Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber, Extended Composition)

7 June 2023 *

(Law governing the institutions – Rules governing expenses and allowances for Members of Parliament – Parliamentary assistance allowance – Recovery of sums unduly paid – Reasonable time – Burden of proof – Right to be heard – Protection of personal data – Article 9 of Regulation (EU) 2018/1725 – Article 26 of the Staff Regulations)

In Case T-309/21,

TC, represented by D. Aukštuolytė, lawyer,

applicant,

v

European Parliament, represented by M. Ecker and S. Toliušis, acting as Agents,

defendant,

THE GENERAL COURT (Fourth Chamber, Extended Composition),

composed, at the time of the deliberations, of S. Gervasoni, President, L. Madise, P. Nihoul (Rapporteur), R. Frendo and J. Martín y Pérez de Nanclares, Judges,

Registrar: R. Ūkelytė, Administrator,

having regard to the written part of the procedure,

further to the hearing on 30 November 2022,

gives the following

Judgment

1 By application of 24 May 2021, the applicant, TC, sought, on the basis of Article 263 TFEU, annulment, first, of the decision of the Secretary-General of the European Parliament of 16 March 2021 declaring a debt owed by him in the amount of EUR 78 838.21 unduly paid in the form of parliamentary assistance expenses and ordering its recovery ('the contested decision') and, second, of the debit note No 7010000523 of 31 March 2021 ('the debit note').

* Language of the case: Lithuanian.

I. Background to the dispute and events subsequent to the bringing of the action

A. Background to the dispute

2 The applicant has been a Member of the Parliament since [*confidential*].[1]

3 On 22 May 2015, the Parliament, on the basis of Article 5a of the Conditions of Employment of Other Servants of the European Union ('the CEOS'), concluded a contract with A, the accredited parliamentary assistant ('the APA') as a full-time APA in Brussels (Belgium) for the purposes of assisting the applicant until the end of the seventh parliamentary term.

4 Since the quality of the APA's work had deteriorated from December 2015, the applicant, on 25 February 2016, requested the parliamentary authority empowered to conclude contracts of employment ('the AECE'), to terminate the APA's contract on various grounds involving loss of trust, including absences without good reason and failure to comply with the rules on authorisations to engage in outside activities.

5 In accordance with Article 139(3a) of the CEOS, a conciliation meeting was held with the APA on 31 May 2016.

6 On 15 June 2016, it was found that the conciliation procedure had failed.

7 By letter of 24 June 2016, the AECE notified the APA of its decision to terminate the parliamentary assistance contract pursuant to Article 139(1)(d) of the CEOS, due to a breakdown in the relationship of trust on the ground that he had failed to comply with the rules relating to authorisations to engage in outside activities. On account, in particular, of sick leave, the notice period was extended on several occasions, with the result that the APA's contract only ended on 22 November 2016.

8 On 14 April 2017, the APA brought an action for annulment of the decision of 24 June 2016 before the General Court.

9 By judgment of 7 March 2019, *L* v *Parliament* (T-59/17, EU:T:2019:140, paragraphs 35 to 45), the Court annulled the Parliament's decision of 24 June 2016. The Court found that it was apparent from the material in the file that not only was the applicant aware of the APA's external activities, but that, moreover, they were on his direct initiative. The Court therefore held that the reason given by the AECE to justify the contract termination decision, namely the breakdown in the relationship of trust, did not appear plausible. According to the Court, the AECE had therefore committed a manifest error of assessment in granting the applicant's request for termination of the APA's contract on that ground. The applicant was not a party to the proceedings in that case.

10 In accordance with paragraph 32 of that judgment, the external activities improperly carried out by the APA were, according to his claims, which were not disputed by the Parliament, as follows:

– 'first, the lodging of applications for political asylum with the Russian, French, Swiss and Andorran authorities, to enable the [applicant] to avoid a sentence of four years' imprisonment imposed in [*confidential*], including an appeal against a decision to refuse

[1] Confidential information omitted.

asylum regarding the latter, in respect of which the [APA claimed], inter alia, that he had been mandated by [the applicant];

– secondly, canvassing and representing as a lawyer [*confidential*] nationals who are retired or receiving the minimum wage, in proceedings before the [*confidential*] courts, in order to present [the applicant] as a "human rights defender" and thus make it more difficult for him to be imprisoned;

– thirdly, the representation of [the applicant] before the European Ombudsman, United Nations Human Rights Committee and the European Court of Human Rights in cases concerning [him] … concerning, in the first place, inter alia, the challenge to the request to waive parliamentary immunity made by the [*confidential*] authorities, following the prison sentence imposed on the [applicant] in question in [*confidential*] and, in the second place, the challenge to a house arrest ordered by the [*confidential*] judicial authorities following criminal proceedings for corruption brought against the [applicant].'

11 By letter of 8 June 2020, written in English and sent by email of 30 July 2020 following an unsuccessful initial notification on 22 June 2020, and by letter of 3 September 2020, written in Lithuanian and sent by email of 4 September 2020, the Secretary-General of the Parliament informed the applicant of the commencement of a procedure for the recovery of sums unduly paid, pursuant to Article 68 of the decision of the Bureau of 19 May and 9 July 2008 concerning implementing measures for the Statute for Members of the European Parliament (OJ 2009 C 159, p. 1; 'the IMS'), for a total amount of EUR 78 838.21 in respect of the parliamentary assistance provided to the applicant by the APA. By the same letter, the applicant was invited, in accordance with Article 68(2) of the IMS, to submit, within two months, observations and evidence to rebut the Parliament's preliminary findings on the external activities which the APA had carried out to the applicant's knowledge and under his direction from 22 May 2015 to 22 November 2016 and to prove that, during that same period, the APA had actually performed the duties of an accredited parliamentary assistant.

