definitely not expired.

38 Secondly, the General Court, in paragraph 43 of the judgment under appeal, considered that the appellant had also intended to complain that the Parliament had failed to fulfil its obligations under the reasonable period principle, which, in the light of the fundamental requirement of legal certainty, prevents the institutions from indefinitely delaying the exercise of their powers. The General Court recalled that compliance with the reasonable time requirement in the conduct of administrative procedures constitutes a general principle of EU law whose observance the Courts of the EU ensure and which is laid down as a component of the right to sound administration by Article 41(1) of the Charter of Fundamental Rights of the European Union.

39 After having taken the view that action within a reasonable time is required in all cases where the applicable texts are silent on the matter and the principles of legal certainty and protection of legitimate expectations prevent the institutions from acting without any restriction as to time, the General Court, in paragraphs 45 and 46 of the judgment under appeal, held that, in the present case, neither the Financial Regulation nor the Implementing Regulation specified the period within which a debit note must be sent and that, in consequence, it was for that court to ascertain whether the Parliament had complied with the obligations on it under the reasonable period principle.

40 In paragraphs 47 and 49 of the judgment under appeal, the General Court considered, firstly, that the period which had elapsed between the end of the applicant's term of parliamentary office, in 1999, and the date of adoption of the second decision of the Secretary General, on 7 October 2010, cannot avoid all criticism in the light of the reasonable period principle. Secondly, the allegations made against the person concerned were linked to accounting documents which were already in possession of the Parliament and it should have been alerted to the risk of errors, moreover, by the letter from the appellant of 13 July 1999 seeking clarification of the arrangements for reimbursement of the expenses for parliamentary assistance.

41 In paragraph 50 of the judgment under appeal, the General Court concluded that the verification procedure initiated by the Parliament could have been commenced earlier and that the second decision of the Secretary General could also have been adopted earlier, so that the Parliament had failed to fulfil the obligations imposed on it by the reasonable period principle.

42 Nevertheless, it held that the plea in law alleging infringement of the reasonable period principle had to be rejected since it cannot result in annulment of a measure vitiated thereby unless the infringement in question affected its addressee's rights of the defence. The General Court considered, in paragraph 52 of the judgment under appeal, that, in the present case, the applicant had not put forward any argument in the observations he submitted concerning that infringement to allege that his rights of the defence had been adversely affected.

43 In that regard, it must be borne in mind that Article 73a of the Financial Regulation lays down a general rule providing for a limitation period for claims by the European Union of five years and referring, for the fixing of the date to be used to calculate that period, to the detailed implementing rules which, by virtue of Article 183 of that regulation, it is for the Commission to establish.

44 It follows from those provisions, firstly, that Article 73a of the Financial Regulation cannot be relied on alone, without its implementing rules, to establish that recovery of a debt owed to the European Union is time-barred.

45 Secondly, in so laying down a general rule providing for a limitation period of five years, the EU legislature took the view that such a period was sufficient to protect the debtor's interests in the light of the requirements of the principles of legal certainty and legitimate expectations, and to enable the EU bodies to obtain reimbursement of sums unduly paid. As the Advocate General noted in point 50 of his Opinion, Article 73a of the Financial Regulation is intended in particular to limit in time the possibility of recovering EU entitlements against third parties, in order to comply with the principle of sound financial management. The implementing rules thus laid down for Article 73a can be adopted only in compliance with those objectives.

46 In that regard, Article 85b of the Implementing Regulation sets the starting point for the limitation period as the deadline notified to the debtor in the debit note, that is to say, in the act by which the determination of the debt by the authorising officer is brought to the notice of the debtor and by which he is informed of the final date for payment, in accordance with Article 78 of the Implementing Regulation.

47 As the General Court pointed out in paragraph 45 of the judgment under appeal, it must nevertheless be noted that neither the Financial Regulation nor the Implementing Regulations specifies the period within which a debit note must be sent following the date of the origin of the debt in question.

48 That being the case, as was recalled in paragraph 44 of the judgment under appeal, where the applicable texts are silent, the principle of legal certainty requires the institution concerned to make that communication within a reasonable time. Failing that, the authorising officer, to whom falls the task of determining, in the debit note, the final date for payment which, pursuant to the very terms of Article 85b of the Implementing Regulation, constitutes the point from which time starts to run, would be able freely to set the date of that starting point without any connection to the point at which the debt in question arose, which, clearly, would run counter to the principle of legal certainty and the objective of Article 73a of the Financial Regulation.

49 In that regard, it must be accepted, having regard to Article 73a of the Financial Regulation, that the period in which a debit note is communicated must be presumed to be unreasonable where that communication takes place outside a period of five years from the point at which the institution was, in normal circumstances, in a position to claim its debt. Such a presumption cannot be overturned unless the institution in question establishes that, despite the efforts which it has made, the delay in acting was caused by the debtor's conduct, particularly time-wasting manoeuvres or bad faith. In the absence of such proof, it must therefore be held that the institution has failed to fulfil the obligations on it under the reasonable period principle.

