Reports of Cases

JUDGMENT OF THE GENERAL COURT (Appeal Chamber)

14 January 2016*

(Appeal — Civil service — Contract staff — Reports procedure — Career development report — 2010 appraisal procedure — Dismissal of the action at first instance — Time-limit for submission of the defence — Extension — Exceptional circumstances — Article 39(2) of the Rules of Procedure of the Civil Service tribunal — Lawfulness of the appraisal procedure)

In Case T-94/13 P,

APPEAL brought against the judgment of the European Union Civil Service Tribunal (Second Chamber) of 11 December 2012 in *Ntouvas* v *ECDC* (F-107/11, ECR-SC, EU:F:2012:182), and seeking to have that judgment set aside,

Ioannis Ntouvas, residing in Agios Stefanos (Greece), represented by V. Kolias, lawyer,

appellant,

the other party to the proceedings being

European Center for Disease Prevention and Control (ECDC), represented initially by R. Trott, and subsequently by J. Mannheim et A. Daume, acting as Agents, assisted by D. Waelbroeck and A. Duron, lawyers,

defendant at first instance,

THE GENERAL COURT (Appeal Chamber),

composed of M. Jaeger, President, S. Papasavvas and S. Frimodt Nielsen (Rapporteur), Judges,

Registrar: E. Coulon,

having regard to the written part of the procedure,

gives the following

Judgment

1 By his appeal, brought under Article 9 of Annex I to the Statute of the Court of Justice of the European Union, the appellant, Mr Ioannis Ntouvas, requests the General Court to set aside the judgment of the European Union Civil Service Tribunal (Second Chamber) of 11 December 2012 in *Ntouvas* v *ECDC* (F-107/11, ECR-SC, EU:F:2012:182) ('the judgment under appeal') and to annul his appraisal report in respect of the 2010 appraisal procedure.

* Language of the case: English.

Facts

2 The factual background to the dispute is set out as follows in paragraphs 13 to 26 of the judgment under appeal:

‘13 Following publication of a vacancy notice, the applicant was recruited on 1 January 2010 as a member of the contract staff in function group IV, grade 14, within the “Legal and Procurement” section of the “Management and Coordination” unit of the ECDC, as “legal assistant”.

14 According to his job description, as set out in the vacancy notice referred to in the preceding paragraph, the applicant was to report to the legal advisor and was responsible for the following tasks:

“– [a]ssisting and supporting in personal [d]ata [p]rotection tasks ...;

– [a]ssisting and supporting in legal questions and administrative issues arising in the context of an European [r]egulatory [a]gency …;

– [c]ontributing to the development of a legal data base;

– [d]eveloping/adapting internal procurement procedures and templates as required;

– [c]ontributing to the quality control of procurement activities;

– [s]upporting the monitoring of procurement activities; and

– [p]erforming any other relevant activities and tasks that may be requested by the [h]ead of [u]nit.”

15 On 21 September 2010, a new description of the applicant’s job was prepared and co-signed by the applicant and Ms A, head of the “Legal and Procurement” section and the applicant’s line manager. That document also referred to Mr B as the applicant’s substitute.

16 On 14 December 2010, the applicant’s title was renamed “Legal Officer”.

17 Under Article 8(3) and (4) of ... Implementing rule [No 20 on Appraisals], the applicant produced a “self-assessment” on 24 January 2011, which was followed, on 27 January 2011, by an “appraisal dialogue” between the applicant and Ms A.

18 On 8 February 2011, Ms A compiled the applicant’s draft appraisal report in respect of the period from 1 January 2010 to 31 December 2010. It is apparent from that draft that the applicant’s overall efficiency was considered to be “above the levels required for the post”, which corresponded to the third highest appraisal on a scale of seven possible appraisal levels.

19 From 9 February 2011, Ms A took leave, following which she did not return to her post due to her subsequent resignation from the ECDC.

20 On 15 February 2011, the applicant refused to accept the appraisal report on grounds of a lack of factual basis, failure to take account of important facts concerning his work, the impossibility of attaining one objective and factual error.

21 Following from the dialogue which she had had with the applicant on 23 February 2011, Ms C, the applicant's countersigning officer, who also acted as reporting officer from 13 April 2011, issued a report on 15 April 2011 confirming the draft appraisal report. That report was challenged by the applicant on 2 May 2011.

22 The Joint Committee for Appraisals ("the Joint Committee"), to which the matter was referred under Article 8(10) of the Implementing rule, delivered an opinion on 30 June 2011 confirming the appraisal report.