12 Attached to the letter of 3 September 2020 was a copy of the judgment of 7 March 2019, *L* v *Parliament* (T-59/17, EU:T:2019:140), and a breakdown of the sums paid by the Parliament to the APA. That breakdown was drawn up as follows: for 2015, EUR 35 003.84 in respect of remuneration and social costs and EUR 1 369.60 in respect of travel expenses and, for 2016, EUR 42 025.57 in respect of remuneration and social costs and EUR 439.20 in respect of travel expenses.

13 By email of 4 August 2020, the applicant asked the Parliament to provide him with the following:

– the APA's personal file at the Parliament (all documents relating to his recruitment and work), including information on the number of times protection of Parliament had been requested in respect of that APA and data relating to the APA's presence (data from his Parliamentary access card);

– copies of the correspondence he had exchanged with the Parliament's representatives concerning the work of the APA;

– the complete file in the case which gave rise to the judgment of 7 March 2019, *L* v *Parliament* (T-59/17, EU:T:2019:140).

14 On 22 September 2020, the applicant reminded the Parliament of that request and he also asked for the protocol for the conciliation procedure between himself and the APA in Lithuanian as well as a copy of 'all emails from 2015, 2016 and 2019'.

15 By email of 27 October 2020, the Parliament sent the applicant various documents concerning the termination of the APA's contract.

16 By email of 29 October 2020, the applicant sent the Parliament his preliminary observations and a number of documents, while noting that he had not yet received from the Parliament the documents and detailed information concerning the APA's period of employment and that he had not yet been able to examine the limited information which had been provided to him by the email of 27 October 2020. He therefore asked to be allowed to submit further information and evidence at a later stage.

17 By email of 20 November 2020, the applicant again asked the Parliament for the information which he had requested by his emails of 4 August and 22 September 2020, in particular data relating to the APA's access to Parliament and copies of the emails of 2015, 2016 and 2019.

18 By email of 24 November 2020, the applicant sent the Parliament further observations and evidence in addition to those sent by him to the Parliament on 29 October 2020.

19 By email of 27 November 2020, the Director-General for Finance of the Parliament ('the Director-General for Finance') informed the applicant that the time limit for submitting his observations and evidence in the context of the recovery procedure under Article 68 of the IMS had expired on 4 November 2020, but that, if he wished to obtain information concerning the APA, he could contact two individuals whose email addresses the Director-General for Finance provided, without those requests having any effect on that procedure.

20 By letter sent to the Parliament on 1 December 2020, the applicant disputed the statements contained in the email of 27 November 2020. In addition, he sent his requests for documents to the individuals mentioned in that email.

21 By letter of 8 January 2021, the Director-General for Finance forwarded the protocol relating to the conciliation procedure in Lithuanian to the applicant, but refused him access to the other documents requested.

22 In addition, while observing that the time limit set for the applicant to submit his observations had expired on 4 November 2020, without the applicant having requested an extension of that period, the Director-General for Finance granted the applicant a period of 15 days in which to submit additional observations.

23 On 21 January 2021, the applicant submitted additional observations to the Parliament.

24 By the contested decision, the Secretary-General of the Parliament considered that a sum of EUR 78 838.21 had been unduly borne by that institution in connection with the use of the APA for the period from 22 May 2015 to 22 November 2016 and that it should be recovered from the applicant pursuant to Article 68(1) of the IMS.

25 On 31 March 2021, the Director-General for Finance, in his capacity as authorising officer by delegation, issued the debit note, ordering the recovery of the sum of EUR 78 838.21 from the applicant and requesting him to pay that sum by 30 May 2021 at the latest.

26 On the same date, the Director-General for Finance notified the applicant of the contested decision and the debit note.

B. Events subsequent to the bringing of the present action

27 Following a check carried out in the context of the present proceedings, it became apparent that, in March 2016, the Parliament had decided to suspend payment of the APA's remuneration and travel expenses with effect from 1 April 2016.

28 Consequently, on 8 November 2022, the Secretary-General of the Parliament decided to withdraw the contested decision *ab initio* in so far as it ordered, for the period from 1 April to 22 November 2016, the recovery of the sum of EUR 27 644.47 by way of remuneration and social costs and the sum of EUR 439.20 in respect of travel expenses, that is to say, a total of EUR 28 083.67 ('the decision of 8 November 2022'). On 15 November 2022, a credit note bearing the number 7120000068 was issued for the same amount.

29 On 15 November 2022, the Director-General for Finance notified the applicant of the decision of 8 November 2022 and credit note No 7120000068.

II. Procedure and forms of order sought

30 The applicant contends that the Court should:

– annul the contested decision;

– annul the debit note;

– order the Parliament to pay the costs.

– hear as witnesses B and C.

31 The Parliament contends that the Court should:

– dismiss the present action as unfounded;

– order the applicant to pay the costs;

– refuse the request for measures of inquiry.

32 By a separate document of 16 November 2022, the Parliament contends, on the basis of Article 130(2) of the Rules of Procedure of the General Court, that the Court should:

– declare that part of the subject matter of the action has ceased to exist and that there is no longer any need to adjudicate on the part of the contested decision which has been withdrawn, in so far as, for the period from 1 April to 22 November 2016, an amount of EUR 27 644.47 for

remuneration and social costs and an amount of EUR 439.20 for travel expenses, had been considered to have been unduly paid by the Parliament for the benefit of the APA and the recovery of those amounts was ordered;

– order each party to bear its own costs in respect of the part of the subject matter of the dispute which has ceased to exist.

33 At the Court's request, the applicant submitted his observations on that request at the hearing on 30 November 2022.

34 On 22 November 2022, the applicant provided the Court with B's written statement, obtained on 18 November 2022.

35 At the hearing, the Parliament maintained that that new evidence was inadmissible on the ground that, contrary to the requirements of Article 85(3) of the Rules of Procedure, it had been produced after the exchange of pleadings, without the applicant having justified that delay in submission.

III. Law

A. The need to adjudicate in part only

36 As is apparent from paragraph 32 above, the Parliament asks the Court to declare that the action has become devoid of purpose and that there is no longer any need to adjudicate on the legality of the contested decision, in so far as it concerns remuneration, social costs and travel expenses which were paid for the benefit of the APA between 1 April and 22 November 2016 for the total amount of EUR 28 083.67.

