Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

14 June 2016*

(Appeal — Member of the European Parliament — Parliamentary assistance allowance — Recovery of undue payments — Recovery — Implementing Measures of the Statute for Members of the Parliament — Respect for the rights of the defence — Principle of impartiality — Limitation — Regulation (EU, Euratom) No 966/2012 — Articles 78 to 81 — Delegated Regulation (EU) No 1268/2012 — Articles 81, 82 and 93 — Principle of protection of legitimate expectations — Reasonable time)

In Case C-566/14 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 6 December 2014,

Jean-Charles Marchiani, residing in Toulon (France), represented by C.-S. Marchiani, avocat,

appellant,

the other party to the proceedings being:

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

defendant at first instance,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, R. Silva de Lapuerta, M. Ilešič (Rapporteur), J.L. da Cruz Vilaça, A. Arabadjiev, C. Toader, D. Šváby, F. Biltgen, Presidents of Chambers, J.-C. Bonichot, M. Safjan, E. Jarašiūnas, C.G. Fernlund, C. Vajda and S. Rodin, Judges,

Advocate General: M. Wathelet,

Registrar: V. Giacobbo-Peyronnel, Administrator,

having regard to the written procedure and further to the hearing on 8 December 2015,

after hearing the Opinion of the Advocate General at the sitting on 19 January 2016,

gives the following

* Language of the case: French.

Judgment

1 By his appeal, Mr Jean-Charles Marchiani asks the Court to set aside the judgment of the General Court of the European Union of 10 October 2014 in *Marchiani* v *Parliament* (T-479/13, not published, 'the judgment under appeal', EU:T:2014:866) whereby the General Court dismissed his action for the annulment of the decision of the Secretary-General of the European Parliament of 4 July 2013 regarding the recovery from the appellant of a sum of EUR 107694.72 ('the decision at issue') and of the related debit note No 2013-807 of 5 July 2013 ('the debit note at issue').

Legal context

EU law

Regulation (EU, Euratom) No 966/2012

2 Article 78 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ 2012 L 298, p. 1), that article being headed 'Establishment of amounts receivable', provides:

'1. The establishment of an amount receivable is the act by which the authorising officer responsible:

(a) verifies that the debt exists;

(b) determines or verifies the reality and the amount of the debt;

(c) verifies the conditions according to which the debt is due.

2. The own resources made available to the Commission and any amount receivable that is identified as being certain, of a fixed amount and due shall be established by a recovery order to the accounting officer followed by a debit note sent to the debtor, both drawn up by the authorising officer responsible.

3. Amounts wrongly paid shall be recovered.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the establishment of amounts receivable, including procedures and supporting documents, and of default interest.'

3 Article 79(1) of that regulation, that article being headed 'Authorisation of recovery', provides:

'The authorisation of recovery is the act by which the authorising officer responsible instructs the accounting officer, by issuing a recovery order, to recover an amount receivable which that authorising officer responsible has established.'

4 Article 80(1) of that regulation, that article being headed 'Rules on Recovery', states:

'The accounting officer shall act on recovery orders for amounts receivable duly established by the authorising officer responsible. The accounting officer shall exercise due diligence to ensure that the Union receives its revenue and shall ensure that the Union's rights are safeguarded.

The accounting officer shall recover amounts by offsetting them against equivalent claims that the Union has on any debtor who in turn has a claim on the Union. Such claims shall be certain, of a fixed amount and due.'

5 Under Article 81 of Regulation No 966/2012, headed 'Limitation period':

'1. Without prejudice to the provisions of specific regulations and the application of [Council Decision 2007/436/EC, Euratom of 7 June 2007 on the system of the European Communities' own resources (OJ 2007 L 163, p. 17)], entitlements of the Union in respect of third parties and entitlements of third parties in respect of the Union shall be subject to a limitation period of five years.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the limitation period.'

6 The wording of Article 81(1) of Regulation No 966/2012 is similar to that of Article 73a of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1), as amended by Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 (OJ 2006 L 390, p. 1).

Delegated Regulation (EU) No 1268/2012

7 Article 81 of Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation No 966/2012 (OJ 2012 L 362, p. 1) provides:

'To establish an amount receivable the authorising officer responsible shall ensure that:

(a) the receivable is certain, meaning that it is not subject to any condition;

(b) the receivable is of [a] fixed amount, expressed precisely in cash terms;

(c) the receivable is due and is not subject to any payment time;

(d) the particulars of the debtor are correct;

(e) the amount to be recovered is booked to the correct budget item;

(f) the supporting documents are in order; and

(g) the principle of sound financial management is complied with, in particular with regard to the criteria referred to in point (a) of Article 91(1).'

8 Under Article 82(1) and (2) of that delegated regulation:

'1. The establishment of an amount receivable shall be based on supporting documents certifying the Union's entitlement.

2. Before establishing an amount receivable the authorising officer responsible shall personally check the supporting documents or, on his own responsibility, shall ascertain that this has been done.'

9 Article 93 of the delegated regulation, headed 'Rules for limitation periods', provides:

'1. The limitation period for entitlements of the Union in respect of third parties shall begin to run on the expiry of the deadline communicated to the debtor in the debit note as specified in Article 80(3)(b).

The limitation period for entitlements of third parties in respect of the Union shall begin to run on the date on which the payment of the third party's entitlement is due according to the corresponding legal commitment.

…

6. Entitlements shall not be recovered after the expiry of the limitation period, as established in paragraphs 1 to 5.'

10 The wording of Article 93(1) of Delegated Regulation No 1268/2012 corresponds to that of Article 85b(1) of Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Regulation No 1605/2002 (OJ 2002 L 357, p. 1), as amended by Commission Regulation (EC, Euratom) No 478/2007 of 23 April 2007 amending Regulation No 2342/2002 laying down detailed rules for the implementation of Regulation No 1605/2002 (OJ 2007 L 111, p. 13).

