Reports of Cases

OPINION OF ADVOCATE GENERAL
MEDINA
delivered on 30 January 2025 [1]

Case C-529/23 P

European Parliament
v

TC

(Law governing the institutions – Rules governing expenses and allowances for Members of Parliament – Parliamentary assistance allowance – Recovery of sums unduly paid – Article 41(2) of the Charter – Right to be heard – Right of access to the file – Protection of personal data – Article 9 of Regulation (EU) 2018/1725 – Article 26 of the Staff Regulations)

I. Introduction

1. This Opinion concerns an appeal brought by the European Parliament seeking to have the judgment of 7 June 2023, *TC* v *Parliament* (T-309/21, EU:T:2023:315) ('the judgment under appeal') set aside. By that judgment, the General Court annulled a decision of the Secretary-General of the European Parliament ordering the recovery of a debt owed by one of its Members for a sum unduly paid in the form of parliamentary assistance expenses. The General Court also annulled the debit note issued in connection with that decision.

2. In the judgment under appeal, the General Court essentially declared that, in the context of a recovery procedure, where a Member of Parliament requests disclosure of information that appears to be relevant to prove that an accredited parliamentary assistant worked in connection with his or her mandate, the Parliament cannot refuse to provide the information requested unless it relies on grounds which may be regarded as justified. Based on that premiss, the General Court found that the Parliament had wrongly refused to disclose several categories of documents to the Member concerned by the case at first instance, which, in the General Court's view, meant that it could not be excluded that that Member had been deprived of an opportunity to better defend himself.

3. In its appeal, the Parliament claims by way of principal argument that the judgment under appeal is unenforceable under Article 266 TFEU, due to the broad scope of the right to be heard in recovery procedures as recognised by the General Court. The Parliament submits that that judgment infringes the principle of the free mandate of Members of Parliament and reverses the burden of proof which, according to settled case-law, is borne by those members when they are

[1] Original language: English.

called upon to demonstrate that the expenses incurred by a parliamentary assistant were duly paid. The Parliament also submits that the General Court misinterpreted other provisions relevant to parliamentarian activities, such as Regulation 2018/1725 [2] and the Staff Regulations. [3]

4. This case provides the Court of Justice with the opportunity to rule on the scope of the right to be heard and the right of access to the file, enshrined in Article 41(2) of the Charter of Fundamental Rights of the European Union ('the Charter'), which, as stated repeatedly in the case-law, are the corollary of the rights of the defence in procedures before the EU institutions. For that purpose, the Court of Justice will have to determine, first and foremost, whether the legal standard defined by the General Court for assessing the observance – or infringement – of those rights in a case such as that at first instance is legally sound, primarily in the light of the principle of the burden of proof that is applicable to recovery procedures. This case also allows the Court of Justice to interpret other relevant EU law provisions relating to the protection of personal data which, in the judgment under appeal, the General Court held not to be valid grounds for refusing access to information requested by a Member of Parliament.

II. Legal framework

A. Act concerning the election of the Members of the European Parliament by direct universal suffrage

5. Article 6(1) of the Electoral Act [4] provides:

'Members of the European Parliament shall vote on an individual and personal basis. They shall not be bound by any instructions and shall not receive a binding mandate.'

B. The Statute for Members of the European Parliament

6. Article 2 of the Statute for Members of the European Parliament [5] provides:

'1. Members shall be free and independent.

…'

[2] Regulation (EU) 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) ('Regulation 2018/1725').

[3] Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (OJ, English Special Edition, Series I Volume 1959-1962, p. 135), as amended ('the Staff Regulations').

[4] Act concerning the election of the members of the European Parliament by direct universal suffrage (OJ 1976 L 278, p. 5), annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976 (OJ 1976 L 278, p. 1), as amended by Council Decision 2002/772/EC, Euratom of 25 June 2002 and 23 September 2002 (OJ 2002 L 283, p. 1) ('the Electoral Act').

[5] Decision of the European Parliament of 28 September 2005 adopting the Statute for Members of the European Parliament (OJ 2005 L 262, p. 1) ('the Statute for Members of the European Parliament').

7. Article 4 of the Statute for Members of the European Parliament provides:

'Documents and electronic records which a Member has received, drafted or sent shall not be treated as Parliament documents unless they have been tabled in accordance with the Rules of Procedure.'

8. Article 21 of the Statute for Members of the European Parliament provides:

'1. Members shall be entitled to assistance from personal staff whom they may freely choose.

2. Parliament shall meet the expenses actually incurred by Members in employing such personal staff.

3. Parliament shall lay down the conditions for the exercise of this right.'

C. Implementing measures for the Statute

9. Article 33 of the implementing measures for the Statute,[6] under the heading 'Defrayal of parliamentary assistance expenses', provides:

'1. Members shall be entitled to assistance from personal staff whom they may freely choose. Parliament shall defray expenses actually incurred and arising wholly and exclusively from the employment of one or more assistants or the use of service providers in accordance with these implementing measures and the conditions laid down by the Bureau.

2. Only expenses for assistance which is necessary and directly linked to the exercise of a Member's parliamentary mandate may be defrayed. Expenses linked to a Member's private life may on no account be defrayed.'

10. Article 68 of the implementing measures for the Statute, under the heading 'Recovery of undue payments', provides:

'1. Any sum unduly paid pursuant to these implementing measures shall be recovered. The Secretary-General shall issue instructions with a view to recovery of the sums in question from the Member concerned.

2. Any decision concerning the recovery of undue payments shall be consistent with the requirement that Members should be able to exercise their mandate effectively and with the smooth running of Parliament. Before any decision is taken, the Member concerned shall be heard by the Secretary-General.

…'

[6] 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), as amended ('the implementing measures for the Statute').