37 At the hearing, the applicant observed that the amounts indicated in the decision of 8 November 2022 were not supported by any documentary evidence and asked the Court to adjudicate on the legality of the contested decision as a whole.

38 In that regard, it should be recalled that, according to settled case-law, the subject matter of the dispute must continue, like the interest in bringing proceedings, until the final decision, failing which there will be no need to adjudicate, which presupposes that the action must be liable, if successful, to procure an advantage to the party bringing it (see judgment of 7 June 2007, *Wunenburger* v *Commission*, C-362/05 P, EU:C:2007:322, paragraph 42 and the case-law cited).

39 The disappearance of the subject matter of the action can inter alia result from the withdrawal or replacement of the contested act in the course of the proceedings (see order of 12 January 2011, *Terezakis* v *Commission*, T-411/09, EU:T:2011:4, paragraph 15 and the case-law cited).

40 In the present case, on account of the decision of 8 November 2022, it must be found that the subject matter of the action has ceased to exist in so far as it sought the annulment of the contested decision and the debit note to the extent that those measures ordered the reimbursement by the applicant of the sum of EUR 28 083.67 in respect of remuneration, social costs and travel expenses paid for the benefit of the APA between 1 April and 22 November 2016.

41 In this respect, the fact that the amounts indicated in the decision of 8 November 2022 were not supported by any documentary evidence is irrelevant.

42 Consequently, it must be held that, to the extent described above, the action for annulment has become devoid of purpose and that there is no need to adjudicate on the legality of the contested decision and of the debit note.

B. The remainder of the action for annulment

43 The applicant puts forward five pleas in law, based, respectively, on:

– the infringement of the reasonable time principle laid down in Article 41(1) of the Charter of Fundamental Rights of the European Union;

– the right to be heard, the right to have access to the file and the obligation to state reasons, as laid down in Article 41(2) of the Charter of Fundamental Rights;

– an error of assessment and a failure to fulfil the duty to state reasons, in that the Parliament did not take into consideration the evidence which the applicant provided in response to the letter of 3 September 2020 in his observations of 29 October and 24 November 2020 and of 21 January 2021;

– an infringement of the obligation to state reasons as regards the determination of the amount of the sum to be recovered;

– the fact that Annexes A.3 to A.21, which he produced, establish that, contrary to that which would be apparent from the contested decision, the APA performed his duties as a parliamentary assistant at least until 15 December 2015.

44 Before examining those pleas, it is appropriate to set out the rules relating to the defrayal of parliamentary assistance expenses and the recovery of sums unduly paid in that regard.

1. The rules relating to the defrayal of parliamentary assistance expenses and the recovery of sums unduly paid in that regard

45 Article 33 of the IMS states that Members must be entitled to assistance from personal staff whom they may freely choose.

46 According to the same provision, the Parliament is to defray expenses actually incurred and arising wholly and exclusively from the employment of one or more assistants, in accordance with the IMS, it being understood that only expenses for the assistance which is necessary and directly linked to the exercise of a Member's parliamentary mandate may be defrayed.

47 Article 62 of the IMS states that the sums paid pursuant to those implementing measures must be reserved exclusively for the funding of activities linked to the exercise of a Member's mandate and may not be used to cover personal expenses or to fund grants or donations of a political nature.

48 Article 68 of the IMS provides that any sum unduly paid pursuant to those implementing measures must be recovered and that the Secretary-General of the Parliament is to issue instructions with a view to recovery of the sums in question from the Member concerned, whom he or she must have heard in advance.

49 From Article 33 of the IMS, the content of which was described in paragraphs 45 and 46 above, the Court has inferred that the definition of the concept of parliamentary assistance did not fall within the discretion of Members of the Parliament (see, to that effect, judgments of 14 July 2021, *Rochefort* v *Parliament*, T-171/20, not published, EU:T:2021:438, paragraph 45, and of 8 September 2021, *Griesbeck* v *Parliament*, T-10/21, not published, EU:T:2021:542, paragraph 39).

50 According to the Court, it follows that the services actually provided by the assistants to the Parliament must be demonstrated by the Member concerned (see judgment of 8 September 2021, *Griesbeck* v *Parliament*, T-10/21, not published, EU:T:2021:542, paragraph 40 and the case-law cited).

51 In the event of a check relating to the use of parliamentary assistance expenses, the Member concerned must therefore be able to prove that the sums received were used to cover the expenses actually incurred and arising wholly and exclusively from the employment of one or more assistants, as provided for in Article 33 of the IMS (judgment of 14 July 2021, *Rochefort* v *Parliament*, T-171/20, not published, EU:T:2021:438, paragraph 47; see also judgment of 8 September 2021, *Griesbeck* v *Parliament*, T-10/21, not published, EU:T:2021:542, paragraph 41 and the case-law cited).

52 In that context, the Member must, inter alia, produce the supporting documents relating to the activities of the APA and, therefore, retain them, even in the absence of an express obligation to that effect under EU law (see, to that effect, judgments of 14 July 2021, *Rochefort* v *Parliament*, T-171/20, not published, EU:T:2021:438, paragraph 47, and of 8 September 2021, *Griesbeck* v *Parliament*, T-10/21, not published, EU:T:2021:542, paragraph 41 and the case-law cited).

53 That case-law of the General Court has been confirmed by the Court of Justice, according to which it is for Members who request Parliament to bear financial responsibility for the costs relating to the assistance of personal staff to prove that those expenses were actually incurred and were for the assistance necessary and directly linked to the exercise of the mandate. Thus, such a Member must, in response to a request to that effect from the competent authority of the Parliament, submit all the evidence at his or her disposal capable of demonstrating the genuineness of the work carried out by his or her assistant, as well as the link between that work and the exercise of his or her mandate (see, to that effect, orders of 21 March 2019, *Gollnisch* v *Parliament*, C-330/18 P, not published, EU:C:2019:240, paragraphs 63, 64 and 88, and of 21 May 2019, *Le Pen* v *Parliament*, C-525/18 P, not published, EU:C:2019:435, paragraphs 37 and 82 and the case-law cited).