23 In its decision of 5 July 2011, the director of the ECDC, acting as appeal assessor, confirmed the Joint Committee's opinion, thereby finalising the applicant's appraisal report.

24 On 21 July 2011, the applicant filed a complaint with the Authority Authorised to Conclude Contracts ("AACC") against the decision of 5 July 2011.

25 By decision of 9 September 2011, the AACC rejected the complaint.

26 At the hearing, the defendant informed the Tribunal that the applicant was, with effect from 1 April 2012, no longer working at the ECDC. '

Procedure before the Civil Service Tribunal

3 By application lodged at the Registry of the Tribunal on 18 October 2011, the appellant brought an action, registered as Case F-107/11, seeking, essentially, the annulment of his appraisal report in respect of 2010.

4 The appellant raised four pleas in support of his claims, alleging, respectively, infringement of procedural rules, unlawful assessment of his conduct, factual error and manifest error of assessment.

5 By letter of 11 January 2012, the European Center for Disease Prevention and Control (ECDC) requested an extension of the time-limit for lodging the defence, fixed at 17 January 2012, on the grounds that, because of an incident which had occurred in its general service for the distribution of mail, the application served on 7 November 2011 was only delivered to the director of the ECDC on 11 January 2012. By letter of 12 January 2012, the Tribunal Registry informed the ECDC that, having regard to the circumstances mentioned in its letter of 11 January 2012, the time-limit for lodging the defence had been extended until 7 February 2012. By letter of the same day, the appellant was informed of that extension.

6 The defence was lodged at the Tribunal Registry on 7 February 2012. That pleading was served on the appellant on 24 February 2012.

7 By letter of 5 June 2012, the Tribunal informed the appellant that the written part of the procedure had been closed and that a decision had been made to open the oral part of the procedure, the hearing being arranged for 5 July 2012.

8 By letter of 13 June 2012, the appellant submitted observations calling on the Tribunal to declare the defence inadmissible. Those observations were included in the file and, by letter of 22 June 2012, the Registry of the Tribunal informed the parties of the Tribunal's decision to invite the ECDC to state its views at the hearing regarding the appellant's observations.

9 In response to a question put by the Tribunal at the hearing, the appellant specified that his letter of 13 June 2012 was to be interpreted as a request for judgment by default. The appellant also requested the Tribunal to order the defendant to pay all the costs even if it were to decide to dismiss his action.

Judgment under appeal

10 By the judgment under appeal, the Tribunal dismissed the action and ordered the appellant to bear his own costs and to pay those incurred by the ECDC.

11 First of all, when considering the admissibility of the action and its subject-matter, the Tribunal ruled, inter alia, on the appellant's request that the defence be declared inadmissible.

12 In this connection, the Tribunal observed that, in his observations of 13 June 2012, the appellant had contested the extension granted to the ECDC to lodge its defence, claiming, essentially, that the circumstances put forward by the ECDC in support of its request were not exceptional within the meaning of Article 39(2) of the Tribunal's Rules of Procedure.

13 In response to those claims, the Tribunal stated the following:

> '39 First ..., it is sufficient to observe that, pursuant to Article 39(2) of the Rules of Procedure, on a reasoned application from the defendant, the President may assess whether the circumstances on which such an application is based are exceptional and grant an extension of the time-limit without hearing the applicant ... That was the case in the present instance and the arguments put forward by the applicant cannot establish that the Rules of Procedure were not complied with, since the application for an extension was made before the time-limit for submitting the defence expired. Second, the Tribunal notes that the ECDC was granted, exceptionally, an extension of the time-limit within which to lodge the defence until 7 February 2012 and that the ECDC lodged the defence within the time-limit which it had been set by the Tribunal.
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> 40 Consequently, the request that the Tribunal declare the defence inadmissible must be rejected as unfounded.
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> 41 In addition, contrary to the requirements of Article 116 of the Rules of Procedure, the observations of 13 [June] 2012, which moreover do not in any way refer to that provision, do not contain any request by the applicant for judgment by default. Even if those observations could be considered to be an application for judgment by default within the meaning of that article, such an application must be rejected as devoid of any factual basis since, as the Tribunal has noted, the defence was lodged within the prescribed period.'

14 The Tribunal went on to reject the pleas in law raised in support of the claim for annulment of the appraisal report in respect of 2010.