Rules governing the payment of expenses and allowances to Members of the European Parliament

11 Article 27(3) of the rules governing the payment of expenses and allowances to Members of the European Parliament ('the PEAM Rules'), provided, in the version in force until 14 July 2009:

'Where the Secretary-General, in consultation with the Quaestors, is satisfied that undue sums have been paid by way of allowances provided for Members of the European Parliament by these Rules, he shall give instructions for the recovery of such sums from the Member concerned.'

12 Article 68 of the Decision of the Bureau of the European Parliament 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), in the version in force after 21 October 2010 (OJ 2010 C 283, p. 9) ('the Implementing Measures'), that article being headed '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.

3. This article shall also apply to former Members and third parties.'

13 Title III of the Implementing Measures, headed 'General and final provisions', contains a Chapter 4 relating to 'Final provisions'. In that Chapter 4, Article 72, headed 'Complaints', provides:

'1. A Member who takes the view that these implementing measures have not been correctly applied to him or her by the competent service may address a written complaint to the Secretary-General.

The decision of the Secretary-General on the complaint shall state the reasons on which it is based.

2. A Member who does not agree with the decision of the Secretary-General may, within two months after notification of the Secretary-General's decision, request that the matter be referred to the Quaestors, who shall take a decision after consulting the Secretary-General.

3. If a party to the complaint procedure does not agree with the decision adopted by the Quaestors, he or she may, within two months after notification of that decision, request that the matter be referred to the Bureau, which shall take the final decision.

4. This Article shall also apply to a Member's legal successor as well as to former Members and their legal successors.'

14 Under Article 74 of the Implementing Measures:

'Subject to the transitional provisions laid down in Title IV, the PEAM Rules shall cease to be valid on the date on which the Statute enters into force.'

Background to the dispute

15 Mr Marchiani was a Member of the Parliament from 20 July 1999 until 19 June 2004. He employed as parliamentary assistants Ms T. and Mr T. between 2001 and 2004 and Ms B. between 2002 and 2004. On 30 September 2004 an investigating judge at the Tribunal de Grande Instance de Paris (Regional Court, Paris, France) informed the President of the Parliament of the possibility that the duties performed by Ms T. and Mr T. between 2001 and 2004 bore no actual relation to those of a parliamentary assistant.

16 By decision of 4 March 2009, after hearing the parties involved and having consulted the Quaestors on 14 January 2009, the Secretary-General of the Parliament ('the Secretary-General') established that a sum of EUR 148160.27 had been unduly paid to the appellant under Article 14 of the PEAM Rules and requested the Parliament's authorising officer to take the necessary steps to recover that sum.

17 On the same day, the Parliament's authorising officer sent the appellant a debit note claiming reimbursement of EUR 148160.27.

18 On 14 August 2009 the European Anti-Fraud Office (OLAF), after the file on the irregularities concerned had been sent to it by the Secretary-General on 21 October 2008, notified the Parliament and the appellant that an investigation had been opened.

19 On 14 October 2011, OLAF, following an investigation and having interviewed the appellant on 6 July 2011, sent the Parliament a copy of its final investigation report ('the OLAF report'). That report found that the appellant had unduly received allowances in respect of the duties performed by Ms T., Mr T. and Ms B. and recommended that the Parliament should take the necessary steps to recover the sums due. On 25 October 2011, OLAF notified the appellant that the investigation had been closed.

20 On 28 May 2013, on the basis of the OLAF report, the Secretary-General informed the appellant, under Article 27(3) of the PEAM Rules, of his intention to recover all the sums paid by the Parliament in connection with Ms T., Mr T. and Ms B., and invited him to submit his comments in that regard.

21 On 25 June 2013, the appellant was questioned by the Secretary-General at a hearing. On 27 June 2013, the appellant sent the Secretary-General a transcript of the hearing. The Quaestors were consulted by the Secretary-General on 2 July 2013.

22 In the decision at issue, the Secretary-General established that, whilst the decision of 4 March 2009 provided for the recovery of a sum of EUR 148160.27, an additional amount of EUR 107694.72 had been unduly paid to the appellant, and he requested the Parliament's authorising officer to take the

necessary steps to recover the latter amount. In essence, the Secretary-General took the view that the appellant had not provided sufficient proof that Ms T., Mr T. and Ms B. had carried out the work of a parliamentary assistant.

23 Noting that the sums paid by way of parliamentary assistance allowances amounted to a total of EUR 255854.99, some of which had been the subject of the decision of 4 March 2009, the decision at issue states that the sum of EUR 107694.72 does not comply with the PEAM Rules and that it must be recovered. On 5 July 2013, the Parliament's authorising officer issued the debit note at issue ordering the recovery of EUR 107694.72 before 31 August 2013.

The proceedings before the General Court and the judgment under appeal

24 By application lodged at the Registry of the General Court on 3 September 2013, the appellant brought an action seeking the annulment of the decision at issue and of the debit note at issue.

25 In support of his action, the appellant relied on five pleas in law: first, infringement of the procedure laid down by the Implementing Measures, of the adversarial principle and of the principle of respect for the rights of the defence; second, incorrect application of the PEAM Rules; third, error of assessment of the supporting documents; fourth, a lack of impartiality on the part of the Secretary-General, and, fifth and last, the claim that recovery of the sums in question was time-barred. As the appellant took the view that the sums in question were time-barred and that the signatory of the debit note at issue did not prove his capacity as authorising officer, he also claimed that the General Court should annul the debit note.

26 In the judgment under appeal, the General Court, without ruling on the Parliament's objections concerning the inadmissibility of the action, dismissed the appellant's action on the substance.