D. Regulation 2018/1725

11. Recital 22 of Regulation 2018/1725 reads as follows:

'In order for processing to be lawful, personal data should be processed on the basis of the necessity for the performance of a task carried out in the public interest by Union institutions and bodies or in the exercise of their official authority, the necessity for compliance with a legal obligation to which the controller is subject or some other legitimate basis under this Regulation, including the consent of the data subject concerned, the necessity for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract. Processing of personal data for the performance of tasks carried out in the public interest by the Union institutions and bodies includes the processing of personal data necessary for the management and functioning of those institutions and bodies. …'

12. Article 4 of Regulation 2018/1725, under the heading 'Principles relating to processing of personal data', sets out the following:

'1. Personal data shall be:

…

(c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimisation");

…

(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 13 subject to implementation of the appropriate technical and organisational measures required by this Regulation in order to safeguard the rights and freedoms of the data subject ("storage limitation");

…'

13. Article 9 of Regulation 2018/1725, under the heading 'Transmissions of personal data to recipients established in the Union other than Union institutions and bodies', provides:

'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.

2. Where the controller initiates the transmission under this Article, it shall demonstrate that the transmission of personal data is necessary for and proportionate to the purposes of the transmission by applying the criteria laid down in points (a) or (b) of paragraph 1.

3. Union institutions and bodies shall reconcile the right to the protection of personal data with the right of access to documents in accordance with Union law.'

E. The Staff Regulations

14. Article 26 of the Staff Regulations provides:

'The personal file of an official shall contain:

(a) all documents concerning his administrative status and all reports relating to his ability, efficiency and conduct;

(b) any comments by the official on such documents.

…

There shall be only one personal file for each official.

An official shall have the right, even after leaving the service, to acquaint himself with all the documents in his file …

…

The personal file shall be confidential and may be consulted only in the offices of the administration or on a secure electronic medium. It shall, however, be forwarded to the Court of Justice of the European Union if an action concerning the official is brought.'

III. Facts and procedure

A. Background to the dispute

15. The background to the dispute is described in paragraphs 2 to 26 of the judgment under appeal. For the purposes of the present Opinion, that background can be summarised as follows.

16. On 22 May 2015, the Parliament concluded a contract with A as a full-time accredited parliamentary assistant in Brussels (Belgium) for the purposes of assisting TC, Member of that institution.[7]

17. On 25 February 2016, TC requested the Parliament to terminate A's contract on various grounds involving loss of trust and including absences without good reason and failure to comply with the rules on authorisations to engage in outside activities.

[7] Also referred to in the present Opinion as 'the applicant at first instance'.

18. After the failure of a conciliation procedure, on 24 June 2016, the Parliament notified A of its decision to terminate the parliamentary assistance contract 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.

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

20. By judgment of 7 March 2019, *L* v *Parliament* (T-59/17, EU:T:2019:140), the General Court annulled the Parliament's decision of 24 June 2016. The General Court found that it was apparent from the material in the file that not only was TC aware of A's external activities, but that, moreover, they were on his direct initiative.[8] The General Court accordingly held that the reason given by the Parliament to justify the contract termination decision, namely the breakdown in the relationship of trust, did not appear plausible. In the General Court's view, the Parliament had therefore committed a manifest error of assessment in granting TC's request for termination of A's contract on that ground. TC was not a party to the proceedings in that case.

21. By letter of 8 June 2020, written in English and sent by email of 30 July 2020, the Secretary-General of the Parliament informed TC of the commencement of a procedure for the recovery of sums unduly paid, pursuant to Article 68 of the implementing measures for the Statute, for a total amount of EUR 78 838.21 in respect of the parliamentary assistance provided by A to TC.

22. By the same letter, TC was invited, in accordance with Article 68(2) of the implementing measures for the Statute, to submit, within two months, observations and evidence to rebut the Parliament's preliminary findings on the external activities which A had carried out with TC's knowledge and under his direction from 22 May 2015 to 22 November 2016 and to prove that, during that same period, A had actually performed the duties of an accredited parliamentary assistant.

23. On 4 August 2020, TC asked the Parliament to provide him with the following:

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

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

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

24. On 4 September 2020, the Secretary-General of the Parliament sent TC a letter, written in Lithuanian and dated 3 September 2020, with substantially the same content as the letter of 8 June 2020, referred to in point 21 above. Attached to the letter of 3 September 2020 was a copy of the judgment in *L* v *Parliament* (T-59/17, EU:T:2019:140) and a breakdown of the sums paid by the Parliament to A.

[8] See, in particular, *L* v *Parliament* (T-59/17, EU:T:2019:140, paragraph 35).

25. On 22 September 2020, TC reminded the Parliament of the request referred to in point 23 above and requested the minutes of the conciliation procedure between himself and A in Lithuanian, as well as a copy of 'all emails from 2015, 2016 and 2019'.

26. On 27 October 2020, the Parliament sent TC various documents concerning the termination of A's contract.

27. On 29 October 2020, TC 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 A'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 accordingly asked to be allowed to submit further information and evidence at a later stage.

28. On 20 November 2020, TC again asked the Parliament for the information which he had requested on 4 August and 22 September 2020, in particular data relating to A's access to Parliament and copies of the emails of 2015, 2016 and 2019.

29. On 24 November 2020, TC sent the Parliament further observations and evidence in addition to those that he had sent to the Parliament on 29 October 2020.

30. On 27 November 2020, the Director-General for Finance of the Parliament informed TC that the time limit for submitting his observations and evidence in the context of the recovery procedure under Article 68 of the implementing measures for the Statute had expired on 4 November 2020, but that, if he wished to obtain information concerning A, he could contact two individuals whose email addresses the Director-General for Finance provided, without those requests having any effect on that procedure.

31. On 1 December 2020, TC disputed the statements received on 27 November 2020. In addition, he sent his requests for documents to the individuals referred to in the communication.

32. On 8 January 2021, the Director-General for Finance forwarded the minutes of the conciliation procedure in Lithuanian to TC, but refused him access to the other documents requested. In addition, the Director-General for Finance granted TC a period of 15 days in which to submit additional observations, which TC did on 21 January 2021.