15 First, the Tribunal ruled out the plea alleging infringement of procedural rules by rejecting, on the following grounds, the three submissions set out in that connection:

> '58 So far as concerns the first submission in this plea, the Tribunal notes at the outset that the applicant merely claims that the management and recruitment of staff are vitiated by supposed irregularities, without, however, adducing any evidence of those irregularities.
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> 59 Next, the Tribunal notes that the applicant has not provided any evidence that might prove that there is a conflict of interests within the meaning of Article 9(6) of ... Implementing rule [No 20 on Appraisals], which provides that there is a conflict of interests where the chair or a member of the Joint Committee is also the reporting officer, countersigning officer or appeal assessor for the staff member under appraisal or where the staff member under appraisal, acting on the authority of the Staff Committee or as a representative of a trade union or staff association, has been in contact with the chair or one of the members on matters of personnel management. At no time did the applicant claim that one of those two situations had occurred in the present case.

60 It follows that the first submission must be rejected.

61 In the light of the applicant's arguments, the second submission must be interpreted as raising a plea of illegality on the grounds of the lack of signature and publication of the Joint Committee's Rules of Procedure and on the grounds that the authority which adopted them was not competent to do so.

62 It is settled case-law that, for a plea of illegality to be declared admissible, the general measure which it is sought to have declared unlawful must be applicable, directly or indirectly, to the issue with which the application is concerned and there must be a direct legal connection between the contested individual measure and the general measure which it is sought to have declared unlawful ... Those conditions are not met in the present case, since the Joint Committee's Rules of Procedure do not constitute the legal basis of the applicant's appraisal report and do not have a direct legal connection with the act against which the action has been brought ... The abovementioned plea of illegality must therefore be declared inadmissible.

63 So far as concerns the third submission, the applicant merely challenges the fact that the Joint Committee did not take into consideration the correct conduct of the procedure without however putting forward any argument capable of substantiating [his] claims, so that that submission must be rejected as inadmissible pursuant to Article 35(1)(e) of the Rules of Procedure.

64 On the other hand, it must be stated that the Joint Committee's opinion, although in summary form, mentions a dialogue taking place between the various stakeholders and the delay with which the countersigning officer adopted her decision and notes that, in the light of the documents which were submitted to it, the assessment made of the ability, efficiency and conduct in the service of the applicant is not inappropriate. It follows that the third submission must also be rejected. '

16 Secondly, the Tribunal, on the following grounds, ruled out the plea alleging that the assessment made of the appellant's conduct was unlawful:

'66 The applicant submits that the reporting officer did not bring to his notice during the reference period the problems in his conduct which are highlighted in the appraisal report, which states that "[the applicant] would gain from enhanced team spirit and interpersonal skills" and that he "could further progress in interpersonal and communication skills as well as team spirit".

67 Essentially, in the applicant's view, the most appropriate means of remedying his behavioural weaknesses would have been to inform him of them before the appraisal report was drawn up, so that bringing them to his notice at the time when his appraisal report was drawn up infringes the principle of proportionality.

68 In this connection, it must be recalled that, according to case-law, the improvement of the conduct in the service of the staff member under appraisal is indeed an objective which the appraisal report aims to meet ... Thus, even if it were to be established that the reporting officer did not bring to the applicant's notice the weaknesses in his conduct in the service during the reference period, the ECDC cannot be accused of having acted unlawfully on account of the fact that the reporting officer's observations on the applicant's conduct in the service are included in the appraisal report. '

17 Thirdly, the Tribunal held on the following grounds that the plea alleging factual error was devoid of any factual basis and therefore had to be rejected:

> ‘70 The applicant alleges that the ECDC committed a factual error in stating that the legal team consisted of the head of section and two legal officers. The applicant considers himself to have been the only legal officer, as Mr B was only an interim “legal assistant”, and could not be considered to be a legal officer. It follows from that error that the applicant’s workload appears in the appraisal report to be less than it was in actual fact, which affected the overall mark given in his appraisal.
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> 71 The Tribunal observes in this connection that, in the defence, the defendant submitted, without having been contradicted at the hearing by the applicant, that until 14 December 2010 the applicant’s post was named “legal assistant”. From that date onwards, that post was designated as being that of a “legal officer”, without, nevertheless, that having entailed any change in the tasks allocated to the applicant. Thus, for almost all of the reference period, the applicant and Mr B had the same title, that of “legal assistant”, even if Mr B was not a member of the contract staff like the applicant but was employed by the ECDC on the basis of a short term contract concluded under a framework contract between the ECDC and a Swedish interim employment agency. It follows that that plea lacks a factual basis and the applicant has not been able to demonstrate that the ECDC committed any error in the assessment of his workload.
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> 72 Moreover, the applicant has not even attempted to demonstrate that the change in the title of his post resulted in a substantial increase in his workload in respect of the period from 14 December 2010 to 31 December 2010, in order to show a factual error as regards the description of the service. ’

