Reports of Cases

JUDGMENT OF THE GENERAL COURT (Appeal Chamber)

27 January 2016*

(Appeal — Civil service — Officials — Remuneration — Secondment in the interest of the service — Expatriation allowance — Condition set out in Article 4(1)(b) of Annex VII to the Staff Regulations — Recovery of undue payments)

In Case T-782/14 P,

APPEAL against the judgment of the European Union Civil Service Tribunal (Third Chamber) of 1 October 2014, *DF* v *Commission* (F-91/13, ECR-SC, EU:F:2014:228), seeking to have that judgment set aside in part,

DF, official of the European Commission, residing in Brussels (Belgium), represented by A. von Zwehl, lawyer,

appellant,

the other party to the proceedings being

European Commission, represented by J. Currall and T. Bohr, acting as Agents,

defendant at first instance,

THE GENERAL COURT (Appeal Chamber),

composed of M. Jaeger, President, M. Prek and G. Berardis (Rapporteur), Judges,

Registrar: E. Coulon,

having regard to the written procedure,

gives the following

Judgment

1 By his appeal lodged pursuant to Article 9 of Annex I to the Statute of the Court of Justice of the European Union, the appellant, DF, asks the Court to set aside the judgment of the European Union Civil Service Tribunal (Third Chamber) of 1 October 2014 in *DF* v *Commission* (F-91/13, ECR-SC, EU:F:2014:228, 'the judgment under appeal'), which only partially upheld his action seeking, inter alia, annulment of the decision of the European Commission of 20 December 2012 ordering recovery of the expatriation allowance and annual travel expenses received by him during his secondment in Germany, between 1 September 2009 and 31 August 2012 ('the contested decision') and, in so far as necessary,

* Language of the case: English.

annulment of the Commission decision of 24 June 2014 rejecting his complaint ('the decision rejecting the complaint') and an order that the Commission repay the appellant the sum already recovered, together with default interest, and compensate him for the non-material harm suffered.

Facts

2 The background to the dispute is set out in paragraphs 3 to 7 of the judgment under appeal, as follows:

'3 The applicant, who is a German national, lived in Munich (Germany) until 1995 and subsequently, until 2001, in Maastricht (the Netherlands). At the time the ... action was brought, he was classified at grade AD 10.

4 On 1 May 2001, the applicant was recruited as an official at the Commission in Brussels (Belgium). When he took up his duties, his place of origin was initially established as Maastricht, then corrected, in response to his request, and established as Munich. From that date he received the expatriation allowance and annual travel expenses.

5 From 1 September 2009 to 31 August 2012 he was placed on secondment, in the interests of the service, in the Bayerische Staatskanzlei (Bavarian State Chancellery) in Germany. From 1 September 2012, he resumed his duties in Brussels.

6 On 20 December 2012, the Commission sent a note to the applicant .... informing him that, following a review, the expatriation allowance and annual travel expenses paid to him during his secondment in Germany were considered to have been unduly received and had to be recovered under Article 85 of the Staff Regulations. The total amount to be recovered was EUR 55420.77.

7 On 27 February 2013, the applicant lodged a complaint against the contested decision. By decision of 24 June 2013, the complaint of 27 [February] 2013 was rejected ...'

Proceedings at first instance and judgment under appeal

3 By application lodged at the Registry of the Civil Service Tribunal on 19 September 2013, the appellant brought an action for annulment of the decision at issue and, in so far as necessary, of the decision rejecting his complaint, and for an order that the Commission repay him the sum already recovered, together with default interest, and compensate him for the non-material harm suffered.

4 By the judgment under appeal, the Civil Service Tribunal found, inter alia, that the appellant had suffered non-material harm assessed, *ex aequo et bono*, at EUR 1 500, as a result of feeling that he had been presented with a fait accompli, on the ground that the Commission had infringed his right to be properly heard before the adoption of the contested decision. The action was dismissed as to the remainder and the Commission was ordered to bear its own costs and one quarter of the costs incurred by the appellant.