33. By decision of 16 March 2021, 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 employment of A for the period from 22 May 2015 to 22 November 2016 and that it should be recovered from TC ('the contested decision').

34. On 31 March 2021, the Director-General for Finance, in his capacity as authorising officer by delegation, issued debit note No 7010000523, ordering the recovery of the sum of EUR 78 838.21 from TC and requesting him to pay that sum by 30 May 2021 at the latest ('the debit note'). The Director-General for Finance notified TC of the contested decision and the debit note on that same date.

B. The application for annulment brought before the General Court and the judgment under appeal

35. By application lodged at the Registry of the General Court on 24 May 2021, TC brought an action for annulment of the contested decision and the debit note.

1. The need to adjudicate in part only

36. As a preliminary point, it is apparent from the judgment under appeal [9] that, following a check carried out in the context of the proceedings before the General Court, the Parliament found that, in March 2016, it had decided to suspend payment of A's remuneration and travel expenses with effect from 1 April 2016. Consequently, on 8 November 2022, the Secretary-General of the Parliament decided to withdraw the contested decision *ab initio* in respect of an amount of EUR 28 083.67. A credit note was issued in connection with that decision.

37. Accordingly, at the request of the Parliament and after hearing TC's observations, the General Court found that the action had become devoid of purpose and that there was no need to adjudicate on the lawfulness of the decision at issue and of the debit note to the extent described above. [10]

2. The remainder of the action for annulment

38. As to the remainder of the action for annulment, TC, the applicant at first instance, put forward five pleas in law, the second of which, being the sole plea relevant for the purposes of the present appeal, [11] was based on 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.

39. In the judgment under appeal, after recalling the rules relating to the defrayal of parliamentary assistance expenses and the recovery of sums unduly paid in that regard, [12] the General Court observed that the Parliament had provided TC with only some of the documents requested by the latter, [13] namely (i) the minutes in Lithuanian of the conciliation procedure between himself and A, [14] and (ii) the documents relating to the termination of A's contract. [15]

40. By contrast, the requests relating to the other categories of documents were refused by the letter of 8 January 2021. [16] In particular, that refusal concerned (i) the copy of 'all emails from 2015, 2016 and 2019', referred to in TC's email of 22 September 2020, (ii) the copy of the

9 Paragraphs 27 and 28 of the judgment under appeal.

10 Paragraphs 32 and 36 to 42, and point 1 of the operative part of the judgment under appeal.

11 The other pleas in law concerned, in essence, the infringement of the reasonable time principle laid down in Article 41(1) of the Charter, an error of assessment of the evidence provided by TC to demonstrate A's performance of his duties as a parliamentary assistant, and an infringement of the obligation to state reasons as regards the determination of the amount of the sum to be recovered.

12 Paragraphs 45 to 53 of the judgment under appeal.

13 Paragraphs 87 and 88 of the judgment under appeal.

14 See point 32 of the present Opinion.

15 See point 26 of the present Opinion.

16 Contrary to the Parliament's arguments, the General Court took the view that TC's arguments relating to the letter of 8 January 2021 were admissible. See paragraphs 73 to 80 of the judgment under appeal.

correspondence that TC had exchanged with the Parliament's representatives concerning A's work, (iii) the complete file in the case which gave rise to the judgment in *L* v *Parliament* (T-59/17, EU:T:2019:140), and (iv) A's personal file at the Parliament. [17]

41. In that regard, in paragraphs 90 and 91 of the judgment under appeal, the General Court observed that, where a Member is requested to provide the Parliament with proof that an accredited parliamentary assistant has worked for him or her in connection with his or her mandate, that Member may, on the basis of the right to be heard, request the institution concerned to disclose the information in its possession which appears to be relevant. In that context, when the Parliament receives such a request, it 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 considered as justified having regard, first, to the circumstances of the case and, second, to the applicable rules.

42. Following an assessment of the specific facts of the case, the General Court concluded that the reasons relied on by the Parliament in its letter of 8 January 2021, refusing TC access to the categories of documents referred to in point 40 above, were unfounded or inadequate. Moreover, in the absence of a proper justification for it to refuse disclosure of documents which, in the General Court's view, were likely to enable TC to exercise effectively his right to be heard, it could not be excluded that he had been deprived of an opportunity to better defend himself in the procedure commenced against him for recovery of the sums paid by way of parliamentary assistance expenses. [18]

43. In those circumstances, the General Court upheld the second plea in law, in so far as it alleged infringement of the right to be heard. Without examining the other pleas and arguments put forward by TC, the General Court also annulled the contested decision and the debit note in so far as they concerned the remuneration, social costs and travel expenses relating to the employment of A during the period from 22 May 2015 to 31 March 2016, in respect of an amount of EUR 50 754.54. [19]

IV. Forms of order sought by the parties before the Court of Justice

44. By its appeal, lodged on 17 August 2023, the Parliament claims that the Court of Justice should:

– set aside the judgment under appeal;

– give final judgment in the dispute before the General Court, granting the form of order sought by it at first instance;

– order TC to pay the costs of both the proceedings before the General Court and the Court of Justice.

45. TC contends that the Court of Justice should dismiss the appeal and order the Parliament to pay the costs.

[17] See points 23, 25 and 28 of the present Opinion.

[18] Paragraphs 130 and 131 of the judgment under appeal.

[19] Paragraphs 132 and 133, and point 2 of the operative part of the judgment under appeal.

46. A hearing was held on 28 November 2024.

V. Assessment

47. In support of its appeal, the Parliament relies on five grounds:

– the first ground alleges disregard of the subject matter of the proceedings at first instance and the preparatory nature of the letter of 8 January 2021, infringement of the right to be heard and failure to have regard to the settled case-law on the effects of an irregularity on a procedural act;

– the second, third and fourth grounds concern the General Court's findings in relation, respectively, to: (i) TC's emails from 2015, 2016 and 2019 and the correspondence exchanged with the Parliament's services concerning A's work; (ii) A's personal file, including the use of his access badge to the Parliament; and (iii) the complete file in the case which gave rise to the judgment in *L* v *Parliament* (T-59/17, EU:T:2019:140).