Form of order sought by the parties in the appeal

27 Mr Marchiani claims that the Court should set aside the judgment under appeal.

28 The Parliament contends that the Court should:

— dismiss the appeal; and

— order the appellant to pay the costs.

The appeal

29 In support of his appeal, the appellant relies on five grounds of appeal.

30 The Parliament submits, principally, that the appeal is inadmissible in its entirety. In the alternative, the Parliament submits that the grounds relied on in support of the appeal must be rejected as being in part inadmissible and in part unfounded.

Admissibility of the appeal in its entirety

31 The Parliament contends that the appeal is inadmissible in its entirety, on the ground that, in essence, the appellant does no more than reproduce the pleas in law and arguments previously submitted by him before the General Court, and fails to develop arguments directed specifically to the reasons stated for the General Court's decision in the judgment under appeal.

32 In that regard, it is however clear that the Parliament's argument is formulated in general terms and is not supported by a detailed analysis of the arguments developed by the appellant in his appeal.

33 That being the case, the Court must reject the objection of inadmissibility in so far as it is directed against the appeal in its entirety.

34 That said, the conclusion reached in the previous paragraph does not prejudice a consideration of the admissibility of certain grounds of appeal taken individually (see, to that effect, judgment of 11 July 2013 in *France* v *Commission*, C-601/11 P, EU:C:2013:465, paragraphs 70, 71 and 73).

The first ground of appeal

Arguments of the parties

35 By his first ground of appeal, which has six parts, the appellant submits, in essence, that the General Court erred in law in the application of the Implementing Measures, vitiated the judgment under appeal by stating contradictory reasons for its decision and disregarded the principle of respect for the rights of the defence.

36 The Parliament contends that the first, fifth and sixth parts of the first ground of appeal are inadmissible, since, in those parts, the appellant does no more than reproduce the arguments submitted before the General Court, while failing to provide any specific criticism of the General Court's reasoning in the judgment under appeal. As for the remainder, the first ground of appeal is in part ineffective and in part unfounded.

Findings of the Court

37 As regards the inadmissibility of the first, fifth and sixth parts of the first ground of appeal, as claimed by the Parliament, it should be recalled that, where a party challenges the interpretation or application of EU law by the General Court, the points of law examined at first instance may be argued again in the course of an appeal. If a party could not thus base his appeal on pleas in law and arguments already relied on before the General Court, the appeal would be deprived of part of its purpose (see, inter alia, judgment of 21 September 2010 in *Sweden and Others* v *API and Commission*, C-514/07 P, C-528/07 P and C-532/07 P, EU:C:2010:541, paragraph 116).

38 In the present case, whilst it is true that certain sections of the appeal setting out the line of argument developed by the appellant within the first ground of appeal lack precision, it is nevertheless clear from the appeal that the arguments developed in the first, fifth and sixth parts of this ground are intended to show that the General Court erred in law in the application of the Implementing Measures and disregarded the appellant's rights of defence. Those parts are therefore admissible.

39 By the first part of his first ground of appeal, the appellant claims that the General Court disregarded the explicit wording of Article 68(3) of the Implementing Measures, which states that that provision is also to apply to former Members and third parties, in holding that the Implementing Measures did not apply to the recovery procedure carried out in relation to the appellant, notwithstanding the fact that it is undisputed that the appellant is a former Member.

40 In that regard, it is apparent from Article 68(1) of the Implementing Measures that 'any sum unduly paid pursuant to these implementing measures shall be recovered'. Article 68(1) thus specifies the material scope of Article 68, limiting it to the recovery of sums paid pursuant to the Implementing Measures. It is common ground that the sums at issue in the present case were paid to the appellant under the PEAM Rules and not under the Implementing Measures, which entered into force after the

payments at issue. Accordingly, the General Court did not err in law in excluding, in paragraphs 27 and 28 of the judgment under appeal, the possibility that Article 68 of the Implementing Measures applied to the present case, since the fact that that provision refers to former Members is irrelevant on this point.

41 In addition, it should be noted that, according to Article 72(1), (3) and (4) of the Implementing Measures, that provision is intended to establish a complaints procedure allowing the Secretary-General to deal with objections raised by Members and former Members as well as their successors in law as regards the correct application of the Implementing Measures to those persons. Since the General Court was correct to find that the procedure for the recovery of undue payments carried out in relation to the appellant was not based on Article 68 of the Implementing Measures, it must be held that any objection of the appellant relating to the way in which that procedure was conducted cannot be regarded as a complaint within the meaning of Article 72 of the Implementing Measures.

42 Accordingly, the General Court did not err in law in excluding, in paragraphs 27, 28 and 31 of the judgment under appeal, the possibility that the Implementing Measures applied to the procedure for the recovery of the amounts receivable at issue in the present case.

43 That being the case, it is also appropriate to reject the fifth part of this ground of appeal, alleging that the General Court erred in law in holding that the decision at issue was capable of being adopted on the basis of Articles 78 to 80 of Regulation No 966/2012, whereas only the Implementing Measures ought to have been applied in proceedings for the recovery of undue payments carried out in relation to a former Member.

44 As the General Court stated in paragraph 31 of the judgment under appeal, the Implementing Measures cannot be rendered applicable, notwithstanding their material scope, merely because Articles 78 to 80 of Regulation No 966/2012 do not contain any detailed rules specifically concerning the procedure for the recovery of amounts receivable from Members of the European Parliament, but concern the establishment of amounts receivable by the Union and the ordering of recovery.

45 The first and fifth parts of the first ground of appeal must therefore be rejected.

46 As regards the second and fourth parts of the first ground of appeal, alleging that the reasons stated in the judgment under appeal are contradictory as regards the application of Article 68 of the Implementing Measures and of the PEAM Rules in the present case, it is clear that they are founded on a misreading of the judgment under appeal.