2. The first plea, alleging infringement of the reasonable time principle

54 By the first plea, the applicant claims, in particular, that, by adopting the contested decision, the Parliament infringed the reasonable time principle laid down in Article 41(1) of the Charter of Fundamental Rights and enshrined in Article 98(2) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ 2018 L 193, p. 1; 'the Financial Regulation').

55 In the present case, the fact that the reasonable time was exceeded stems from the fact that Parliament based the contested decision on data in the case which gave rise to the judgment of 7 March 2019, *L* v *Parliament* (T-59/17, EU:T:2019:140), in respect of which the application had been lodged on 14 April 2017. It was not until 30 July or 3 September 2020, that is to say, more than three years later, that Parliament asked the applicant for his observations on the proposed recovery.

56 The Parliament disputes that argument.

57 In that regard, it should be recalled that Article 41(1) of the Charter of Fundamental Rights provides that every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the European Union. That provision thus lays down the principle that action must be taken within a reasonable time, which is an integral part of the right to good administration.

58 According to settled case-law, there is an obligation to act within a reasonable time in all cases where, in the absence of any statutory rule, the principles of legal certainty or the protection of legitimate expectations preclude the EU institutions and natural or legal persons from acting without any time limits, thereby threatening, inter alia, to undermine the stability of legal positions already acquired (judgment of 5 October 2004, *Eagle and Others* v *Commission*, T-144/02, EU:T:2004:290, paragraph 57; see also judgment of 12 July 2012, *Commission* v *Nanopoulos*, T-308/10 P, EU:T:2012:370, paragraph 76 and the case-law cited). Where the administration acts within the period specifically prescribed by a provision, it cannot be validly claimed that the requirements arising from the right for a person to have his or her affairs dealt with within a reasonable time, enshrined in Article 41 of the Charter of Fundamental Rights, are disregarded.

59 It should be recalled that, in the legislation prior to that which is applicable in the present case, namely Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ 2012 L 298, p. 1), and Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation No 966/2012 (OJ 2012 L 362, p. 1), there was no provision laying down a time limit for sending the debit note to the debtor.

60 That is why, in the judgment of 14 June 2016, *Marchiani* v *Parliament* (C-566/14 P, EU:C:2016:437), the Court of Justice applied the reasonable time principle in order to assess the period taken to send the debit note to the debtor.

61 However, the legislation was amended following that judgment by the introduction of the provisions in the second subparagraph of Article 98(2) of the Financial Regulation, which now provides:

‘The authorising officer shall send the debit note immediately after establishing the amount receivable and at the latest within a period of five years from the time when the Union institution was, in normal circumstances, in a position to claim its debt. Such period shall not apply where the authorising officer responsible establishes that, despite the efforts which the Union institution has made, the delay in acting was caused by the debtor’s conduct.’

62 Since such a provision has been adopted, there is no longer any need, contrary to what the applicant wrongly claims, to have recourse to the reasonable time principle in order to assess the period within which the debit note was sent to him. By contrast, it is necessary to ask whether in accordance with that provision, the Parliament sent the debit note to the applicant, first, immediately after the establishment of the amount receivable, and second, within five years following the date on which it was able to claim its debt.

63 As regards the first period, it should be noted that the debit note was sent to the applicant on 31 March 2021, whereas the Parliament's debt was established on 16 March 2021, in the contested decision. In those circumstances, it can be considered that the debit note was sent to the applicant immediately after the establishment of the amount receivable in accordance with the second subparagraph of Article 98(2) of the Financial Regulation.

64 As regards the second period, it must be observed that the parties do not agree when the Parliament was in a position to claim its debt within the meaning of the second subparagraph of Article 98(2) of the Financial Regulation. Although the applicant submits that that time coincides with the lodging of the application by the APA in the proceedings which gave rise to the judgment of 7 March 2019, *L* v *Parliament* (T-59/17, EU:T:2019:140), that is 14 April 2017, the Parliament contends that it was not able to claim its debt until the date of delivery of the judgment in that case, namely 7 March 2019.

65 Since the debit note was sent to the applicant on 31 March 2021, it must be found that, whatever the starting point of the period laid down in the second subparagraph of Article 98(2) of the Financial Regulation, whether that be the lodging of the application in the case which gave rise to the judgment of 7 March 2019, *L* v *Parliament* (T-59/17, EU:T:2019:140), that is 14 April 2017, or the date of delivery of that judgment, the period laid down in that provision was complied with by the Parliament.

66 The applicant's argument and, therefore, the first plea in law must be rejected as unfounded.

3. The second plea, alleging infringement of the right to be heard, the right of access to the file and the obligation to state reasons, as provided for in Article 41(2) of the Charter of Fundamental Rights

67 The applicant submits that the Parliament infringed his right to be heard and his right of access to the file, laid down in Article 41(2) of the Charter of Fundamental Rights, on the ground that it referred, in the contested decision, to the findings of the judgment of 7 March 2019, *L* v *Parliament* (T-59/17, EU:T:2019:140), without disclosing the evidence to him, in particular a note from the APA of 9 May 2016, which supported those findings.

68 The applicant states in that regard that he did not intervene in the proceedings that gave rise to the judgment of 7 March 2019, *L* v *Parliament* (T-59/17, EU:T:2019:140), either as a party or as a witness, that the Parliament did not dispute the aforementioned evidence before the Court and that it did not ask him for his observations on that evidence.

69 Furthermore, the applicant submits that, in its letter of 8 January 2021, the Parliament was wrong to rely on Article 9 of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ 2018 L 295, p. 39),

in order to refuse him access to the evidence which he had requested. The right to the protection of personal data is not absolute and should be weighed against other fundamental rights, in accordance with the principle of proportionality. In the present case, his right to information is based on recitals 21 and 28 and Article 9(1) and (3) of Regulation 2018/1725. Since the recovery of sums paid by way of parliamentary assistance expenses constitutes a matter of public interest, the applicant could have access to personal data in order to assess the merits of the recovery of the sums concerned and to submit observations to the Parliament.