5 In particular, having noted that the claim seeking annulment of the decision rejecting the complaint lacked any independent content and had to be regarded as being formally directed against the contested decision, the Civil Service Tribunal found, with regard to the claim for annulment of the contested decision, that the appellant had relied on two pleas in law alleging, first, as the main plea, infringement of Article 4(1)(b) and Article 7(3) of Annex VII to the Staff Regulations of the European Union ('the Staff Regulations') and, secondly, in the alternative, infringement of Article 85 of the Staff Regulations, of the principle of legal certainty, the principle of unjust enrichment and the principle of good administration and failure to exercise due diligence.

6 The Civil Service Tribunal rejected the first plea in law as being in part unfounded in law and in part inadmissible. More specifically, in paragraphs 17 and 18 of the judgment under appeal, it was stated that the 10-year period referred to in Article 4(1)(b) of Annex VII to the Staff Regulations expired on the date of initial entry into service, that is, the date on which the appellant was recruited as an official by the Commission, and not, as the appellant claimed, the date on which he was seconded to Germany in the interest of the service.

7 The Civil Service Tribunal also rejected the second plea in law. More specifically, as regards the conditions for recovering undue payments, it stated, in paragraphs 35 and 36 of the judgment under appeal, that the words 'patently such', used of the irregularity of the payment, in the first paragraph of Article 85 of the Staff Regulations, did not mean that the official in receipt of an undue payment did not need to make any effort to reflect or check, but that, according to established case-law, repayment was required where the error was one which would not escape the notice of an official exercising ordinary care, who was deemed to know the rules governing his salary.

8 In that regard, the Civil Service Tribunal expressly rejected the appellant's argument, derived from paragraph 66 of the judgment of 25 September 2007 in *Cavallaro* v *Commission* (F-108/05, ECR-SC, EU:F:2007:164), according to which the irregularity was not patently such that he could not have been unaware of it, finding that, at paragraph 71 of that judgment, it had been unambiguously confirmed that the 10-year period referred to in Article 4(1)(b) of Annex VII to the Staff Regulations always expired at the date of the initial entry into service.

9 At paragraph 37 of the judgment under appeal, the Civil Service Tribunal found that, in any event, an experienced official, such as the appellant, of a high grade and exercising ordinary care, could not be unaware that payment of the expatriation allowance depended on expatriation within the meaning of Article 4 of Annex VII to the Staff Regulations, and there was no expatriation where an official is seconded in order to carry out duties in the country of which he was a national.

10 In that regard, at paragraph 38 of the judgment under appeal, it was also stated that, faced with the administration's refusal to confirm in writing what was said verbally, an experienced official, of a high grade and exercising ordinary care was required to verify the accuracy of such verbal assurances by sending, for example, an application in writing to the administration pursuant to Article 90(1) of the Staff Regulations.

Procedure before the Court and forms of order sought

11 By document lodged at the Registry of the General Court on 24 November 2014, the appellant brought the present appeal.

12 By letter lodged at the Court Registry on 24 December 2014, the appellant requested that he be granted anonymity. By decision of 4 March 2015 the Court, pursuant to Article 18(4) of the Instructions to the Registrar, granted anonymity to the appellant.

13 On 17 February 2015, the Commission lodged its response.

14 By letter of 11 March 2015, the appellant submitted, by fax, an application for leave to lodge a reply. As the original signed version of that document was not lodged at the Registry within the time-limit of ten days provided for in Article 43(6) of the Rules of Procedure of the General Court of 2 May 1991, the appellant's application was not taken into account and the written procedure was closed on 30 March 2015, the parties being so informed by a letter from the Registrar of the same date.

15 Acting on a report from the Judge-Rapporteur, the General Court (Appeal Chamber) held that no application for a hearing to be arranged had been submitted by the parties within the period of one month from notification of the closure of the written procedure and decided to give a ruling without an oral procedure, in accordance with Article 146 of the Rules of Procedure of 2 May 1991.

16 The applicant claims that the Court should:

— set aside the judgment under appeal, in so far as it did not uphold his action;

— annul the contested decision;

— order the European Commission to reimburse to the appellant the amounts already recovered by it, together with default interest at the reference rate of the European Central Bank (ECB), plus 2 points;

— order the Commission to bear all costs.