18 Fourthly, after observing that, although in the appellant’s pleadings certain submissions were presented as concerning an alleged infringement of the obligation to state reasons, they had to be interpreted as relating to a manifest error of assessment, the Tribunal rejected the plea, thus interpreted, on the following grounds:

> ‘78 [I]t must be pointed out that it is not for the Tribunal to substitute its assessment for that of the persons responsible for appraising the work of the person under appraisal, since the EU institutions have a wide discretion in the appraisal of the work of their officials and staff members ... Thus it is not for the Tribunal, save in the case of factual errors, manifest error of assessment or misuse of powers, to review the merits of the assessment made by the administration of the occupational abilities of an official or a staff member where it involves complex value judgments which, by their very nature, are not amenable to objective verification ...
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> 79 In the first place, the Tribunal observes that the remarks concerning the applicant’s behaviour must be read in the context in which they were made. In particular, the reporting officer noted the positive aspects of the applicant’s performance, stating, inter alia, that he performed very well, demonstrating a high level of organisation and a strong ability to carry out his tasks in a timely and effective manner. In addition, the reporting officer observed that the applicant successfully contributed to the activities of the legal team and that his advice was very much appreciated. It follows that, far from being statements relating to alleged “behavioural weaknesses” or from being comparable to “negative remarks” as the applicant claims, the disputed remarks must be regarded as suggestions indicating to the applicant the fields in which he could further improve his performance, which was already clearly appreciated by his superiors.

80 In the second place, so far as concerns the alleged psychological pressure to which the applicant was subject, this related to Ms A's supposed wish to replace the applicant by Mr B. However, the Tribunal notes that the applicant merely makes assumptions without producing any evidence capable of proving his claims.

81 The only considerations put forward by the applicant in support of his arguments concern the alleged irregularities in Mr B's recruitment procedure, the allocation to Mr B of files which were at the level of responsibility of an administrator and the publication of a new vacancy notice, the vacancy notice ECDC/CA/IV/2010/RMU-LO, concerning a post which the applicant considered to be identical to his own. Even if those factual elements could be regarded as indications of an intention to replace the applicant by Mr B, it is clear from the file that they have not been proved by the applicant.

82 First, in respect of the alleged irregularities in the recruitment of Mr B, the Tribunal has already observed in paragraph 58 above that the applicant has not provided any evidence of those irregularities. Even if it is established that Mr B was allocated files at the level of responsibility of an administrator, that is perfectly consistent with the functions carried out by Mr B, which were those of a "legal assistant", like the applicant. Second, the applicant's job description was set out in the vacancy notice relating to his post, confirmed by the report at the end of his probationary period and then amended by the description signed by the applicant himself on 21 September 2010. Also, the vacancy notice ECDC/CA/IV/2010/RMU-LO did not concern the same post as that of the applicant, as the different descriptions of the two posts show.

82 In the third place, so far as concerns the applicant's workload, it must be stated that this was taken into consideration in the appraisal report, which indicates that his efficiency was above the level required for the post. In this connection, the applicant claims that he was recruited to deal with "all aspects of EU administrative law" but had demonstrated knowledge at a "level well above", having dealt with a very high number of files on data protection and on copyright law. However, it is sufficient to observe that the issues which related to data protection and to copyright were expressly provided for in the applicant's job description, so that the fact that he took care of those matters did not exceed his job description.

84 In the fourth place, the appraisal report mentions that the achievement of the objective relating to the implementation of a computer application did not only depend upon the applicant's activity but also on other factors, such as organisational changes within the unit and the existence of other, more pressing, objectives, so that the statement that that specific objective had not been achieved is merely a finding of fact and not an assessment of the applicant's efficiency. '

Procedure before the General Court and forms of order sought

19 By a pleading lodged at the Registry of the General Court on 17 February 2013, the appellant brought the present appeal. On 27 May 2013, the ECDC lodged a statement in response.

20 On 18 June 2013 and 19 August 2013, the appellant and the ECDC, respectively, lodged a reply and a rejoinder.

21 Acting on a report from the Judge-Rapporteur, the General Court (Appeal Chamber) noted 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, pursuant to Article 146 of its Rules of Procedure of 2 May 1991.