47 In the first place, after having considered, in paragraphs 27 and 28 of the judgment under appeal, that the Implementing Measures were not applicable to the procedure carried out in relation to the appellant, the General Court clearly stated, in paragraph 29 of that judgment, that it would assess the appellant's arguments alleging an incorrect application of Articles 68 and 72 of the Implementing Measures 'independently of the question of whether the recovery of the undue payments had to be based on the Implementing Measures' and 'on the assumption that the Implementing Measures were applicable'. It follows that the General Court did not, thereby vitiating the judgment under appeal, state reasons for its decision that were contradictory as regards the application in the present case of Article 68 to the extent that it undertook, for the sake of completeness, an assessment of whether there was a breach of the Implementing Measures.

48 In the second place, it is clear from the judgment under appeal that the General Court found, in paragraph 27 of that judgment, that, although the payment of the sums at issue, which took place between 2001 and 2004, was made on the basis of the PEAM Rules, those rules had been repealed, as stated by the General Court in paragraph 30 of its judgment, on the date of the entry into force of Decision 2005/684/EC, Euratom of the European Parliament of 28 September 2005 adopting the

Statute for Members of the European Parliament (OJ 2005 L 262, p. 1). That being the case, the General Court was correct to take the view, in paragraph 31 of the judgment under appeal, and did not thereby vitiate its judgment by any contradiction in that regard, that the procedure for the recovery of the sums unduly paid, given the context in which the decision at issue was adopted in 2013, could not be based on the PEAM Rules.

49 In addition, since the General Court correctly held, as is apparent from paragraphs 40 to 44 above, that the Implementing Measures were not applicable in the present case, the Court must also find that, in so far as the third and fourth parts of the appellant's first ground of appeal allege misinterpretation of the relationship between Articles 68 and 72 of the Implementing Measures, as well as distortion of the sense of the letter of 27 June 2013, which, according to the appellant, should have been considered to be a complaint within the meaning of Article 72, those parts of the first ground of appeal are directed against reasons included in the judgment under appeal purely for the sake of completeness and cannot, according to the settled case-law of the Court, lead to that judgment being set aside (see judgments of 21 December 2011 in *France* v *People's Mojahedin Organization of Iran*, C-27/09 P, EU:C:2011:853, paragraph 79, and 13 February 2014 in *Hungary* v *Commission*, C-31/13 P, EU:C:2014:70, paragraph 82).

50 In the light of the foregoing, the second, third and fourth parts of the first ground of appeal must be rejected.

51 Last, as regards the sixth part of this ground of appeal, relating to an error of law committed by the General Court in its assessment of the alleged disregard by the Parliament of the appellant's rights of defence, it should be recalled that the principle of respect for the rights of the defence is, in all proceedings initiated against a person which are liable to culminate in a measure adversely affecting that person, a general principle of EU law which is applicable even in the absence of any specific rules in that regard. That principle requires that the addressees of decisions which significantly affect the interests of those addressees should be placed in a position in which they may effectively make known their views with regard to the evidence on which those decisions are based (see, to that effect, judgments of 12 February 1992 in *Netherlands and Others* v *Commission*, C-48/90 and C-66/90, EU:C:1992:63, paragraphs 44 and 45; 24 October 1996 in *Commission* v *Lisrestal and Others*, C-32/95 P, EU:C:1996:402, paragraph 30; and 9 June 2005 in *Spain* v *Commission*, C-287/02, EU:C:2005:368, paragraph 37).

52 By this part, the appellant criticises the General Court for having erred in holding, in paragraph 37 of the judgment under appeal, that the failure to communicate his letter of 27 June 2013 to the Quaestors did not infringe his rights of defence, since the Quaestors gave their opinion without knowing the appellant's position.

53 In that regard, it is clear from paragraphs 32 to 39 of the judgment under appeal that the General Court examined whether, for want of a specific procedure for the recovery of undue payments laid down in Regulation No 966/2012, the appellant's rights of defence had been observed in the procedure leading to the adoption of the decision at issue. The General Court found, in paragraph 33 of the judgment under appeal, that finding not being challenged by the appellant in his appeal, that, before the adoption of the decision at issue, 'the Secretary-General, first, heard the appellant and, second, consulted the Quaestors'.

54 Nor does the appellant allege that there was any distortion in the General Court's finding of fact in paragraph 36 of the judgment under appeal that, contrary to what the appellant claimed before that court, the Quaestors did not give a ruling in the procedure leading to the adoption of the decision at issue, but were only consulted, since their opinion did not bind the Secretary-General when that decision was adopted.

55 Furthermore, as the General Court found in paragraph 37 of the judgment under appeal, that finding not being challenged by the appellant in his appeal, although the Parliament accepted that the letter of 27 June 2013 was not communicated to the Quaestors, that letter is only a record, drawn up by the appellant, of the appellant's hearing before the Secretary-General. In the absence of any further evidence showing how the failure to communicate that letter to the Quaestors when they were being consulted was contrary to the requirements arising from respect for the appellant's rights of defence, recalled in paragraph 51 above, the Court must hold that the General Court was entitled to reject the appellant's argument on the infringement of his rights of defence. The Court must therefore reject the sixth part of the first ground of appeal.

56 In the light of the foregoing, the first ground of appeal must be rejected in its entirety.

The second ground of appeal

Arguments of the parties

57 By his second ground of appeal, the appellant claims that the General Court erred in law by taking the view, in paragraph 54 of the judgment under appeal, that the burden of proof relating to the use of the parliamentary assistance allowance in accordance with the PEAM Rules was, in relation to the recovery procedure for that allowance, to be borne by the appellant and not by the Parliament. In the light of the circumstances, first, that the appellant satisfied the conditions laid down by those rules as regards the grant of the allowance in question at the time when it was applied for and, second, that the decision at issue was adopted more than nine years after the end of the appellant's term in office, the General Court should have found that the Parliament bore the burden of proof.