17 The Commission contends that the Court should:

— dismiss the appeal;

— order the appellant to pay the costs of the appeal.

The appeal

18 The appellant raises two grounds of appeal in support of its appeal. The first alleges an infringement of Article 85 of the Staff Regulations and of the principle of legal certainty. The second, put forward in the alternative, alleges an infringement of the principle of non-discrimination and of the obligation of the Courts of the European Union to ensure that the law is observed. Furthermore, the appellant claims that the conditions for compensation for harm are fulfilled in the present case.

The first ground of appeal, alleging an infringement of Article 85 of the Staff Regulations and of the principle of legal certainty

19 The first ground of appeal falls into two parts, alleging that the Civil Service Tribunal infringed, first, Article 85 of the Staff Regulations and, secondly, the principle of legal certainty.

20 By the first part of the first ground of appeal, the appellant claims that the Civil Service Tribunal infringed Article 85 of the Staff Regulations, in so far as it did not undertake any assessment whether, in this specific case, the overpayment of the expatriation allowance, in breach of Article 4(1)(b) of Annex VII to the Staff Regulations, was 'patently' clear. More specifically, the Civil Service Tribunal did not take into account, as he alleges it did in the judgment of 10 March 2009 in *Tsirimiagos* v *Committee of the Regions* (F-100/07, ECR-SC, EU:F:2009:21), the ambiguity of that provision, as found, inter alia, in paragraph 66 of the judgment in *Cavallaro* v *Commission*, paragraph 8 above (EU:F:2007:164), with regard to whether the reference period of 10 years ends with the initial entry into service or with the entry into service at the entity of secondment. Moreover, he alleges, the Civil Service Tribunal implicitly required that the appellant be informed not only of the provisions contained in the Staff Regulations concerning his salary, but also of all the case-law interpreting those provisions. Furthermore, the appellant complains that the Civil Service Tribunal erred in finding that, taking into account its case-law, an experienced official, with the applicant's grade and exercising ordinary care, who has no experience in civil service law, could not have been unaware of the irregularity of the payments in question.

21 In addition, the appellant contests paragraph 38 of the judgment under appeal, in so far as the Civil Service Tribunal introduced in that paragraph a requirement for officials to undertake formal legal acts, within the meaning of Article 90(1) of the Staff Regulations, in order to verify the accuracy of the verbal assurances received, which, moreover, was impossible for the appellant, given the very specific temporal circumstances in which he had been informed of his secondment.

22 The Commission disputes the appellant's arguments.

23 It must be noted that the first paragraph of Article 85 of the Staff Regulations provides that any sum overpaid is to be recovered in two cases: where the recipient was aware that there was no due reason for the payment or where the fact of the overpayment was patently such that he could not have been unaware of it. In order to justify recovery of undue payment, it is therefore sufficient that one of the two conditions required by the first paragraph of Article 85 of the Staff Regulations be satisfied (judgment of 24 February 1994 in *Stahlschmidt* v *Parliament*, T-38/93, ECR-SC, EU:T:1994:23, paragraph 17).

24 In the present case, as the second condition laid down for recovery of undue payment within the meaning of the first paragraph of Article 85 of the Staff Regulations is the only relevant condition, the Civil Service Tribunal correctly examined, in paragraphs 34 et seq of the judgment under appeal, whether the irregularity of the payment was patently such that the appellant could not have been unaware of it.

25 In essence, two factors must be taken into account when examining whether the error was patently such that the official could not have been unaware of it, that is, the clarity of the applicable provisions, on the one hand, and the grade and experience of the official, on the other.

26 More specifically, it is clear from settled case-law that the words 'patently such', used of the irregularity of the payment within the meaning of the first paragraph of Article 85 of the Staff Regulations, do not mean that the official in receipt of an undue payment does not need to make any effort to reflect or check, but means that repayment is required where the error is one which would not escape the notice of an official exercising ordinary care, who is deemed to know the rules governing his salary (see judgment of 29 September 2005 in *Thommes* v *Commission*, T-195/03, ECR-SC, EU:T:2005:344, paragraph 123 and the case-law cited).