22 The appellant claims that the Court should:

— set aside the judgment under appeal;

— annul the decision contested at first instance;

— order the ECDC to pay the costs of the present proceedings and of the proceedings before the Tribunal.

23 The ECDC contends that the Court should:

— dismiss the appeal;

— order the appellant to pay the costs.

Law

24 The appellant relies on fourteen grounds in support of his appeal.

25 The first five grounds concern the circumstances in which the extension of the time-limit for lodging the defence took place and the inferences drawn from that extension by the Tribunal in the judgment under appeal.

26 The other nine grounds concern the Tribunal's assessment with regard to the pleas in law put forward before it for the purposes of obtaining the annulment of the appellant's appraisal report in respect of 2010.

The grounds concerning the circumstances in which the extension of the time-limit for lodging the defence took place and the inferences drawn from that extension

Admissibility

27 The ECDC submits that the extension of the time-limit for lodging the defence granted by the President of the Tribunal in the present case is a measure of judicial administration, which is not subject to appeal as it constitutes neither a final decision of the Tribunal nor a decision disposing of substantive issues in part nor a decision disposing of a procedural issue concerning a plea of lack of jurisdiction or inadmissibility. Consequently, the grounds put forward by the appellant against such a decision should be rejected as manifestly inadmissible.

28 It must be recalled that, under Article 11 of Annex I to the Statute of the Court of Justice, an appeal to the General Court must be limited to points of law and may lie on the grounds, inter alia, of a breach of procedure before the Tribunal which adversely affects the interests of the appellant, as well as the infringement of Union law by the Tribunal.

29 In the present case, by his first four grounds of appeal, the appellant submits, essentially, that the Tribunal committed breaches in the procedure which gave rise to the judgment under appeal adversely affecting his interests, namely the possibility of requesting judgment by default.

30 Contrary to what the ECDC contends, in an appeal brought against a judgment of the Tribunal, measures taken by the Tribunal during the proceedings which could affect the interests of the party challenging them may be the subject of the General Court's review of the lawfulness of the procedure under Article 11 of Annex I to the Statute of the Court of Justice.

31 The General Court has thus already ruled on an extension of the time-limit for lodging the defence granted by the Civil Service Tribunal (judgment of 13 December 2012 in *Commission* v *Strack*, T-197/11 P and T-198/11 P, ECR-SC, EU:T:2012:690, paragraphs 92 and 93).

32 Accordingly, the plea of inadmissibility raised by the ECDC against the first four grounds of appeal raised by the appellant must be rejected.

33 However, it must be observed that, by his second and third grounds of appeal, the appellant is essentially seeking to call into question the Tribunal's findings relating, first, to the date of service to the ECDC of the application at first instance and, secondly, to the factual circumstances relied upon by the ECDC as reasons for its application for an extension.

34 It must be recalled in this connection that, under Article 11 of Annex I to the Statute of the Court of Justice, an appeal before the General Court is limited to points of law. It is settled case-law that the appraisal of the facts by the first instance court does not, except where those facts have been distorted, constitute a question of law which, as such, is subject to review by the General Court on appeal. Such distortion must be obvious from the documents on the Court's file, without there being any need to carry out a new assessment of the facts and the evidence (see judgment of 26 June 2014 in *Marcuccio* v *Commission*, T-20/13 P, ECR-SC, EU:T:2014:582, paragraph 50 and the case-law cited).

35 Consequently, the second and third grounds of appeal must be rejected as inadmissible, in so far as they seek to challenge the assessment of the facts made by the Tribunal and in so far as, in any event, even if it were to be considered that, by his arguments, the appellant seeks to claim that the facts have been distorted, such distortion is not obvious from the documents on the file.

The first and fourth grounds of appeal, concerning the extension of the time-limit for lodging the defence

36 By his first and fourth grounds of appeal, the appellant challenges the extension of the time-limit for lodging the defence, granted by the Tribunal although, he submits, no supporting evidence was adduced by the ECDC of the circumstances relied on (first ground of appeal) and those circumstances are not exceptional (fourth ground of appeal).

37 Article 39(2) of the Tribunal's Rules of Procedure provides that, on a reasoned application, the President of the Tribunal may, in exceptional circumstances, extend the time-limit for lodging the defence.

38 In the present case, it is apparent from the file that, by letter of 11 January 2012, the ECDC applied for an extension of the time-limit for lodging the defence on the following grounds:

'[D]ue to an unfortunate set of circumstances we learned of the served application only [today], whereas it had arrived at the general [mail distribution] service ... of the Agency on 7 November 2011 where it remained until [today]. This unfortunate incident is due to the fact that the above mentioned service is recent and suffers from inexperience as to the reception and distribution of applications sent by your Tribunal.'