58 The Parliament submits that this ground of appeal, in so far as it alleges an incorrect application of the PEAM Rules as regards the burden of proving the correct use of the parliamentary assistance allowance, is ineffective, given that it is directed against grounds included in the judgment under appeal purely for the sake of completeness. In so far as that ground relates to a breach of the reasonable time principle with regard to the burden of proving that matter, the Parliament submits that the second ground of appeal is unfounded.

Findings of the Court

59 It is clear that, in so far as the second ground of appeal involves the claim that the General Court erred in law in paragraph 54 of the judgment under appeal by holding 'that it was … for the applicant to put forward evidence capable of calling into question the decision [at issue] in so far as the decision states that the applicant has not supplied any evidence sufficient to show that the parliamentary assistants in question had carried out the work of a parliamentary assistant within the meaning of Article 14 of the PEAM Rules', that ground of appeal is directed against reasons included in the judgment under appeal purely for the sake of completeness. It is apparent from paragraph 54 that the appellant's submission relating to the claim that the burden of proof falls on the Parliament was made for the first time before the General Court in his reply and that, on that basis, the General Court declared it to be inadmissible.

60 To that extent, this ground of appeal must therefore be rejected as being ineffective in accordance with the case-law cited in paragraph 49 of this judgment.

61 Moreover, in so far as the appellant also submits that the General Court erred in finding that the allocation of the burden of proof was to the advantage of the Parliament as regards use of the parliamentary assistance allowance in accordance with the PEAM Rules, despite the length of time that had elapsed between the end of the Member's term in office and the date on which the decision

at issue was adopted, the Court notes that it is apparent from the case file at first instance that an argument to that effect was not put forward before the General Court. The argument is therefore new and must, in accordance with settled case-law of the Court, be rejected as being inadmissible (judgment of 8 March 2016 in *Greece* v *Commission*, C-431/14 P, EU:C:2016:145, paragraph 55 and the case-law cited).

62 The Court therefore rejects the second ground of appeal.

The third ground of appeal

Arguments of the parties

63 By his third ground of appeal, the appellant claims, in the first place, that the General Court disregarded the adversarial principle in that it failed to rule on an infringement of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), despite the fact that the Parliament is, as an institution of the European Union, bound by the ECHR.

64 In the second place, the appellant claims that the principle of impartiality as derived from Article 6 of the ECHR has a broader scope than the principle of good administration applied by the General Court in the judgment under appeal for the purposes of ruling on the corresponding plea in law relied on in support of the application before it. The General Court therefore also infringed the principle of impartiality.

65 The Parliament submits, principally, that the third ground of appeal must be rejected as being inadmissible in so far as the appellant does no more than repeat arguments which he previously submitted before the General Court. As for the remainder, this ground of appeal is founded on a misreading of the judgment under appeal, since the General Court provided adequate reasons for its rejection of the plea in law to the effect that the Secretary-General was not impartial. In any event, Article 6 of the ECHR is not applicable to the procedure before the Secretary-General.

Findings of the Court

66 As regards, first of all, the Parliament's argument that the third ground of appeal should be held to be inadmissible, the Court notes, in the light of the case-law cited in paragraph 37 of this judgment, that, where a party challenges the interpretation or application of EU law effected by the General Court, the points of law examined at first instance may be argued afresh on appeal, for otherwise an appeal would be deprived of part of its purpose. That argument is all the more relevant where the General Court is criticised for having erred in failing to consider one of an applicant's pleas in law (see order of 22 June 2004 in *Meyer* v *Commission*, C-151/03 P, not published, EU:C:2004:381, paragraph 50).

67 By his third ground of appeal, the appellant criticises the General Court for having failed to rule on his argument that there was an infringement of Article 6 of the ECHR in the present case. The third ground of appeal is therefore admissible.

68 In that regard, it should be noted that, by means of the argument that the General Court did not rule on the submission founded on Article 6 of the ECHR, the appellant is, in reality, criticising the General Court for not having given a ruling, in connection with the assessment of his submission that the principle of impartiality had been disregarded, on his argument, submitted for the first time before the General Court in his reply, that that principle is also enshrined in Article 6 of the ECHR, by which the Parliament, as an institution of the European Union, is bound.

69 The Court has consistently held that the requirement that the General Court give reasons for its decisions does not mean that it is obliged to respond in detail to every single argument put forward (see judgment of 9 September 2008 in *FIAMM and Others* v *Council and Commission*, C-120/06 P and C-121/06 P, EU:C:2008:476, paragraph 91, and order of 29 October 2009 in *Portela* v *Commission*, C-85/09 P, not published, EU:C:2009:685, paragraph 31). The reasoning adopted by the General Court may therefore be implicit, on condition that it enables the persons concerned to understand the grounds for the General Court's judgment and provides the Court of Justice with sufficient information to exercise its powers of review (see, inter alia, judgments of 22 May 2008 in *Evonik Degussa* v *Commission*, C-266/06 P, EU:C:2008:295, paragraph 103, and 8 March 2016 in *Greece* v *Commission*, C-431/14 P, EU:C:2016:145, paragraph 38).