27 The factors taken into consideration by the Courts of the European Union in assessing the ability of the official concerned to make the necessary checks concern his level of responsibility, grade and seniority, the degree of clarity of the provisions of the Staff Regulations setting out the conditions for grant of the benefit at issue and the significance of the changes in his personal or family circumstances where payment of the sum at issue is linked to an assessment of such circumstances by the administration (see judgment of 16 May 2007 in *F* v *Commission*, T-324/04, ECR-SC, EU:T:2007:140, paragraph 145 and the case-law cited).

28 Moreover, as is also clear from the settled case-law, it is not necessary for the official concerned, in the exercise of his duty of diligence, to be able to determine the precise extent of the error made by the administration. The fact that he has doubts about the validity of the payments in question is sufficient for him to be obliged to contact the administration so that it can carry out the necessary checks (see judgment in *Thommes* v *Commission*, paragraph 26 above, EU:T:2005:344, paragraph 124 and the case-law cited).

29 First, it should be pointed out that Article 4(1)(b) of Annex VII to the Staff Regulations, which states that the expatriation allowance is paid to officials 'who are or have been nationals of the State in whose territory the place where they are employed is situated but who during the ten years ending at the date of their entering the service habitually resided outside the European territory of that State for reasons other than the performance of duties in the service of a State or of an international

organisation', is entirely unambiguous. It follows from this, with sufficient clarity, that the allowance in question is not granted to an official who is a national of the State in whose territory the place where he is employed is situated, unless, during the 'ten years ending at the date of [his] entering the service' he habitually resided outside the European territory of that State. In that regard, moreover, the Civil Service Tribunal was right to find, in paragraph 17 of the judgment under appeal, that that period expired on the date of initial entry into service, without this being called into question by the appellant in the present appeal.

30 The wording of Article 4(1)(b) of Annex VII to the Staff Regulations therefore enables an official exercising ordinary care to understand its scope and to conclude that the 10-year period referred to in that provision ends before entry into service with the employer institution, particularly since, contrary to what the appellant claims, that provision has long been the subject of coherent and consistent interpretation by the Courts of the European Union (order of 14 July 2005 in *Gouvras* v *Commission*, C-420/04 P, ECR, EU:C:2005:482, paragraphs 57 and 60, and judgment of 28 September 1993 in *Magdalena Fernández* v *Commission*, T-90/92, ECR, EU:T:1993:78, paragraph 32).

31 The fact that, at paragraph 66 of the judgment in *Cavallaro* v *Commission*, paragraph 8 above (EU:F:2007:164), the Civil Service Tribunal incidentally took into account a consideration in line with the argument advanced by the applicant in the case giving rise to that judgment, namely that the expiry date of the 10-year reference period should have been the date of his reassignment, defining it as 'at first glance, more logical', cannot be considered to be an indication of ambiguity in the interpretation of that provision, so that the irregularity in question was not 'patently such' that he could not have been unaware of it within the meaning of the first paragraph of Article 85 of the Staff Regulations.

32 Following its own reasoning set out in the abovementioned paragraph 66 of the judgment in *Cavallaro* v *Commission*, paragraph 8 above (EU:F:2007:164), the Civil Service Tribunal came to the conclusion, based on settled case-law, that, even in the event of reassignment, the reference period provided for in Article 4(1)(b) of Annex VII to the Staff Regulations always expired on the date of initial entry into service, as was correctly noted in paragraph 36 of the judgment under appeal. Moreover, contrary to what the appellant claims, it cannot be inferred from the finding made by the Civil Service Tribunal, in that paragraph of the judgment under appeal, that an official exercising care is deemed to know not only the provisions of the Staff Regulations, but also all the case-law of the Courts of the European Union interpreting those provisions. On the contrary, it is stated in paragraph 36 of the judgment under appeal that the Civil Service Tribunal merely responded to a specific argument of the appellant, based on the judgment in *Cavallaro* v *Commission*, paragraph 8 above (EU:F:2007:164), to inform him that that judgment contains no ambiguity as regards the interpretation of Article 4(1)(b) of Annex VII to the Staff Regulations. In any event, that paragraph of the judgment under appeal is perfectly consistent with the settled case-law, referred to in paragraph 26 above, according to which an official exercising ordinary care is deemed to know the rules governing his salary, since such knowledge necessarily includes the application and interpretation of those rules by the Courts of the European Union, provided that the case-law in question is not confusing, which it certainly was not in the present case.