70 Similarly, the applicant states, in connection with the first plea, that he was deprived of the opportunity of producing evidence against the Parliament's claims. The emails exchanged with the APA between 22 May 2015 and 25 February 2016, which would have provided the bulk of the evidence of the latter's work in the Parliament, in relation to the applicant's position as a Member, were deleted because of the policy implemented by the Parliament, which, in principle, limits the retention of those emails to 90 days. Apart from the fact that that policy changed in May 2019 and he was not informed thereof, the applicant submits that he could not be asked to retain his own emails, because he was not the owner of those emails, as is apparent from Article 17 and Article 18(1) of the Staff Regulations of Officials of the European Union ('the Staff Regulations') and from the Rules governing access to and use of the email system by Parliament's Secretariat, approved by the Secretary-General of the Parliament on 19 February 2018. He also submits that such retention constitutes a breach of confidentiality obligations and a breach of information security.

71 In addition, still in connection with the first plea, the applicant calls into question, in the light of recital 22 of Regulation 2018/1725, the Parliament's policy on retaining e-mails, since that institution has failed to take into account, in the implementation of that policy, the need for Members to defend themselves against complaints which might be made against them.

72 The Parliament disputes the admissibility and the merits of that line of argument.

(a) The admissibility of the applicant's argument in so far as it relates to the letter of 8 January 2021

73 The Parliament contends that, in so far as it relates to the letter of 8 January 2021, the applicant's argument is out of time. The applicant cannot, by his action for annulment of the contested decision and the debit note, call into question the answer given to him by the Director-General for Finance in his letter of 8 January 2021, since the two-month period laid down in the sixth paragraph of Article 263 TFEU has expired.

74 In that regard, it should be recalled that, according to the consistent case-law of the Court, any measure the legal effects of which are binding on, and capable of affecting the interests of, the applicant by bringing about a distinct change in his or her legal position is an act which may be the subject of an action for annulment under Article 263 TFEU (judgment of 11 November 1981, *IBM* v *Commission*, 60/81, EU:C:1981:264, paragraph 9; see also order of 16 June 2021, *Green Power Technologies* v *ECSEL Joint Undertaking*, T-533/20, not published, EU:T:2021:375, paragraph 26 and the case-law cited).

75 As regards acts or decisions which are reached in several stages, in particular where they are the culmination of an internal procedure, only a measure definitively establishing the position of the institution at the conclusion of that procedure, and not preparatory acts for the final decision, are acts adversely affecting an official and, as such, open to challenge. It is only in an action brought

against the decision taken at the end of that procedure that an applicant may challenge, as an incidental matter, the irregularity of such preparatory acts (judgment of 11 November 1981, *IBM* v *Commission*, 60/81, EU:C:1981:264, paragraph 10; see also order of 20 January 2021, *ZU* v *EEAS*, C-266/20 P, not published, EU:C:2021:42, paragraph 12 and the case-law cited).

76 In the present case, the action for annulment is directed, in view of the finding that there is no need to adjudicate in part, made in paragraph 42 above, against the decision by which the Secretary-General of the Parliament ordered the recovery of a sum of EUR 50 754.54 from the applicant and the debit note which followed it, which constitute the end of the recovery procedure and therefore the acts adversely affecting the applicant against which the action was brought.

77 In the context of the procedure that was to lead to the adoption of the contested decision and the debit note, the applicant requested the Parliament, as indicated in paragraphs 13, 14 and 17 above, to produce documents which he considered necessary in order to demonstrate that the APA had indeed performed duties of an accredited parliamentary assistant during the period from 22 May 2015 to 22 November 2016.

78 In those circumstances, the reply to that request, contained in the letter of 8 January 2021, forms part of the procedure for the recovery of sums unduly paid and was able to influence the outcome of that procedure.

79 Consequently, in accordance with the case-law cited in paragraph 75 above, it is open to the applicant to raise in the present action the irregularities which, in his view, affect the letter of 8 January 2021.

80 Accordingly, it must be held that the applicant's arguments relating to the letter of 8 January 2021 are admissible.

(b) The merits of the applicant's arguments

81 Pursuant to Article 41(2)(a) of the Charter of Fundamental Rights, the right to good administration includes, inter alia, the right of every person to be heard, before any individual measure which would affect him or her adversely is taken.

82 In the context of procedures for the recovery of sums unduly paid under the IMS, the right to be heard is guaranteed, in particular, by Article 68(2) of those measures, which provides that the Member concerned is to be heard prior to the adoption of any decision on the matter.

83 In accordance with settled case-law, the right to be heard guarantees every person the opportunity to make known his or her views effectively during an administrative procedure and before the adoption of any decision liable to affect his or her interests adversely (see judgment of 4 April 2019, *OZ* v *EIB*, C-558/17 P, EU:C:2019:289, paragraph 53 and the case-law cited).

84 In order to determine whether those rules have been complied with in the present case, it is necessary to examine the steps taken by the parties during the procedure which led to the adoption of the contested decision and the debit note.

85 In the present case, by letter of 3 September 2020, the Secretary-General of the Parliament, after setting out the evidence justifying the initiation of the recovery procedure at issue, invited the applicant to establish that the APA had performed duties of an accredited parliamentary assistant between 22 May 2015 and 22 November 2016.

86 On that date, however, the applicant no longer had in his possession the emails exchanged with the APA during the period between 22 May 2015 and 25 February 2016, which might provide the bulk of the evidence requested by the Secretary-General of the Parliament. Indeed, those emails had been deleted because of the Parliament's email retention policy. Under that policy, the emails contained in the 'Inbox', 'Sent Items', 'Deleted Items', 'Junk E-mail' and 'drafts' files are in principle deleted after 90 days.