70 In the light of that case-law, it is clear that, although the General Court did not expressly give a ruling on Article 6 of the ECHR in paragraphs 63 to 68 of the judgment under appeal, it nevertheless clearly follows from the reasons stated by the General Court that that court took a view on the submission on the principle of impartiality and rejected that submission, stating reasons which enable the appellant to understand the grounds for its decision and the Court to exercise its powers of review. In that regard, the General Court stated, inter alia, in paragraph 63 of the judgment under appeal, that the principle of good administration, applicable to all institutions of the European Union, entails the requirement that each institution should examine impartially all the relevant aspects of a particular case. Furthermore, the General Court stated, in paragraph 64 of its judgment, that the Secretary-General must give a solemn undertaking before the Bureau of the Parliament to perform his duties conscientiously and with absolute impartiality. The General Court then held, in paragraphs 65 to 68 of the judgment under appeal, following a detailed examination, that the Secretary-General did not breach that undertaking in adopting the decision at issue. The General Court therefore gave a ruling, in paragraphs 63 to 68 of the judgment under appeal, on the appellant's submission that the principle of impartiality had been disregarded.

71 In addition, there is no need to determine whether Article 6 of the ECHR applies to an administrative procedure carried out by the Parliament relating to the recovery of undue payments, since it must be observed that, in doing no more than submitting that the principle of impartiality as derived from that provision has a broader scope than it does in connection with the principle of good administration, the appellant fails, however, to put forward any legal argument capable of calling into question the findings of the General Court in paragraphs 63 to 68 of the judgment under appeal.

72 That line of argument must therefore be rejected as being inadmissible, in accordance with the Court's settled case-law that an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and the legal arguments specifically advanced in support of the appeal (judgments of 11 April 2013 in *Mindo* v *Commission*, C-652/11 P, EU:C:2013:229, paragraph 21, and 3 October 2013 in *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 46).

73 The third ground of appeal relied on by the appellant in support of the appeal must therefore be rejected.

The fourth ground of appeal

74 By his fourth ground of appeal, the appellant claims that, by holding that the recovery of the sums unduly paid was not time-barred, the General Court erred in law. This ground of appeal is composed of four parts. It is appropriate to consider the third part of this ground of appeal in the first place, and to consider the first and second parts of this ground of appeal together.

The third part of the fourth ground of appeal

– Arguments of the parties

75 By the third part of the fourth ground of appeal, the appellant criticises the General Court for having disregarded the principle of protection of legitimate expectations in holding that the appellant could not have believed that the sums which were paid to him on the basis of the parliamentary assistance allowance would not ever be reclaimed from him due to the length of time that had elapsed between the date on which he was paid those sums and the date on which the decision at issue was adopted.

76 The Parliament contests the appellant's arguments.

– Findings of the Court

77 It should be recalled that the right to rely on the principle of the protection of legitimate expectations presupposes that precise, unconditional and consistent assurances originating from authorised, reliable sources have been given to the person concerned by the competent authorities of the European Union (see, inter alia, judgments of 22 June 2006 in *Belgium and Forum 187* v *Commission*, C-182/03 and C-217/03, EU:C:2006:416, paragraph 147, and 7 April 2011 in *Greece* v *Commission*, C-321/09 P, EU:C:2011:218, paragraph 45).

78 In that regard, the General Court held, in paragraph 80 of the judgment under appeal, that the appellant had not advanced any argument to support a conclusion that, in the light of the circumstances of the case, he had acquired a legitimate expectation that the sums at issue could not be recovered. In addition, the General Court stated that the material available to it, relating to the conduct of the procedure carried out in relation to the appellant, ruled out any possibility of the appellant entertaining such an expectation, despite the length of time that had elapsed since the events leading to the adoption of the decision at issue.

79 Accordingly, in the light of the case-law cited in paragraph 77 of this judgment, the Court must hold that the General Court was correct to hold that the mere fact that a long period had elapsed between the date on which the sums were paid and the date when the decision at issue was adopted is not sufficient, in itself and in the absence of any other relevant factor, to engender, on the part of the appellant, a legitimate expectation that the sums at issue would no longer be reclaimed.

80 The Court therefore finds that the General Court was correct to reject the appellant's submission on disregard of the principle of protection of legitimate expectations.

81 It follows that the third part of the fourth ground of appeal is unfounded.

The first and second parts of the fourth ground of appeal

– Arguments of the parties

82 By the first part of his fourth ground of appeal, the appellant claims that the General Court disregarded Regulation No 1605/2002 and Regulation No 478/2007 by holding that the sums claimed on the basis of the decision at issue were not time-barred, whereas it should have recognised that the sums paid in the course of 2001 and at the beginning of 2002 were time-barred in 2007 in accordance with the limitation period of five years laid down in Regulation No 1605/2002. As regards the sums paid during the second half of 2002 and until 2004, the entry into force of Regulation No 478/2007, stating that a limitation period of five years was to run on the expiry of the deadline communicated to the

debtor in the debit note, could not have interrupted the limitation period already running, since no debit note had been issued by the Parliament in the present case during the limitation period that had not yet expired.

83 By the second part of the fourth ground of appeal, the appellant submits that the General Court, by rejecting his arguments that the debit note at issue, adopted on the basis of Delegated Regulation No 1268/2012, could not reopen limitation periods which expired in 2009, disregarded the principle of non-retroactivity.

84 The Parliament contests the appellant's arguments.

– Findings of the Court

85 By the first and second parts of the fourth ground of appeal, the appellant submits that a limitation period of five years for amounts receivable by the European Union in respect of third parties was laid down by the EU rules in force at the time when the sums at issue were paid and that the rule as to the date on which that period commences, to the effect that it begins to run on the date stated in the debit note, was adopted only in the course of 2007.

86 It must be observed in that regard that the Court has previously made clear that Article 73a of Regulation No 1605/2002, which fixed a limitation period for claims by the European Union of five years, could not be relied on alone, without its implementing rules, to establish that recovery of a debt owed to the European Union was time-barred (see judgment of 13 November 2014 in *Nencini* v *Parliament*, C-447/13 P, EU:C:2014:2372, paragraphs 43 and 44).