33 In that regard, with regard to the appellant's argument based on the judgment in *Tsirimiagos* v *Committee of the Regions*, paragraph 20 above (EU:F:2009:21), it must be pointed out that, as the Commission states, the reference to that judgment is not relevant, since it concerns another provision of the Staff Regulations, which, unlike Article 4(1)(b) of Annex VII to the Staff Regulations, was in fact held to be unclear in some aspects.

34 Secondly, it should be noted that, contrary to the appellant's allegations, the Civil Service Tribunal did not err in concluding, in paragraph 37 of the judgment under appeal, that an experienced official, with the applicant's grade and exercising ordinary care, could not have been unaware that the payment of

the expatriation allowance, within the meaning of Article 4(1)(b) of Annex VII to the Staff Regulations, depended on expatriation, and there was no expatriation in his case during the period in which he had been seconded to Germany, a country of which he was a national.

35 First of all, it should be noted that the reference which the Civil Service Tribunal made, in paragraph 37 of the judgment under appeal, to the order in *Gouvras* v *Commission*, paragraph 30 above (EU:C:2005:482), is, contrary to what the appellant claims, entirely relevant. The case giving rise to that order has significant similarities to the present case, since one of the issues considered in that case specifically concerned the irregular nature of the payment of expatriation allowance during the period of secondment of the official in question in the country of which he was a national.

36 Next, the fact that the Civil Service Tribunal restricted itself to pointing out, in paragraph 37 of the judgment under appeal, that 'there [was no expatriation] where an official is seconded in order to carry out duties in the country of which he [was] a national', without referring to the abovementioned ten-year reference period, cannot vitiate the reasoning of the Civil Service Tribunal, since it falls within the logic and context of Article 4 of Annex VII to the Staff Regulations, expressly referred to in the paragraph in question of the judgment under appeal.

37 The Civil Service Tribunal did not, therefore, err by finding that the appellant could not have been unaware that the payment of the expatriation allowance was irregular during the period of his secondment in Germany.

38 Nor, finally, did the Civil Service Tribunal err in noting, in paragraph 38 of the judgment under appeal, in response to the appellant's argument, first, that the appellant had doubts 'regarding the retention of his expatriation allowance during the period of his secondment' and, secondly, that, faced with a refusal by the Commission services to confirm in writing the assurances that he claimed to have received verbally from those services, an experienced official, of a high grade and exercising care should have verified the accuracy of such verbal assurances by sending, for example, an application in writing to the administration pursuant to Article 90(1) of the Staff Regulations.

39 In that regard, first, it must be noted that the assessment of the Civil Service Tribunal complies with the requirements of the case-law referred to in paragraph 28 above, according to which an official who has doubts about the validity of the payments in question is obliged to contact the administration so that it can carry out the necessary checks.

40 Secondly, it must be noted that, far from seeking to impose 'an entirely new obligation on officials', the Civil Service Tribunal restricted itself to pointing out, by way of example, what, in accordance with the case-law referred to in paragraph 28 above, an official exercising care, in the situation of the appellant, would have been required to do in order to verify simple verbal assurances that were not supported by any factual evidence, as the Civil Service Tribunal had, moreover, indicated in paragraph 20 of the judgment under appeal.

41 Article 90(1) of the Staff Regulations provides, without restriction, that any person to whom the Staff Regulations apply may submit to the appointing authority a request that it take a decision relating to him. Contrary to what the appellant claims, the exercise of that right is not conditional on the existence of any legal basis permitting the administration to adopt the decision requested; nor is it hindered by the fact that the administration has no margin of discretion as regards its adoption (see, to that effect, judgment of 16 October 1980 in *Hochstrass* v *Court of Justice*, 147/79, ECR, EU:C:1980:238, paragraphs 2 to 4).