– the fifth ground concerns the General Court's finding that TC could request, solely on the basis of the right to be heard, disclosure by the Parliament of any information enabling him to submit his observations.

48. In so far as the fifth ground of appeal is aimed at contesting the scope recognised by the General Court of the right to be heard in the context of a recovery procedure of unduly paid parliamentary assistance expenses, I will start my assessment by examining that ground.

49. It is indeed that scope which constitutes the premiss on which the General Court subsequently based its analysis of the lawfulness of the Parliament's refusal to disclose the information requested by TC, on which it then justified its assessment.

50. Moreover, since the first ground of appeal relates mainly to the consistency of the General Court's reasoning when applying that scope in the case at first instance – in particular, as regards the absence of analysis of the relevance of the information requested for TC's defence –, I will merge the analysis of that ground with that of the fifth ground.

51. Lastly, it is important to point out that, should the assessment of the Parliament's first and fifth grounds of appeal lead to the conclusion that those grounds are well founded, then it would not, in principle, be necessary for the Court of Justice to examine the other grounds of appeal. Accordingly, my assessment of the second, third and fourth grounds of appeal would be set out in the alternative.

A. The first and fifth grounds of appeal

52. By its first and fifth grounds of appeal, the Parliament essentially contests the findings made by the General Court in paragraphs 90 and 91 of the judgment under appeal.

53. In particular, the Parliament argues that the General Court held, without developing any specific reasoning, that the right to be heard under Article 41(2)(a) of the Charter allows a Member of Parliament to request from the EU institutions the communication of any element that is seemingly relevant for the purpose of demonstrating the proper use of parliamentary assistance expenses. In the Parliament's submission, such a right has no basis in the wording of

that provision or in the case-law of the EU courts. The Parliament further observes that the right of access to the file provided for in Article 41(2)(b) of the Charter already establishes the means allowing a person concerned to gain access to all relevant information through an administrative procedure. There is no gap between the right to be heard and the right of access to the file which would have to be filled by interpretative means. Lastly, the Parliament criticises the General Court for having applied the scope of the right to be heard as defined in the judgment under appeal in an inconsistent manner, in particular by failing to determine, at the beginning of its assessment, whether the categories of documents requested by TC were seemingly relevant for him in the context of the recovery procedure.

54. TC contests the Parliament's arguments. He notes that, neither in the letter of 8 January 2021 nor during the proceedings before the General Court did the Parliament dispute his right to obtain information in the context of a recovery procedure. Therefore, according to TC, by the fifth ground of appeal, the Parliament justifies its refusal to provide him with that information on the basis of new arguments, on which the General Court did not have the opportunity to rule and which, therefore, should be declared inadmissible. TC further submits that the right to receive information from the Parliament in the context of a recovery procedure is part of the general right to good administration enshrined in Article 41 of the Charter, with which the Parliament had failed to comply.

55. Article 41 of the Charter, entitled 'Right to good administration', provides, in paragraph 1, 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 Union. Paragraph 2 of that article further provides that that right encompasses (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken, and (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy.

56. As regards the right to be heard, it follows from the wording of Article 41(2)(a) of the Charter that that right guarantees every person the opportunity to make known his or her views usefully and effectively during an administrative procedure and before the adoption of any decision liable to affect his or her interests adversely. [20] It applies even where the applicable legislation does not expressly provide for such a procedural requirement [21] and its main purpose, according to case-law of the Court of Justice, is to enable the person concerned to provide information arguing in favour of the adoption or non-adoption of an administrative decision, or in favour of it having a specific content. [22] It also allows the competent authority to take into account all relevant elements when adopting the decision that puts an end to a procedure before the administration of the European Union. [23]

[20] See, to that effect, judgment of 30 January 2024, *Agentsia 'Patna infrastruktura' (European funding of road infrastructure)* (C-471/22, EU:C:2024:99, paragraph 42 and the case-law cited).

[21] See, to that effect, judgment of 30 November 2023, *MG* v *EIB* (C-173/22 P, EU:C:2023:932, paragraph 22 and the case-law cited).

[22] See, inter alia, judgment of 13 June 2024, *C (Court-appointed administrators and liquidators)* (C-696/22, EU:C:2024:499, paragraph 108 and the case-law cited). See also judgment of 16 February 2012, *Council and Commission* v *Interpipe Niko Tube and Interpipe NTRP* (C-191/09 P and C-200/09 P, EU:C:2012:78, paragraph 76).

[23] Judgment of 13 June 2024, *C (Court-appointed administrators and liquidators)* (C-696/22, EU:C:2024:499, paragraph 108 and the case-law cited).

57. In turn, Article 41(2)(b) of the Charter provides for a right of access to the file which is associated with the right of a person to have his or her affairs handled impartially and fairly by the administration. [24] It concerns persons subject to proceedings opened against them and implies that the institution in question must give the person concerned the opportunity to examine all the documents contained in the investigation file which are likely to be relevant for his or her defence, facilitating the understanding of the evidentiary basis on which the decision is to be made. Access to the file must also provide those persons with the possibility of knowing the reasoning underlying those proceedings, thereby placing them in a better position to put counter-arguments when exercising the right to be heard. [25]

58. As the Court of Justice has consistently held, both the right to be heard and the right of access to the file are the corollary of the fundamental right of defence in administrative procedures, which is an integral part of the EU legal order. [26]

59. In the present case, I would invite the Court of Justice, in the first place, to reject the argument submitted by TC alleging that, since the Parliament did not dispute before the General Court his right to obtain information in the context of a recovery procedure, the fifth ground of appeal should be considered inadmissible. In that regard, suffice it to observe that the main issue examined by the General Court in the judgment under appeal was whether TC could claim that the Parliament had incorrectly refused to disclose the information requested by him during the procedure carried out pursuant to Article 68 of the implementing measures for the Statute. For that purpose, the General Court defined, first and foremost, the legal standard for assessing the lawfulness of the Parliament's decision. It is therefore open for the Parliament, in the context of the present appeal, to contest that standard and, consequently, to argue that that judgment is vitiated by an error of law which the Court of Justice should examine in the present case.