87 It follows that Article 73a, which must be read in conjunction with its detailed implementing rules laid down in Article 85b of Regulation No 2342/2002, provides for a limitation period of five years to allow the EU institutions to recover European Union entitlements in respect of third parties, the date from which that period begins to run being the expiry of the deadline communicated to the debtor in the debit note (see judgment of 13 November 2014 in *Nencini* v *Parliament*, C-447/13 P, EU:C:2014:2372, paragraphs 45 and 46).

88 That interpretation applies equally to Article 81 of Regulation No 966/2012 and Article 93 of Delegated Regulation No 1268/2012, in force at the date of the adoption of the decision at issue, since those provisions correspond, in essence, to Article 73a of Regulation No 1605/2002 and to Article 85b of Regulation No 2342/2002, respectively.

89 Contrary to the view which appears to be held by the appellant, those provisions did not fix any period within which a debit note had to be sent to the debtor following the date when the debt in question arose (see, to that effect, judgment of 13 November 2014 in *Nencini* v *Parliament*, C-447/13 P, EU:C:2014:2372, paragraph 47). It follows that the General Court was entitled to hold that the amounts receivable that were the subject matter of the decision at issue were not time-barred and that the adoption of the decision at issue was not a breach of the principle of non-retroactivity.

90 That being the case, the Court must reject the first and second parts of the fourth ground of appeal as being unfounded.

The fourth part of the fourth ground of appeal

– Arguments of the parties

91 By the fourth part of his fourth ground of appeal, the appellant criticises the General Court for having disregarded the scope of the reasonable time principle by failing to take into account all the relevant circumstances of the case. The appellant submits that the General Court should have recognised, having regard to the significant sums at issue, the limited complexity of the case and the appellant's exemplary conduct, that the period of almost ten years which elapsed between the end of the appellant's term in office and the Parliament's adoption of the decision at issue was unreasonable.

92 The Parliament submits, principally, that the General Court should not, in the present case, have examined the issue of failure to act within a reasonable time since such a failure had not been raised by the appellant before that court. If the Court should nevertheless hold that the General Court raised of its own motion the issue of failure to act within a reasonable time as a plea in law, the General Court erred in law, since that plea does not fall within the category of pleas in law that may or must be raised by the General Court of its own motion. In any event, the General Court should have requested the parties to submit their observations in that regard. In those circumstances, the Parliament requests the Court to substitute the grounds of the judgment under appeal.

93 In the alternative, the Parliament submits that the reasonable time principle was not disregarded by the General Court.

– Findings of the Court

94 It should be noted that the Court has previously held that compliance with a limitation period may not be raised by a Court of the European Union of its own motion but must be raised by the party affected (judgment of 8 November 2012 in *Evropaïki Dynamiki* v *Commission*, C-469/11 P, EU:C:2012:705, paragraph 51 and the case-law cited). In the present case, it is common ground that the appellant explicitly submitted before the General Court that the Parliament acted out of time as regards the establishment of the amounts receivable by it, in that that action was contrary to the provisions of Regulations No 1605/2002 and No 2342/2002 providing for rules on limitation applicable to entitlements of the European Union in respect of third parties.

95 Against that background, the General Court was, as is apparent from paragraph 89 above, correct to hold that no provision of EU law laid down the time within which a debit note, namely the act in which the establishment of amounts receivable by an EU institution is brought to the attention of the debtor, had to be communicated to that debtor.

96 It is clear from the Court's case-law that, in such circumstances, the requirement of legal certainty means that the EU institutions must exercise their powers within a reasonable time (see, to that effect, judgments of 24 September 2002 in *Falck and Acciaierie di Bolzano* v *Commission*, C-74/00 P and C-75/00 P, EU:C:2002:524, paragraphs 139 to 141 and the case-law cited; 28 February 2013 in *Review of Arango Jaramillo and Others* v *EIB*, C-334/12 RX-II, EU:C:2013:134, paragraph 28; and 13 November 2014 in *Nencini* v *Parliament*, C-447/13 P, EU:C:2014:2372, paragraphs 47 and 48), as the General Court also stated in paragraph 81 of the judgment under appeal.

97 It follows that the General Court was also correct to give a ruling, in paragraphs 81 to 87 of the judgment under appeal, where the applicable texts are silent and having regard to the circumstances of the case, on the appellant's arguments alleging that the Parliament acted out of time as regards the establishment of the amounts receivable by the Parliament in respect of the appellant, from the perspective of the reasonable time principle.

98 Accordingly, the objections of the Parliament set out in paragraph 92 of this judgment must be rejected, and the Court must consider whether the fourth part of the appellant's fourth ground of appeal, in which the appellant criticises the General Court for having disregarded the scope of the reasonable time principle, is well founded.

99 In that regard, it must be observed that the reasonableness of a period of time is to be appraised in the light of all of the circumstances specific to each case and, in particular, the importance of the case for the person concerned, its complexity, the various procedural stages which the EU institution followed and the conduct of the parties in the course of the procedure (see, to that effect, judgments of 15 July 2004 in *Spain* v *Commission*, C-501/00, EU:C:2004:438, paragraph 53; 7 April 2011 in *Greece* v *Commission*, C-321/09 P, EU:C:2011:218, paragraph 34; and 28 February 2013 in *Review of Arango Jaramillo and Others* v *EIB*, C-334/12 RX-II, EU:C:2013:134, paragraph 28 and the case-law cited).

100 The reasonableness of a period cannot be determined by reference to a precise maximum limit determined in an abstract manner (judgments of 7 April 2011 in *Greece* v *Commission*, C-321/09 P, EU:C:2011:218, paragraph 33, and 28 February 2013 in *Review of Arango Jaramillo and Others* v *EIB*, C-334/12 RX-II, EU:C:2013:134, paragraphs 29 and 30).