42 In the light of all the foregoing, the first part of the first ground of appeal must be rejected.

43 In the second part of the first ground of appeal, the appellant argues, in essence, that the Civil Service Tribunal infringed the principle of legal certainty, in so far as it did not take into account the fact that Article 4(1)(b) of Annex VII to the Staff Regulations did not comply with that principle, since it did not expressly establish the ten-year reference period in the event of secondment of the official.

44 The Commission disputes the appellant's arguments.

45 As the appellant states, the principle of legal certainty is, according to the case-law, a fundamental principle of EU law which requires, in particular, that rules should be clear and precise, so that individuals may be able to ascertain unequivocally what their rights and obligations are and may take steps accordingly (see, to that effect, judgment of 14 April 2005 in *Belgium* v *Commission*, C-110/03, ECR, EU:C:2005:223, paragraph 30 and the case-law cited).

46 It must be pointed out that that part of the first ground of appeal is not clear.

47 In any event, in so far as that part of the first ground of appeal may be understood as seeking to criticise the assessment of the Civil Service Tribunal, in that it did not point out that Article 4(1)(b) of Annex VII to the Staff Regulations was contrary to the principle of legal certainty in so far as it did not establish the reference period in the event of secondment of an official in a country of which he is a national, it suffices to point out that, as stated in paragraphs 29 and 30 above, that provision is both clear and precise and allows it to be easily understood that the ten-year reference period in question seeks only to determine under what conditions, when an official who is a national of the State in whose territory the place where he is employed is situated, the expatriation allowance may be paid to that official.

48 Moreover, and to the extent that that part of the ground may be understood as calling into question the legality of Article 4(1)(b) of Annex VII to the Staff Regulations, in that it did not establish that reference period in the event of secondment, it must be rejected. The fact that Article 4 of Annex VII to the Staff Regulations does not govern a specific situation, such as whether an official is entitled to expatriation allowance in the event of secondment in a country of which he is a national, cannot be considered to infringe the principle of legal certainty, since that provision establishes in general and abstract terms the criteria on the basis of which that allowance may be granted in each individual situation.

49 The Civil Service Tribunal did not, therefore, commit an error of law by holding, at paragraphs 17 and 36 of the judgment under appeal, that Article 4(1)(b) of Annex VII to the Staff Regulations was, within the meaning of the first paragraph of Article 85 of the Staff Regulations, entirely unambiguous with regard to the establishment of the expiry date of the ten-year period referred to in that provision.

50 Accordingly, the second part of the first ground of appeal must be rejected, as must the first ground of appeal in its entirety.

The second ground of appeal, alleging an infringement of the principle of non-discrimination and of the obligation of the Courts of the European Union to ensure that the law is observed

51 By that ground of appeal, put forward in the alternative, the appellant criticises paragraph 39 of the judgment under appeal. In essence, he criticises the Civil Service Tribunal for subjecting him to discrimination and for failing to meet the obligation to ensure the law is observed 'in the interpretation and application of the Treaties'. More specifically, the appellant claims that he paid his former wife, during the period of his secondment, a maintenance allowance calculated on the basis of a salary that included the expatriation allowance that he believed he was entitled to. In the event of recovery of undue payments by the Commission, given that it would be impossible for him, under the German law applicable to maintenance allowances, to recover from his ex-wife the amounts paid in

excess, Article 85 of the Staff Regulations should have been interpreted as meaning that he should be able to rely on this factor against the Commission, which would prevent the Commission from recovering from the appellant amounts that were unduly received by his ex-wife.

52 The Commission disputes the appellant's arguments.

53 In the first place, as the Commission points out, it should be noted that where, as in the present case, the conditions for the recovery of undue payments provided for in the first paragraph of Article 85 of the Staff Regulations are met (see paragraph 23 above), the employer institution must recover the amounts unduly received from the European Union, and there is nothing in that provision which provides for any exception in that regard.

54 In the second place, it should be noted that, as the Commission observed, it is clear from the wording of Article 85 of the Staff Regulations that it relates only to the financial relationship between an official who has received overpayments and the employer institution. Moreover, that provision does not take into account the possible consequences of the recovery for the official with regard to other persons who may have benefited directly or indirectly from the overpayments subject to recovery by the employer institution, these being matters of private law.