87 In order to be able to provide the evidence requested, the applicant then, by emails of 4 August, 22 September and 20 November 2020, requested the Parliament to disclose various documents to him:

– the minutes in Lithuanian of the conciliation procedure between himself and the APA;

– a copy of 'all emails from 2015, 2016 and 2019';

– a copy of the correspondence he had exchanged with the Parliament's representatives concerning the APA's work;

– the complete file in the case which gave rise to the judgment of 7 March 2019, *L* v *Parliament* (T-59/17, EU:T:2019:140);

– the APA's personal file at the Parliament (all documents related to his recruitment and work), including information on the number of times protection of Parliament had been requested in respect of that APA and the data on his presence that could be extracted from his Parliamentary access card (see paragraphs 13, 14 and 17 above).

88 The first request was accepted by the Parliament and a copy of the relevant minutes was sent to the applicant. By contrast, the requests relating to the other categories of documents were refused, except the documents concerning the termination of the APA's contract, sent by email of 27 October 2020. (see paragraph 15 above). As is apparent from the file, the refusal occurred on 8 January 2021, that is to say, five months after the applicant's first request.

89 In that regard, it should be borne in mind that, under the rules of evidence referred to in paragraphs 49 to 53 above, where there is doubt as to the propriety of the use of parliamentary assistance expenses paid to an APA, it is for the Member of Parliament to establish that that APA worked for him or her, in connection with his or her parliamentary mandate, throughout the period during which those expenses were paid.

90 When requested to provide such proof, the Member of Parliament must disclose to the Parliament, within the prescribed time limit, the information in his or her possession. If other information appears to be relevant, he or she may request disclosure thereof from the institutions, bodies, offices and agencies of the European Union which have that information, on the basis of the right to be heard, provided that they concern the data necessary to enable him or her to make his or her observations effectively on the proposed recovery measure. The Parliament

which receives such a request cannot refuse to provide the data requested without infringing the right to be heard, unless it relies, in support of that refusal, on grounds which may be regarded as justified having regard, first, to the circumstances of the case and, second, to the applicable rules.

91 It is therefore necessary to consider whether, in the present case, the grounds relied on by the Parliament in its letter of 8 January 2021 for not disclosing the data requested by the applicant are justified.

(1) The grounds relied on by the Parliament for refusing the applicant's request concerning the disclosure of 'all emails from 2015, 2016 and 2019' and the correspondence exchanged by the applicant with the relevant services of the Parliament concerning the APA's work

92 As can be seen from paragraph 88 above, the Parliament refused the applicant's request for disclosure of 'all emails from 2015, 2016 and 2019' as well as the correspondence the applicant had exchanged with its services concerning the APA's work, on the ground that, according to its policy, the retention of emails was limited to 90 days and, exceptionally, to one year. The Parliament added that the post-2019 emails could be disclosed, but that they were not relevant, as they did not relate to the period during which the APA was deemed to have worked for the applicant.

93 In that regard, it should be borne in mind that each institution organises its work in compliance with the rules applicable to it and which it may lay down. In the present case, the Parliament, contrary to what the applicant claims, was entitled to limit the retention period for Members' emails by allowing them to be safeguarded in private folders. However, it must be determined whether, in the present case, that policy was implemented in such a way as to ensure observance of the right to be heard which, as defined in paragraph 83 above, is binding on the EU institutions, in all situations in which they contemplate adopting a measure capable of adversely affecting a person, where the conditions laid down for its application, under Article 41 of the Charter of Fundamental Rights, are met.

94 In that regard, it should be recalled that, in the present case:

– the APA was recruited on 22 May 2015;

– in December 2015, the applicant noted a deterioration in the quality of the APA's work;

– on 25 February 2016, the applicant requested the Parliament to initiate proceedings for the APA's dismissal on the ground, inter alia, that the latter had not complied with the rules relating to authorisations to engage in outside activities and that he had been absent without good reason;

– on 24 June 2016, the Parliament notified the APA of its decision to terminate his contract on account of a breakdown in the relationship of trust because he had not complied with the rules on authorisations to engage in outside activities;

– on 14 April 2017, the APA brought an action for annulment of the decision terminating his contract before the Court;

– on 8 June and then on 3 September 2020, the Parliament informed the applicant that a procedure had been commenced for the recovery of the sums paid to the APA.

95 It follows from that chronology that, from the beginning of 2016, the Parliament became aware of a situation of conflict between the applicant and the APA as regards whether or not the latter was carrying out his activities for the applicant in compliance with the rules governing parliamentary assistance. Consequently, from that time, it was necessary, in such a situation, particularly as public funds of the European Union were at stake, for the Parliament to ensure the retention of emails which could establish the exact nature of the activities of the APA during the dismissal procedure and, if that procedure gave rise to other judicial or administrative proceedings, such as a recovery procedure, for as long as those other proceedings remained open.

96 In that regard, it should be pointed out that, in the letter of 8 January 2021, the Director-General for Finance informed the applicant that the Parliament could recover emails for a period of one year in exceptional cases.

97 Furthermore, Article 5 of the Rules governing access to and use of the email system by the Parliament's Secretariat, approved on 19 February 2018, provides that, in the event of termination of the duties of an official or agent of the Parliament, the retention period for their emails may exceed three months where they are the subject of 'an administrative investigation, complaint or legal proceedings'.

98 According to the Parliament, it is for the Members to retain their emails beyond that period. To that end, Members of Parliament are invited to create private folders themselves enabling their emails to be archived for an indefinite period. According to the Parliament, that invitation was the subject of three communications addressed to the Members, the first of 14 June 2014, the second of 13 October 2014 and the third of 30 March 2015. Despite those communications, the applicant did not personally archive his emails.

99 The Parliament's argument cannot be accepted.

100 The possibility of personal archiving cannot have the effect of relieving the Parliament of the obligation to ensure the retention of all emails relevant to establishing that, in accordance with the rules which the institution has laid down for itself, an APA has effectively and exclusively carried out his or her activities for the Member to whom he or she was assigned, in direct connection with the latter's mandate.