39 In addition, it is apparent from paragraph 29 of the judgment under appeal that, by e-mail of 12 January 2012, the application for an extension was granted and the time-limit for lodging the defence was extended until 7 February 2012, the date on which the ECDC lodged its statement in defence. The appellant was informed of that extension by e-mail of 12 January 2012.

40 Furthermore, the Tribunal rejected, for the reasons set out in paragraph 39 of the judgment under appeal, the appellant's request, made in the letter of 13 June 2012, seeking that the defence be declared inadmissible.

41 First, it must be noted that the Tribunal rightly applied Article 39(2) of its Rules of Procedure, which provides, as the sole procedural requirement, that the application for an extension must be reasoned.

42 The Tribunal thus did not commit any breach of procedure by accepting the ECDC's letter of 11 January 2012 as an application for extension under Article 39(2) of the Tribunal's Rules of Procedure, since that application was received before the expiry of the time-limit initially prescribed and it was reasoned.

43 The appellant's arguments alleging that the Tribunal infringed the rules on the burden of proof and the taking of evidence cannot affect that finding.

44 It is for the defendant to state reasons for its application under Article 39(2) of the Rules of Procedure of the Tribunal by submitting the arguments which it considers relevant and substantiating those arguments, where it feels that is necessary, by evidence. However, such evidence is not necessary for the application to be held valid.

45 Moreover, under Article 39(2) of the Rules of Procedure of the Tribunal, the President of the Tribunal has the power to decide on an extension of the time-limit for lodging the defence, which he may grant in exceptional circumstances.

46 Having regard to the wording and scheme of that provision, the President of the Tribunal must be allowed a wide discretion so far as concerns the circumstances put forward as exceptional and whether such an extension should be granted (see, to that effect, judgment in *Commission* v *Strack*, paragraph 31 above, EU:T:2012:690, paragraph 92).

47 Thus the Tribunal held, in paragraphs 39 and 40 of the judgment under appeal, that the President of the Tribunal, in the exercise of the power provided for in Article 39(2) of its Rules of Procedure, had assessed whether the circumstances relied upon in support of the application for an extension were exceptional and that, on that basis and having regard to the fact that the Rules of Procedure had been complied with, it was appropriate to reject the request seeking that the defence submitted within the time-limit prescribed, *post* extension, be declared inadmissible.

48 In those circumstances and inasmuch as, in the present case, no breach in the procedure provided for in Article 39(2) of the Rules of Procedure of the Tribunal has been found, it must be held that the Tribunal did not err when it ruled that, in essence, its President had correctly exercised the power conferred on him by the Rules of Procedure.

49 Consequently, the first and fourth grounds of appeal cannot be upheld.

The fifth ground of appeal, concerning the rejection of the application for judgment by default

50 Since the four grounds of appeal relied on by the appellant against the extension of the time-limit for lodging the defence have been rejected and no breach of procedure adversely affecting the appellant's interests has been found, it must be held that the Tribunal did not err in law in holding that the time-limit for lodging the defence of 7 February 2012 had been validly prescribed.

51 Inasmuch as the defence was lodged within the prescribed time-limit, as paragraph 6 above indicates, the pre-condition in order to allow the appellant to make use of the possibility, for which provision is made in Article 116 of the Rules of Procedure of the Tribunal, to apply for judgment by default, was not met in the present case.

52 Accordingly, the Tribunal did not err when it held, in paragraph 41 of the judgment under appeal, that, if such an application had been validly submitted by the appellant, it would have had to have been rejected as devoid of any factual basis, since the defence was lodged within the prescribed time-limit.

53 The fifth ground of appeal raised by the appellant must therefore be rejected.

The grounds relating to the Tribunal's assessment concerning the request for annulment of the appellant's appraisal report in respect of 2010

The sixth and seventh grounds of appeal relating to the existence of a conflict of interests within the Joint Committee

54 Under Article 11 of Annex I to the Statute of the Court of Justice, an appeal before the General Court is limited to points of law. Thus, the assessment of the facts by the court at first instance does not constitute, save where the clear sense of those facts has been distorted, a point of law which is subject, as such, to review by the General Court on appeal.

55 The sixth ground of appeal raised by the appellant seeks to challenge the Tribunal's assessment of whether the post occupied by the appellant was, in essence, the same as that advertised in vacancy notice ECDC/CA/IV/2010/RMU-LO. No distortion of the facts was alleged.