60. In the second place, it is important to point out that the finding made by the General Court in paragraph 90 of the judgment under appeal, recognising access to relevant information for Members of Parliament in the context of recovery procedures, is based on the right to be heard, as provided for in Article 41(2) of the Charter. That is further confirmed by paragraphs 131 and 132 of the judgment under appeal, where the General Court upheld the plea in law submitted by the applicant at first instance 'in so far as it [alleged] infringement of [that right]'.

61. From that perspective, the General Court should not be criticised, as argued by the Parliament, for creating a 'new right of access to information'. Indeed, the reasoning underlying the General Court's finding is that, in the absence of disclosure of the information requested which, in that court's view, was likely to enable him to exercise effectively his right to be heard, it could not be excluded that the Member of Parliament was deprived of an opportunity to better defend himself. That reasoning fits into the manner in which the Court of Justice has developed the right to be heard in its case-law as part of the more general right of defence in administrative procedures. That argument of the Parliament should therefore be dismissed.

[24] See judgment of 22 March 2023, *Satabank* v *ECB* (T-72/20, EU:T:2023:149, paragraph 80), establishing a line of case-law which the Court of Justice could easily endorse.

[25] Peers, S., Hervey, T., Kenner, J. and Ward, A. (eds), 'Article 41' *The EU Charter of Fundamental Rights – A Commentary*, Hart Publishing, Oxford, 2021, pp. 1125-1152.

[26] See, to that effect, judgments of 20 December 2017, *Prequ' Italia* (C-276/16, EU:C:2017:1010, paragraph 45 and case-law cited), and of 30 November 2023, *Sistem ecologica* v *Commission* (C-787/22 P, EU:C:2023:940, paragraph 150 and the case-law cited).

62. That said, the main question raised by the present case is whether the right to be heard, as guaranteed by Article 41(2) of the Charter, obliges the Parliament to disclose *any and all* information requested by one of its Members that appears to be relevant in the context of a recovery procedure of unduly paid parliamentary assistance expenses, unless it can put forward a proper justification.

63. I would observe, as a preliminary point, that, as follows from points 56 and 57 of the present Opinion, the right to be heard allows a person to put forward his or her views on the content of the decision that the EU administration envisages adopting in the context of an administrative procedure. That view may even consist in proposing the non-adoption of the decision in question. In any of those scenarios, the view expressed by the person concerned is not to be based on abstract elements, but on the specific documents contained in the file relating to that procedure.[27] Conceptually, therefore, the right to be heard and the right of access to the file are very closely interrelated, a point supported by the scheme of Article 41(2) of the Charter and the case-law of the Court of Justice interpreting that provision.

64. It follows that, for the purposes of effectively exercising the right to be heard, access must be granted to the documents gathered during the different stages of the administrative procedure and placed in the file.[28] An infringement of the right to be heard can therefore only be established where access is refused to the documents contained in that file, provided, of course, that the legitimate interests of confidentiality and of professional and business secrecy are respected, as required by Article 41(2)(b) of the Charter.

65. In that respect, it is important to observe that the manner in which the file of an administrative procedure is construed depends on the burden of proof that specifically applies to that procedure. For instance, in the context of an administrative penalty proceeding, the file will be basically composed of the elements triggering that proceeding and the documents gathered by the competent authority after the investigation carried out by itself, as it is that authority that bears the burden of proving the existence of an infringement in its final decision.[29] As a rule, access to the file comprises access to both inculpatory and exculpatory evidence.[30]

66. By contrast, recovery procedures pursuant to Article 68 of the implementing measures for the Statute place the burden of proof on Members of Parliament. According to the settled case-law of the Court of Justice, which is correctly cited in paragraph 53 of the judgment under appeal, it is for Members who request Parliament to bear the financial responsibility for the expenses relating to the assistance of personal staff, to prove that those expenses were actually incurred, were used for the assistance necessary and were directly linked to the exercise of the mandate.[31] More specifically, such a Member must, in response to a request to that effect from the competent

[27] Where a specific norm so provides, the right to be heard also concerns the statement of objections notified by the administration, as is the case, by way of illustration, in competition law proceedings. See Article 27(1) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

[28] As discussed below, that might eventually require a certain involvement by the EU institution concerned, in the present case the Parliament.

[29] See, inter alia, judgment of 27 June 2024, *Servier and Others* v *Commission* (C-201/19 P, EU:C:2024:552, paragraph 126).

[30] See judgment of 25 October 2011, *Solvay* v *Commission* (C-109/10 P, EU:C:2011:686, paragraph 54 and the case-law cited).

[31] See orders of 21 March 2019, *Gollnisch* v *Parliament* (C-330/18 P, EU:C:2019:240, paragraph 63), and of 28 November 2018, *Le Pen* v *Parliament* (C-303/18 P, EU:C:2018:962, paragraph 63).

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. [32]

67. Accordingly, as the Parliament confirmed during the hearing, without challenge from the applicant at first instance, the administrative file relating to a procedure for the recovery of parliamentary assistance expenses will, apart from the elements triggering the commencement of the procedure, be composed mainly of the observations submitted by the Member concerned and the evidence produced by that Member. It must also contain any additional information on which the Parliament bases, on its own initiative, its final decision. In the first case, since the Member of Parliament is the source of that documentation, he or she will necessarily have access to it. In the second case, the Parliament will have to place that document in the file, subject to the limitations of confidentiality and business secrecy provided for in Article 41(2)(b) of the Charter. It should be recalled that none of the evidence in dispute in the present case concerned any of those categories of documents.