101 Nor can that possibility relieve the Parliament of the obligation to disclose the emails thus retained, where, in accordance with the right to be heard, which is fundamental in the legal order of the European Union, a request to that effect is made by the Member concerned who, as in the present case, is the subject of a recovery procedure for improper use of parliamentary assistance expenses.

102 Moreover, in response to the applicant who claims, in essence, that he was only informed of the Parliament's email retention policy on 8 January 2021, the Parliament has failed to demonstrate that the communications referred to in paragraph 98 above had been brought to the applicant's attention. Thus, the communication of the Directorate-General (DG) for Innovation and Technological Support of 14 June 2014 was addressed to the 'newcomers', which did not include the applicant on that date since, as is clear from paragraph 2 above, he had been a Member since [*confidential*]. The communication of 13 October 2014 was addressed by DG 'Innovation and Technological Support' to itself, without the Parliament, when questioned on that point in the

context of a measure of organisation of procedure, being able to provide the list of its recipients. The same applies to the communication of 30 March 2015, which was issued by the 'ITEC Service Desk' for Members.

103 As regards the correspondence exchanged by the applicant with the relevant services of the Parliament concerning the APA's work, which is not contained in emails, it is clear that, in the letter of 8 January 2021, the Parliament did not give any reasons specifically explaining its refusal to send it to the applicant.

104 For those reasons, it cannot be held that the grounds relied on by the Parliament for refusing the applicant's request concerning the disclosure of 'all emails from 2015, 2016 and 2019' and the correspondence exchanged by the applicant with the relevant services of the Parliament concerning the APA's work are well founded.

(2) The grounds relied on by the Parliament for refusing the applicant's request concerning the APA's 'personal file' (all documents relating to his recruitment and work), including information on the number of times protection of Parliament had been requested in respect of that APA, and the data relating to his presence which could be extracted from his Parliamentary access card

105 In its letter of 8 January 2021, the Parliament refused to disclose to the applicant the APA's 'personal file' (all documents relating to his recruitment and work), including information relating to the number of times protection of Parliament had been requested in respect of that APA, and the data relating to his presence which could be extracted from his parliamentary access card, on the ground that the transmission of those data was contrary, first, to Regulation 2018/1725 and, second, to Article 26 of the Staff Regulations.

106 As regards the information concerning the Directorate-General (DG) for Security and Safety, the Director-General for Finance also informed the applicant that the interventions of the Parliament security officers were not officially recorded and that data relating to access badges were retained for a maximum period of four months.

(i) The ground relating to Regulation 2018/1725

107 In the letter of 8 January 2021, the Parliament stated that the data requested by the applicant were personal within the meaning of Regulation 2018/1725 and that the applicant had not claimed that they were necessary either for the performance of a task carried out in the public interest or in the exercise of official authority, or for the attainment of a public interest objective as permitted by Article 9 of that regulation.

108 In the defence, the Parliament adds that, although the applicant requested access to the APA's 'personal file', it was in order to avoid reimbursing the parliamentary assistance expenses to it which might be claimed from him at the end of the recovery procedure and, therefore, in order to serve his personal interest. In those circumstances, the Parliament contends that the applicant cannot rely on a public interest for the purposes of Article 9 of Regulation 2018/1725.

109 In that regard, it should be noted that, in the words of Article 9(1) of Regulation 2018/1725:

'1. Without prejudice to Articles 4 to 6 and 10, personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if:

(a) the recipient establishes that the data are necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the recipient; or
(b) the recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests.

…'

110 It is true that, since they had to be used for his defence in the recovery procedure, the data requested by the applicant could not be regarded as being 'necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the recipient' within the meaning of Article 9(1)(a) of Regulation 2018/1725.

111 For the same reason, it cannot be considered that the transmission of those data to the applicant served a 'specific purpose in the public interest' within the meaning of Article 9(1)(b) of Regulation 2018/1725.

112 However, it is apparent from the file that the request for observations sent on 3 September 2020 by the Parliament to the applicant in order to enable him to exercise his right to be heard is based, in the present case, on information held by that institution without being known, as the case may be, to the applicant or on information of which the applicant was aware when he was the APA's hierarchical superior, but which is no longer available to him.

113 In the light of the importance accorded to the right to be heard in the EU legal order, the fact that such information may be found in the APA's 'personal file' cannot, as such, preclude the information from being disclosed to the applicant in order to enable him to make his observations, as required by the case-law, effectively in the exercise of that right.

114 Indeed, the right to the protection of personal data is not an absolute right, but must be considered in relation to its function in society and weighed on that basis against other fundamental rights, in an approach which gives each of the rights involved its proper place in the EU legal order, in the light of the facts of the case, in accordance with the principle of proportionality.

115 The need to strike such a balance between the right to the protection of personal data and the other fundamental rights recognised in that legal order is emphasised by the EU legislature in recital 4 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ 2016 L 119, p. 1).

116 Regulation 2018/1725 is the 'equivalent' of Regulation 2016/679 as regards the protection of personal data by the EU institutions, bodies, offices and agencies (see recital 5 of Regulation 2018/1725).

117 In such a context, it cannot be accepted that the Parliament may invite the applicant to state his views effectively on the information contained, as the case may be, in the APA's file, without giving him access to that information, after weighing up, on the one hand, that APA's interest in

the data concerning him not being transmitted to third parties and, on the other hand, the applicant's interest in presenting his observations effectively in the context of the recovery procedure commenced against him.

118 It must be held that, in the present case, the Parliament did not take such a step.

(ii) The ground relating to Article 26 of the Staff Regulations

119 In its letter of 8 January 2021, the Parliament maintained that the APA's 'personal file' was confidential and could not be transmitted pursuant to Article 26 of the Staff Regulations.

120 In that regard, it is noteworthy that that provision, which is applicable by analogy to parliamentary assistants pursuant to Article 127 of the CEOS, concerns, according to its wording, only the 'personal files' of officials and other servants, which comprise 'all documents concerning [their] administrative status and all reports relating to [their] ability, efficiency and conduct', as well as 'comments by the [officials or other servants] on such documents'.