56 Accordingly, the sixth ground of appeal raised by the appellant must be rejected as inadmissible.

57 By his seventh ground of appeal, the appellant submits that the Tribunal erroneously held that there was no conflict of interests within the Joint Committee consulted in the contested appraisal procedure. He thereby, first, criticises the Tribunal for rejecting, on grounds of lack of evidence, his arguments as to irregularities in the recruitment procedure for a new legal assistant whereas he had identified in the originating application the relevant documents in the ECDC's possession, whose production should have been ordered by the Tribunal. Secondly, the appellant claims that the Tribunal erred in applying solely Article 9(6) of Implementing rule No 20 on Appraisals ('the Implementing rule'), to the exclusion of the article he had relied on, namely Article 11a of the Staff Regulations of Officials of the European Union ('the Staff Regulations').

58 Under Article 11a of the Staff Regulations, '[a]n official shall not, in the performance of his duties ..., deal with a matter in which, directly or indirectly, he has any personal interest such as to impair his independence, and, in particular, family and financial interests'.

59 Under Article 9(6) of the Implementing rule, '[i]f the Chair or a member of the [Joint] Committee has a personal interest in a matter such as to impair his or her independence in the handling of that matter, he or she shall be replaced by the appropriate alternate member and refrain from participating in the work of the Committee[; a] conflict of interest is deemed to arise in particular where the Chair or member is also the reporting officer, countersigning officer or appeal assessor for the jobholder who has appealed to the Committee or where the jobholder, acting on the authority of the Staff Committee or as a representative of a trade union or staff association, has been in contact with the Chair or one of the members on matters of personnel management. '

60 The Tribunal, after setting out in paragraphs 50 and 51 of the judgment under appeal the arguments put forward by the appellant in relation to irregularities in the recruitment procedure which in his view gave rise to a conflict of interests within the Joint Committee, held, in paragraphs 58 and 59 of the judgment under appeal, that there was no evidence to support such arguments.

61 First, as the appellant has himself confirmed in the present appeal, in the application at first instance he merely provided references to documents which he claims that the ECDC possesses. It must be stated that he did not request the Tribunal to order the production of those documents. Furthermore, the appellant, by merely mentioning documents without in any way stating how those documents and the facts to which they refer might support his claims, cannot be regarded as adducing prima face evidence in support of those claims. Nor has he in any way stated how the production of such documents would have been decisive for the outcome of the proceedings. In those circumstances, the Tribunal cannot be criticised for not ordering the production of the documents in question.

62 It follows from the foregoing that the Tribunal did not err in finding that the arguments put forward by the appellant in relation to alleged irregularities vitiating the staff recruitment procedure at the ECDC were not adequately substantiated.

63 Secondly, it must be observed that it is apparent from the file that the arguments put forward by the appellant before the Tribunal are based on the completely unsubstantiated premise that the recruitment of an employee on an interim contract in the department in which the appellant worked was designed to allow that employee to gain relevant experience with a view to his recruitment as a member of the contract staff in response to the vacancy notice ECDC/CA/IV/2010/RMU-LO. The appellant submits that the aim of recruiting that second employee and integrating him into the department was in fact to remove the appellant from his post. He infers from this, without adducing any supporting evidence whatsoever, that he was placed under psychological pressure and, therefore, that there was a conflict of interests on the part of, at the least, the member of the Joint Committee responsible for the Human Resources department, who had taken part in those recruitment procedures. Such unsubstantiated claims cannot constitute evidence capable of demonstrating that any of the members of the Joint Committee had a conflict of interests for the purposes of Article 11a of the Staff Regulations.

64 Lastly, the Tribunal found, under Article 9(6) of the Implementing rule, specifically concerning the existence of a conflict of interests in connection with the activities of the Joint Committee, that the appellant had not claimed that either of the two situations specifically mentioned in that provision as examples of a conflict of interests had occurred, a finding which is not disputed by the appellant. Even if, as the appellant correctly maintains, that provision does not exclude other situations liable to generate a conflict of interests, the fact remains that, as stated in paragraph 63 above, the appellant has not submitted any cohesive and substantiated arguments which could establish the existence of a conflict of interests.

65 Accordingly, the Tribunal was fully justified in rejecting the submission put forward by the appellant relating to the alleged conflict of interests within the Joint Committee.