68. There is, of course, an additional category of documents that a Member of Parliament might require to be incorporated into the file, which is the category underlying the disagreement between the parties to the present case. That is the evidence that a Member of Parliament may need to demonstrate the genuineness of the work carried out by his or her parliamentary assistant and the link between that work and the exercise of his or her mandate, but which remains in the Parliament's possession or in the hands of another institution, body, office or agency of the Union.

69. In that regard, it is important to note from the outset that, even in such a situation, the Member of Parliament remains subject, under the burden of proof borne by him or her, to the obligation to justify the parliamentary assistance expenses incurred. That means that that Member must, at the request of the Parliament, still explain the various tasks carried out by his or her assistant in the accomplishment of his or her parliamentary duties. Nevertheless, that Member can substantiate his or her allegations by referring to the evidence in the Parliament's possession or the evidence that that institution may request from another institution, body, office or agency of the Union.

70. The main requirement for that purpose is that the Member of Parliament indicates, with sufficient precision, the specific evidence referred to and how that evidence is capable of demonstrating that the expenses incurred by the parliamentary assistant were actually used for his or her assistance and were directly linked to the exercise of his or her mandate. That requirement is not satisfied where the Member merely asserts that the relevant evidence is to be found in broad and general categories of documents, for instance, in all of the emails produced for a certain period of years or in the entire personal file of the assistant concerned without further specification.

71. In turn, as the Parliament acknowledged during the hearing, that institution must place that evidence on the file, acting impartially and fairly in accordance with its duties under the principle of good administration. [33] Subject to the limitations laid down in Article 41(2) of the Charter, it must also provide access to it, in particular when, after its assessment, the Parliament concludes

[32] See orders of 21 March 2019, *Gollnisch* v *Parliament* (C-330/18 P, EU:C:2019:240, paragraphs 64 and 88), and of 21 May 2019, *Le Pen* v *Parliament* (C-525/18 P, EU:C:2019:435, paragraphs 37 and 82 and the case-law cited).

[33] See the case-law referred to in point 57 above.

that the evidence referred to by the Member does not demonstrate the genuineness of the work carried out by his or her parliamentary assistant, or the link of that work to the exercise of the mandate. [34]

72. As regards the present case, I note that the finding made by the General Court in paragraphs 90 and 91 of the judgment under appeal does not correspond to the interpretation of Article 41(2) of the Charter that I propose in the preceding points of the present Opinion, in particular as regards the recovery procedures initiated under Article 68 of the implementing measures for the Statute. In my view, that court wrongly broadened the scope of the right to be heard without taking proper account of the burden of proof borne by Members of Parliament in the context of that type of procedure. It actually obliged the Parliament, without a proper basis, to provide the Member concerned by that procedure with any and all information that was seemingly relevant to the formulation of his observations, unless the Parliament could rely on grounds justifying non-disclosure.

73. For those reasons, I am of the view that the Parliament is correct in claiming that the General Court misinterpreted Article 41(2) of the Charter and that, in the assessment made at first instance, that court should instead have analysed, in the first place, whether, in order to discharge his burden of proof in the recovery procedure initiated against him, TC had requested access to evidence identified by him with sufficient detail and not to broad categories of documents. In the affirmative, the General Court should have then specifically examined the assessment made by the Parliament as to whether that evidence was capable of demonstrating that the expenses incurred by TC were used for his assistant and were directly linked to the exercise of his mandate. In so far as the General Court did not carry out its assessment in that manner, the judgment under appeal is vitiated by an error of law.

74. Hence, in my view, the first and fifth grounds of appeal should be upheld.

75. At this stage, it is important to recall that, under the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, the Court is to set aside the judgment of the General Court if the appeal is well founded. Where the proceedings so permit, it may itself give final judgment in the matter. It may also refer the case back to the General Court.

76. Since I propose that the Court of Justice uphold the first and fifth grounds of appeal put forward by the Parliament, points 2 and 3 of the operative part of the judgment under appeal should, consequently, be set aside, [35] without it being necessary to examine the second, third and fourth grounds of appeal.

77. Indeed, in so far as the latter grounds are aimed at challenging the General Court's assessment of TC's requests for information and that assessment is based on the incorrect premiss set out in paragraphs 90 and 91 of the judgment under appeal, the ensuing analysis made by the General Court is also vitiated.

[34] To my mind, even when the assessment of the Parliament supports the Member's allegations, that evidence must be placed in the file, account taken of the fact that the latter will need to be provided to the EU Courts in the event that the final decision of the Parliament is challenged in judicial proceedings and that information might become relevant in the context of those proceedings.

[35] Point 1 of the operative part of the judgment under appeal should not be concerned by the annulment, as it declared that there was no need to adjudicate on the action for annulment in so far as it was directed against the contested decision and the debit note for the period between 1 April and 22 November 2016, which the Parliament does not contest.

78. Moreover, in the light of the broad categories of documents to which TC requested access, those requests would have not satisfied, in any event, the specificity requirement allowing them to be placed into the file, as discussed in point 70 of the present Opinion. I would therefore suggest that, in the present appeal, the Court of Justice dismiss the second plea in law submitted at first instance as unfounded.

79. Lastly, inasmuch as, in support of his action for annulment before the General Court, the applicant at first instance put forward three additional pleas in law which were not examined at first instance, the state of the proceedings does not permit the Court of Justice to give final judgment on those pleas in the present case. Accordingly, in my view, the case should be referred back to the General Court in so far as regards those pleas and costs should be reserved.

B. The second, third and fourth grounds of appeal

80. Although the merits of the first and fifth grounds of appeal are sufficient in themselves to justify the setting aside of the judgment under appeal, I briefly share my views as regards the second, third and fourth grounds put forward by the Parliament, since they constitute additional reasons leading, in my view, to the same conclusion.