121 It must be stated, however, that the confidentiality of the documents in question cannot be relied on against the applicant, who is, moreover, the author of some of the documents concerned as the APA's hierarchical superior, to the extent necessary for the applicant to exercise his right to be heard.

122 In the present case, in relying on Article 26 of the Staff Regulations, the Parliament wrongly failed to take into consideration the applicant's interest in having access to certain documents in the APA's personal file for the purposes of submitting his observations effectively in the context of the recovery procedure commenced against him.

(iii) The particular ground relating to the information held by DG 'Security and Safety'

123 As regards the ground concerning the data relating to the APA's access card, referred to in paragraph 106 above, it should be added to the foregoing that, for reasons similar to those set out in paragraphs 100 and 101 above, the Parliament was required to take the necessary measures to ensure that DG Security and Safety retained those data for a period of more than four months, since the APA's dismissal had given rise to legal proceedings and a procedure for recovery of parliamentary assistance costs had been commenced against the Member in respect of whom the Parliament had engaged that APA.

124 For those reasons, it cannot be held that the grounds relied on by the Parliament for refusing the applicant's request concerning the APA's 'personal file' (all documents relating to his recruitment and work), including information on the number of times protection of Parliament had been requested in respect of that APA, and the data relating to his presence which could be extracted from his Parliamentary access card, are well founded.

(3) The grounds relied on by the Parliament for refusing the applicant's request concerning the file relating to the case giving rise to the judgment of 7 March 2019, L *v* Parliament *(T-59/17)*

125 In its letter of 8 January 2021, the Parliament refused the applicant's request for the file relating to the case that gave rise to the judgment of 7 March 2019, *L* v *Parliament* (T-59/17, EU:T:2019:140), on the grounds that it was contrary to Article 9 of Regulation 2018/1725 and that, in the proceedings before the Court, the APA had obtained anonymity.

126 As regards the ground relating to Article 9 of Regulation 2018/1725, paragraphs 112 to 118 above must be referred to.

127 As regards the granting of anonymity to the APA by the Court in the proceedings which gave rise to the judgment of 7 March 2019, *L* v *Parliament* (T-59/17, EU:T:2019:140), it should be recalled that, under Article 66 of the Rules of Procedure, anonymity is intended to omit the name of a party to the dispute or that of other persons mentioned in connection with the proceedings concerned, or of other information in the documents relating to the case to which the public has access.

128 By contrast, the anonymity granted by the Court does not concern the confidentiality of the material placed on the file of those proceedings outside those proceedings, in the context of the relations between the parties and third parties.

129 Consequently, the Court's decision on anonymity did not preclude the Parliament, contrary to what the latter claimed in its letter of 8 January 2021, from disclosing to the applicant the documents exchanged in the judgment of 7 March 2019, *L* v *Parliament* (T-59/17, EU:T:2019:140), which were likely to be relevant for the purposes of the applicant's exercise of his right to be heard.

(c) Conclusion

130 In conclusion, it must be held that, for the reasons set out above, the grounds relied on by the Parliament in its letter of 8 January 2021 were unfounded or inadequate.

131 In the absence of a proper justification by the Parliament for its refusal to disclose to the applicant the documents which, requested by him, were likely to enable him to exercise effectively his right to be heard, guaranteed by Article 41(2)(a) of the Charter of Fundamental Rights, in the context of the procedure for the recovery of the sums paid in respect of parliamentary assistance expenses commenced against him on 3 September 2020, it cannot be excluded that the applicant was deprived of an opportunity to better defend himself, which inevitably affected the content of the contested decision (see, to that effect, judgments of 16 January 2019, *Commission* v *United Parcel Service*, C-265/17 P, EU:C:2019:23, paragraph 56; of 4 April 2019, *OZ* v *EIB*, C-558/17 P, EU:C:2019:289, paragraphs 77 and 78; and of 25 June 2020, *HF* v *Parliament*, C-570/18 P, EU:C:2020:490, paragraph 73).

132 In those circumstances, the second plea in law must be upheld in so far as it alleges infringement of the right to be heard.

133 Consequently, the contested decision and the debit note must be annulled in so far as they concern the remuneration, social costs and travel expenses relating to the employment of the parliamentary assistant during the period from 22 May 2015 to 31 March 2016, and there is no

need to examine the other arguments put forward in the context of the second plea, the third to fifth pleas, or the admissibility of the evidence produced by the applicant on 22 November 2022 and his request for measures of inquiry.

IV. Costs

134 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Furthermore, under Article 137 of the Rules of Procedure, where a case does not proceed to judgment, the costs are to be at the discretion of the Court.

135 In the present case, it must be held that, in accordance with the form of order sought by the applicant and having regard to the considerations which led the Court to find that there was no need to adjudicate in part, the Parliament must be ordered to pay all the costs.

On those grounds,

THE GENERAL COURT (Fourth Chamber, Extended Composition)

hereby:

1. **Declares that there is no need to adjudicate on the action for annulment, in so far as it is directed against, first, the decision of the Secretary-General of the European Parliament, of 16 March 2021 declaring a debt owed by TC, for a sum unduly paid in the form of parliamentary assistance expenses, and ordering the recovery of that sum and, second, the debit note No 7010000523 of 31 March 2021, in so far as that decision and that note concern the remuneration, social costs and travel expenses relating to A's employment during the period between 1 April and 22 November 2016, in respect of an amount of EUR 28 083.67;**

2. **Annuls the abovementioned decision of the Secretary-General of the Parliament of 16 March 2021 and the debit note No 7010000523 of 31 March 2021, in so far as they order the recovery from TC of the remuneration, social costs and travel expenses relating to A's employment during the period between 22 May 2015 and 31 March 2016, in respect of an amount of EUR 50 754.54;**

3. **Orders the Parliament to pay the costs.**

Gervasoni Madise Nihoul

Frendo Martín y Pérez de Nanclares

Delivered in open court in Luxembourg on 7 June 2023.

[Signatures]