101 As regards the specific background of the particular case, the Court has previously stated that Article 73a of Regulation No 1605/2002, which corresponds, in essence, to Article 81 of Regulation No 966/2012, is intended to limit in time the possibility of recovering European Union entitlements in respect of third parties, in order to satisfy the principle of sound financial management and fixes, from that perspective, a period of five years, and that Article 85b of Regulation No 2342/2002, which corresponds to Article 93(1) of Delegated Regulation No 1268/2012, provides that the limitation period begins to run on the expiry of the deadline communicated to the debtor in the debit note (see, to that effect, judgment of 13 November 2014 in *Nencini* v *Parliament*, C-447/13 P, EU:C:2014:2372, paragraph 45).

102 Taking into consideration Article 73a, it has been held that, where the applicable texts are silent as regards the deadline for an EU institution to communicate a debit note to a debtor, that period must, in principle, be presumed to be unreasonable where that communication takes place outside a period of five years from the point at which the institution was, in normal circumstances, in a position to claim its debt (see, to that effect, judgment of 13 November 2014 in *Nencini* v *Parliament*, C-447/13 P, EU:C:2014:2372, paragraphs 48 and 49).

103 In that regard, it must be held that, having regard to Article 78(1) and (2) of Regulation No 966/2012 and to Articles 81 and 82 of Delegated Regulation No 1268/2012, an EU institution is in a position, in normal circumstances, to claim its debt from the date when supporting documents capable of identifying a given claim as being certain, of a fixed amount and due are available to that institution or when such supporting documents would have been available to it, had it acted with the necessary diligence.

104 In that regard, it must be stressed that a period of more than five years which has elapsed between the date when an institution was, in normal circumstances, in a position to claim its debt and the date when a debit note is communicated cannot, automatically, mean that there is a breach of the reasonable time principle. It is also appropriate, in the light of the case-law cited in paragraph 99 above, to consider whether such a period may be explained by the particular facts of the case.

105 That is why, in paragraph 49 of the judgment of 13 November 2014 in *Nencini* v *Parliament* (C-447/13 P, EU:C:2014:2372), the Court referred to the five-year period with which that paragraph is concerned, not as an upper limit beyond which the communication by an institution of a debit note to a debtor should, irrespective of the facts of the case, be regarded as necessarily having taken place within an unreasonable period of time, but in support of the presumption, which is, it may be added, rebuttable, that is referred to in paragraph 102 of this judgment.

106 Similarly, the communication of such a debit note within a period that is shorter than that five-year period, in a case that is less complex, where what is at issue for the person concerned is significant and where the EU institution has not shown due diligence, inter alia as regards the obtaining of supporting documents capable of identifying the claim as being certain, of a fixed amount and due, may not meet the requirements of the reasonable time principle. In such a case, the debtor would bear the burden of proving that a period shorter than the five-year period was unreasonable.

107 In the present case, by the decision at issue, the Parliament wishes to obtain reimbursement from the appellant of an additional amount which was paid to him on the basis of the parliamentary assistance allowance, over and above the amount already reclaimed by the Secretary-General's decision of 4 March 2009 to claim reimbursement. That additional claim for reimbursement was made following the submission, on 14 October 2011, of the OLAF Report, which indicates that none of the appellant's three assistants carried out the work of a parliamentary assistant. In those circumstances, the Court considers that the Parliament was, in the present case, in a position in normal circumstances to claim its debt, in the sense of paragraph 103 above, at the date when that report was submitted. Since the debit note at issue was issued by the Parliament on 5 July 2013, the period within which the debit note was communicated to the appellant cannot be regarded as being unreasonable.

108 Consequently, in accordance with the case-law cited in paragraph 99 of this judgment, the General Court was correct to find, and did not thereby err in law, that the Parliament, in adopting the decision at issue and the debit note at issue, was not in breach of its obligations under the reasonable time principle, in the light of the facts of the case, in particular those relating to the conduct and diligence of the EU institution in its management of the procedure that led to the adoption of that decision and that debit note.

109 In the light of the foregoing, the fourth part of the fourth ground of appeal relied on by the appellant in support of his appeal is unfounded.

110 The fourth ground of appeal must therefore be rejected in its entirety.

The fifth ground of appeal

111 By his fifth ground of appeal, the appellant criticises the General Court for having dismissed his action for annulment of the debit note at issue, whereas it should have recognised that the sums claimed in the decision at issue were time-barred and, accordingly, have cancelled that note.

112 The Parliament submits that the line of argument developed by the appellant in this ground of appeal amounts to no more than a mere repetition of what was pleaded before the General Court. In any event, it submits that that line of argument should be rejected since the appellant is wrong to claim that the recovery of the sums referred to in the decision at issue was time-barred.

113 As regards the fifth ground of appeal, suffice it to state that the rejection of the fourth ground of appeal alleging disregard of the rules on limitation and of the reasonable time principle necessitates, as a consequence and on the same grounds, the rejection of the fifth ground of appeal.

114 Since none of the grounds of appeal can be upheld, the appeal must be dismissed in its entirety.

Costs

115 Under Article 184(2) of the Rules of Procedure of the Court, where the appeal is unfounded, the Court is to make a decision as to costs.

116 Under Article 138(1) of those Rules of Procedure, which applies to the procedure on appeal by virtue of Article 184(1) of those rules, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

117 Since the appellant has been unsuccessful and the Parliament has applied for costs to be awarded against the appellant, he is to be ordered to bear the costs.

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

1. Dismisses the appeal;

2. Orders Mr Jean-Charles Marchiani to pay the costs.

[Signatures]