81. For that purpose, I note that, by those three grounds, the Parliament challenges the General Court's assessment of the refusal to disclose each category of information requested by TC during the recovery procedure, namely: (i) all his emails from 2015, 2016 and 2019; (ii) the correspondence exchanged by him with the Parliament's services concerning A's work; (iii) A's personal file, including the records concerning A's access badge to the Parliament; and (iv) the file in the case which gave rise to the judgment in *L* v *Parliament* (T-59/17, EU:T:2019:140). Given that some of those categories were subject to the same reasoning by the General Court, I will examine the soundness of that reasoning by grouping those categories and by recalling, at the outset, the findings of that court in the judgment under appeal.

1. 'All emails', the correspondence exchanged and the records concerning A's access badge

82. As regards the refusal to disclose 'all emails from 2015, 2016 and 2019' and the correspondence exchanged concerning A's work, the General Court observed in the judgment under appeal that the Parliament had refused TC's request mainly on the ground that, according to its policy, the retention of electronic messages was limited to 90 days and, exceptionally, to one year.[36] The General Court also found that the Parliament had informed TC that the interventions of the security officers were not officially recorded and that data relating to access badges were retained for a maximum period of four months.[37]

83. In that regard, the General Court noted essentially that, since the beginning of 2016, the Parliament had become aware of a situation of conflict between TC and A as regards whether or not the latter was carrying out his activities in compliance with the rules governing parliamentary assistance. Consequently, from that time, it was necessary for the Parliament to ensure the retention of emails which were capable of establishing the exact nature of A's activities during the dismissal procedure,[38] and also of the data relating to the use of A's access card during that

[36] Paragraph 92 of the judgment under appeal.

[37] Paragraph 106 of the judgment under appeal.

[38] Paragraph 95 of the judgment under appeal.

same period.[39] The General Court further rejected the Parliament's argument that it was for Members to retain their emails, by creating personal files enabling their archiving over an indefinite period.[40]

84. The reasoning of the General Court should not be accepted, mainly for the following reasons.

85. From the outset, the Parliament is correct in claiming, in my view, that the grounds relied on by the General Court are capable of infringing the principle of the free mandate of Members, enshrined in Article 6(1) of the Electoral Act and Article 2 of the Statute for Members. That principle, which constitutes one of the core bases of the independence of Members of Parliament, precludes any intrusion inter alia by the Parliament's services into the protected sphere of those Members.

86. Yet, the obligation established by the General Court in the judgment under appeal manifestly leads the Parliament to interfere in the relations between a Member and his assistant. After all, in order to satisfy that obligation, the Parliament would have to examine the correspondence exchanged between them, as a necessary step in assessing the evidence that could eventually be used by that Member in the context of a recovery procedure. A similar consideration applies to the other obligation imposed by the General Court on the Parliament, namely the obligation to adopt the necessary measures for the retention of data relating to the use of an assistant's access badge.

87. It is true, as TC contends, that all the emails exchanged by a Member of Parliament are hosted on that institution's servers. However, from a legal point of view, they do not belong to the institutional sphere, but to the sphere of the Member, who must be protected from any interference by the Parliament's services. In that regard, it is important to recall, in line with the Parliament's argumentation, that Article 4 of the Statute for Members provides without ambiguity that the documents and electronic records which a Member has received, drafted or sent do not constitute Parliament documents, unless they have been filed in accordance with its Rules of Procedure.

88. Moreover, on another note, it is also clear to me that, since Members of Parliament bear the burden of proof in relation to unduly paid parliamentary assistance expenses,[41] it is for a Member to retain any email exchanged with his or her assistant or with the Parliament's services, in order to use it in the context of a recovery procedure. Any other interpretation would call into question, as the judgment under appeal does in my view, the settled case-law according to which that burden of proof indeed lies with those Members.

89. Lastly, I would point out that, even assuming that the right to be heard could be interpreted as encompassing an obligation for the Parliament to disclose any relevant information requested by a Member concerning a recovery procedure, it cannot be inferred from the rights enshrined in Article 41(2)(a) or (b) of the Charter that the Parliament is under an obligation to compile a file even before the opening of that procedure.

90. In that regard, suffice it to observe that, in the context of a recovery procedure, it is Article 68 of the implementing measures for the Statute that determines the initiation of that procedure when certain elements raise doubts for the Parliament as to the proper use of parliamentary

[39] Paragraph 123 and 124 of the judgment under appeal.

[40] Paragraphs 100 and 101 of the judgment under appeal.

[41] See, in particular, point 66 of the present Opinion, which refers to the case-law cited in paragraph 53 of the judgment under appeal.

assistance expenses. As regards the present case, a recovery procedure against TC was not initiated by the Parliament until 8 June 2020, a moment when it was no longer possible to retain the emails requested and where they therefore were not capable of being placed into the file of that procedure.

91. It follows from the foregoing considerations that, irrespective of whether it is on the basis of the principle of the free mandate, the principle of the burden of proof or the rights enshrined in Article 41(2)(a) or (b) of the Charter, the Parliament is correct to claim that the General Court erred in law in holding that that institution should have retained TC's emails from 2015, 2016 and 2019, the correspondence exchanged with the relevant parliamentary services concerning A's work and the records concerning A's access badge.