55 As the case-law has made clear, the payment of maintenance allowance is determined by private legal relationships between the former spouses. With regard to that kind of relationship, in particular so far as concerns the observance of their personal legal obligations, in accordance with the first paragraph of Article 23 of the Staff Regulations, European Union officials are fully subject to the applicable national law like any other individual (see, to that effect and by analogy, judgment of 17 May 2006 in *Kallianos* v *Commission*, T-93/04, ECR-SC, EU:T:2006:130, paragraph 49).

56 Since payment of the maintenance allowance falls within a private law situation concerning the appellant and his ex-wife, the appellant cannot criticise the Civil Service Tribunal for rejecting as ineffective the argument that the Commission should have taken into account the fact that it was impossible for him to recover from his ex-wife the part of the maintenance allowance calculated on the basis of the principle that he would continue to receive the expatriation allowance during the period of his secondment in the country of which he was a national.

57 In that regard, the Court rejects the argument based on the alleged infringement of the principle of equal treatment by the Civil Service Tribunal arising from the fact that the appellant's ex-wife could rely in respect of the recovery of the overpayment on the fact that, under national law, there is no unjust enrichment, whereas the appellant himself could not claim that the same consideration applies with regard to the Commission.

58 Contrary to what the appellant claims, the two situations are not comparable, since the recovery of overpayments from the European Union was governed by the provisions of Article 85 of the Staff Regulations, which seeks to protect the financial interests of the European Union in the specific context of relations between the institutions of the European Union and their staff, whereas the recovery of the overpayment by the appellant to his former wife during the period of his secondment in Germany was governed by agreements between them and by the applicable national law. Moreover, the fact that the appellant's ex-wife can refuse to repay a part of the amounts paid by him, in respect of the maintenance allowance, during his secondment in Germany, relying on the absence of unjust enrichment under national law, cannot lead the administration, as the appellant claims, to grant him benefits and allowances to which he is not entitled.

59 The second ground of appeal must therefore be rejected.

The claim for damages

60 The appellant argues that, independently of the setting aside of the judgment under appeal, the conduct of the Commission renders the European Union liable for damages, in so far as the three conditions for non-contractual liability of the European Union are fulfilled in the present case.

61 The Commission disputes the appellant's arguments.

62 Regardless of how that claim should be classified, it must be noted that it follows from Article 11 of Annex I to the Statute of the Court of Justice and Article 138(l)(c) of the Rules of Procedure of 2 May 1991 that an appeal must state precisely the contested elements of the order which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal, failing which the appeal or plea concerned is inadmissible (see order of 15 November 2012 in *Marcuccio* v *Commission*, T-286/11 P, ECR-SC, EU:T:2012:602, paragraph 56 and the case-law cited).

63 In the present case, the appellant merely states that the conduct of the Commission gives rise to non-contractual liability on the part of the European Union, the conditions of which, he claims, are satisfied in the present case, without precisely stating the contested elements of the judgment under appeal or developing any legal arguments to demonstrate how the Civil Service Tribunal erred in law with regard to the alleged liability of the European Union.

64 Consequently, that claim must be rejected as inadmissible.

65 In the light of all the considerations set out above, the appeal must be dismissed in its entirety as being partly inadmissible and partly unfounded.

Costs

66 In accordance with Article 211(2) of the Rules of Procedure of the General Court, where an appeal is unfounded, the Court is to make a decision as to costs.

67 Under Article 134(1) of the Rules of Procedure, which applies to appeal proceedings pursuant to Article 211(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

68 Since the appellant has been unsuccessful in his claims on the appeal and the Commission has applied for costs, the appellant must bear his own costs and those incurred by the Commission in the present proceedings.

On those grounds,

THE GENERAL COURT (Appeal Chamber),

hereby:

1. **Dismisses the appeal;**

2. **Orders DF to bear his own costs and to pay those incurred by the European Commission in the appeal.**

Jaeger Prek Berardis

Delivered in open court in Luxembourg on 27 January 2016.

[Signatures]