50 In the present case, as the General Court held in paragraphs 46 to 50 of the judgment under appeal, the Parliament did not adopt and send the second decision of the Secretary General and the second debit note to the appellant until October 2010, while his parliamentary mandate had come to an end in 1999, the Parliament had become aware of the facts at issue on 18 March 2005, the date on which OLAF's final report was sent to it, and, before that date, it had accounting documents concerning those facts. In the absence of proof of any conduct by the person concerned which would explain that delay, the General Court was correct to find that, in the present case, the Parliament had failed to fulfil its obligations under the reasonable period principle.

51 However, by holding, in paragraphs 51 and 52 of the judgment under appeal, that that infringement of the reasonable period principle could not entail the annulment of the second decision of the Secretary General on the ground that the appellant had failed to establish that that infringement had affected his rights of the defence, the General Court erred as to the consequences which must be drawn from the infringement of the reasonable period principle, where the EU legislature has adopted a general provision requiring the institutions to act within a specified period.

52 By adopting, as has been stated in paragraph 45 of the present judgment, a general rule under which, as is clear from Article 73a of the Financial Regulation, debts owed to the European Union by third parties are time-barred after a period of five years, the EU legislature intended to confer on any debtors of the EU a guarantee that, after that period, in principle, in accordance with the requirements of legal certainty and protection of legitimate expectations, they cannot be subject to measures to recover such debts, in respect of which they are then exempted from proving that they are not its debtors.

53 Account must therefore be taken of the thus clearly expressed intention of the EU legislature to restrict in time the institutions' possibilities of recovering debts owed to the European Union by third parties, in order to draw the consequences from the finding of a failure by one of those institutions to fulfil its obligations under the reasonable period principle.

54 Having regard to the requirements of legal certainty and the protection of legitimate expectations which underlie the legislature's intention, the case-law referred to by the General Court in paragraph 51 of the judgment under appeal, in accordance with which infringement of the reasonable period principle cannot result in annulment of the contested act unless that infringement affects the rights of the defence, is irrelevant to the present case.

55 In those circumstances, since, in the present case, the General Court held that the Parliament failed to fulfil its obligations under the reasonable period principle, it could not, without erring in law, refrain from annulling the second decision of the Secretary General on the ground that the appellant had not claimed infringement of his rights of the defence.

56 It follows that the General Court erred in rejecting the appellant's first plea in law.

57 In the light of all the foregoing considerations, it is appropriate, without there being any need to examine the other pleas and arguments of the parties, to set aside the judgment under appeal in so far as it concerns Case T-560/10.

The action before the General Court

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

59 In the present case, the Court of Justice considers that the action for annulment of the contested acts brought by Mr Nencini before the General Court is ready for judgment and that it is appropriate, accordingly, to give final judgment in it.

60 The appellant's first plea in law, alleging a time-bar and infringement of the reasonable period principle, must be upheld on the grounds set out in paragraphs 48 to 50 of the present judgment.

61 Accordingly, the second decision of the Secretary General and the second debit note must be annulled.

Costs

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

63 Under Article 138(1) of the Rules of Procedure, which applies to appeal proceedings pursuant to Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Pursuant to that provision, if it appears justified in the circumstances of the case, the Court may order that one party, in addition to bearing its own costs, pay a proportion of the costs of the other party.

64 In the present case, it must be noted, firstly, that the appellant has failed on the heads of his appeal in so far as concerns Case T-431/10. Secondly, the Parliament has been unsuccessful in the appeal in so far as concerns Case T-560/10. In consequence, since each party has applied for costs against the other, it is appropriate to order the Parliament to bear its own costs and, in addition, to pay three-quarters of the costs incurred by the appellant in the present appeal.

65 The costs of the proceedings at first instance in Case T-560/10 are to be paid by the Parliament.

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

1. **Sets aside the judgment of the General Court of the European Union in *Nencini* v *Parliament* (T-431/10 and T-560/10, EU:T:2013:290) in so far as concerns Case T-560/10;**

2. **Annuls the decision of the Secretary General of the European Parliament of 7 October 2010 regarding the recovery of certain expenses received by Mr Riccardo Nencini, a former Member of the European Parliament, in respect of travel and parliamentary assistance expenses and the debit note of the Director General of the European Parliament's Directorate-General for Finances, No 315653 of 13 October 2010;**

3. **Orders the European Parliament to bear its own costs and to pay three-quarters of the costs incurred by Mr Riccardo Nencini in the present appeal;**

4. **Orders the European Parliament to pay the costs of the proceedings at first instance in Case T-560/10;**

5. **Dismisses the remainder of the appeal.**

[Signatures]