2. A's personal file and the file in the case which gave rise to the judgment in L v Parliament (T-59/17, EU:T:2019:140)

92. As regards A's personal file and the file in the case which gave rise to the judgment in *L* v *Parliament* (T-59/17, EU:T:2019:140), the General Court observed, in essence, that the Parliament had justified the refusal to disclose that information on the ground that it would have been contrary to Regulation 2018/1725 and to Article 26 of the Staff Regulations. [42]

93. In the first place, with respect to Regulation 2018/1725, the General Court noted that, since the information requested by TC had to be used for his defence in the recovery procedure initiated against him, it could not be regarded as falling within the scope of Article 9(1)(a) or (b) of Regulation 2018/1725. [43] Nevertheless, the General Court held that 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. [44] Accordingly, the Parliament should have weighed up, on the one hand, A's interest in the data concerning him not being communicated to third parties and, on the other hand, TC's interest in effectively submitting his observations in the context of the recovery proceedings initiated against him. [45]

94. In the second place, with respect to Article 26 of the Staff Regulations, the General Court noted that, to the extent necessary for TC's exercise of his right to be heard, the confidentiality of the documents in A's file could not be relied on as against TC who, moreover, was the author of some of the documents concerned as A's hierarchical superior. [46] The General Court added that, in relying on Article 26 of the Staff Regulations, the Parliament had wrongly failed to take into consideration TC's interest in having access to certain documents in A's personal file for the purposes of effectively submitting his observations in the context of the recovery procedure initiated against him. [47]

95. Here again, I am of the view that the General Court misinterpreted and misapplied Article 9(1) of Regulation 2018/1725 and Article 26 of the Staff Regulations.

[42] Paragraphs 105 and 126 of the judgment under appeal.

[43] Paragraphs 110, 111 and 123 of the judgment under appeal.

[44] Paragraphs 114, 115 and 116 of the judgment under appeal.

[45] Paragraph 117 of the judgment under appeal.

[46] Paragraph 121 of the judgment under appeal.

[47] Paragraph 122 of the judgment under appeal.

96. As regards the grounds relating to Regulation 2018/1725, Article 9(1) thereof provides that personal data is to be transmitted to recipients established in the Union other than Union institutions and bodies only 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.

97. Following the discussions held during the hearing, I am of the view that Article 9(1)(b) of Regulation 2018/1725 must be interpreted as meaning that the transmission to a Member, in the context of proceedings for the recovery of parliamentary assistance expenses, of the personal data of his or her accredited parliamentary assistant could indeed serve 'a specific purpose in the public interest'. In that respect, it cannot be denied that it is in the public interest that such expenses are reimbursed by the Member concerned, if they have been unduly incurred by the Parliament. In such a situation, it is also, in my view, a matter of public interest that the recovery procedure is conducted in accordance with the rights of the defence, enshrined in Article 41 of the Charter.

98. Therefore, observance of the rights of defence of a Member against whom a recovery procedure has been initiated requires the transmission to that Member of the personal data of his or her accredited parliamentary assistant which are relevant to the matters concerned by that procedure and call for a position to be taken by that Member. However, communication of those data may be authorised under Article 9(1)(b) of Regulation 2018/1725 only in strict compliance with the conditions laid down in that provision.

99. That said, the foregoing considerations cannot justify the general disclosure at the request of the Member concerned, without providing sufficient precision, of his or her assistant's personal data. As I stated in my analysis of the first and fifth grounds of appeal, a Member faced with a request to justify the parliamentary assistance expenses incurred by him or her may, in order to substantiate his or her explanations in response to that request, rely on evidence in the Parliament's possession. However, that Member must identify in advance the specific evidence referred to and must not merely assert, as indicated in point 70 of the present Opinion, that the relevant evidence is to be found in the personal file concerned as a general category of document.

100. In the present case, it is important to note that, despite the wording of Article 9(1)(b) of Regulation 2018/1725, the reasoning of the General Court established that there are other situations that may justify the transmission to third parties of personal data held by an EU institution, body, office or agency. Inasmuch as that court's assessment was conducted beyond the scope of application of that provision, the judgment under appeal is vitiated by an error of law as regards the assessment concerning A's personal file and the file in the case which gave rise to the judgment in *L* v *Parliament* (T-59/17, EU:T:2019:140).

101. As regards the Staff Regulations, it is apparent from the judgment under appeal that TC had requested the Parliament to forward to him A's personal file in its entirety. The Parliament refused to comply with that request, as it considered such disclosure to be prohibited by Article 26 of the Staff Regulations.

102. Article 26 of the Staff Regulations expressly provides that only the official may be granted access to his or her personal file, to the exclusion of other third parties. Moreover, the personal file of an official or other staff member may be consulted only 'in the offices of the administration or on a secure electronic medium' and is to be forwarded only to the Court of Justice of the European Union when an action concerning that official or other staff member is brought.

103. The Parliament was therefore correct in considering that the limitations imposed by Article 26 of the Staff Regulations prevented it from acceding to the request made by TC.

104. Furthermore, in line with the considerations resulting from points 99 and 100 above, it is not apparent from the judgment under appeal that, in the context of the procedure which led to the adoption of the decision at issue, TC referred to the documents capable of being included in A's personal file which could demonstrate the genuineness of the work carried out by A and the link between that work and the exercise of TC's mandate as a Member of Parliament.

105. It follows that the General Court erred in law in holding that Article 26 of the Staff Regulations did not preclude the disclosure of A's personal file to TC.

106. Having regard to the foregoing, I find that the Parliament is right in arguing that the General Court's specific assessment of the refusal to disclose each category of information requested by TC during the recovery procedure – namely (i) all his emails from 2015, 2016 and 2019; (ii) the correspondence exchanged by him with the Parliament's services concerning A's work; (iii) A's personal file, including the records concerning A's access badge to the Parliament; and (iv) the file in the case which gave rise to the judgment in *L* v *Parliament* (T-59/17, EU:T:2019:140) – is vitiated by an error of law.

107. The second, third and fourth grounds of appeal should therefore be upheld.

VI. Conclusion

108. In the light of the analysis set out in the present Opinion, and on the basis of my main proposal as follows from points 74 and 79 above, I propose that the Court of Justice:

– set aside points 2 and 3 of the operative part of the judgment of 7 June 2023, *TC* v *Parliament* (T-309/21, EU:T:2023:315);

– reject the second plea in law in Case T-309/21 ;

– refer the case back to the General Court for a ruling on the third, fourth and fifth pleas in law in Case T-309/21;

– order that the costs be reserved.