66 The seventh ground of appeal raised by the appellant must therefore be rejected as unfounded.

The eighth ground of appeal, alleging an incorrect assessment of the facts and a failure to examine a plea in law relating to the Joint Committee's Rules of Procedure

67 The appellant submits, in essence, that the Tribunal erred when, before rejecting it as inadmissible, it interpreted his plea concerning the lack of a signature on or publication of the Joint Committee's Rules of Procedure and the lack of competence of the authority which adopted them to do so as seeking to challenge the legality of those Rules, whereas that plea alleged infringement of an essential procedural requirement.

68 It is apparent from the file that, in the second submission of the first plea in law relied on by the appellant at first instance, the appellant claims that the Joint Committee acted contrary to the Implementing rule on the ground that the Rules of Procedure of that committee were neither signed nor published, and were adopted not by the Head of the Human Resources department but by the Chair of the Joint Committee. The appellant submits that such an infringement of those Rules of Procedure, which are supposed to ensure, in particular, transparency, fairness, the equal participation of staff representatives and a possibility of judicial review of the Committee proceedings, is prejudicial to his interests.

69 It must be observed that, as the Tribunal correctly noted in paragraph 61 of the judgment under appeal, the appellant was challenging the legality of the Committee's Rules of Procedure.

70 It is appropriate to recall in this connection the case-law according to which Article 277 TFEU expresses a general principle conferring upon any party to proceedings the right to challenge, for the purpose of obtaining the annulment of a decision addressed to that party or which is of direct and individual concern to it, the validity of previous acts of the institutions which, although they are not in the form of a regulation, form the legal basis of the decision under challenge, if that party was not entitled under Article 263 TFEU to bring a direct action challenging those acts by which it was thus affected without having been in a position to ask that they be declared void. That provision is not intended to enable a party to contest the applicability of any measure of general application in support of any action whatsoever, the general measure claimed to be illegal must be applicable, directly or indirectly, to the issue with which the action is concerned and there must be a direct legal connection between the contested individual decision and the general measure in question (see, to that effect, judgments of 6 March 1979 in *Simmenthal* v *Commission*, 92/78, ECR, EU:C:1979:53, paragraphs 39 and 40, and of 20 March 2002 in *LR AF 1998* v *Commission*, T-23/99, ECR, EU:T:2002:75, paragraphs 272 and 273).

71 Thus, even if the Joint Committee's Rules of Procedure could be regarded as a measure of general application, it would be necessary, for the purposes of challenging their validity with a view to obtaining the annulment of the contested appraisal report, for them to constitute the legal basis of that report and for there to be a direct legal connection between those Rules and that report. Having regard to the appraisal procedure, as described in paragraphs 2 to 10 of the judgment under appeal, and the conduct of that procedure in the present case, as described in paragraphs 13 to 23 of the judgment under appeal, reproduced in paragraph 2 above, the Tribunal was fully entitled to hold, in paragraph 62 of the judgment under appeal, that the Joint Committee's Rules of Procedure did not constitute the legal basis of the appraisal report and did not have a direct connection with that report. The Tribunal consequently did not err in law in rejecting as inadmissible the submission relating to the illegality of the Joint Committee's Rules of Procedure.

72 The eighth ground of appeal raised by the appellant must therefore be rejected.

The ninth and tenth grounds of appeal, relating to the verification of the appraisal procedure by the Joint Committee

73 By his ninth and tenth grounds of appeal, the appellant submits, in essence, that the Tribunal incorrectly held that the Joint Committee had performed the verifications incumbent upon it under Article 9(4) of the Implementing rule and that the statement of reasons for the opinion of that committee was adequate.

74 In paragraph 64 of the judgment under appeal, the Tribunal found that the Joint Committee's opinion, although in summary form, mentioned a dialogue taking place between the various stakeholders and the delay with which the countersigning officer had adopted her decision while noting that, in the light of the documents which had been submitted to it, the assessment made of the ability, efficiency and conduct in the service of the appellant was not inappropriate. Consequently, the Tribunal rejected the submission relating to the infringement of Article 9(4) of the Implementing rule.

75 Article 9(4) of the Implementing rule provides as follows:

'The Joint Committee may not take the place of the reporting officer or the countersigning officer as regards appraising the jobholder's performance. It shall verify that [reports] have been drawn up fairly and objectively, i.e. where possible on a factual basis and in accordance with these general implementing provisions and the appraisals guide. It shall verify in particular that the procedure laid down in Article 8 has been followed. To this end it shall carry out the necessary consultations and shall have at its disposal any working documents which may assist it in carrying out its work. '

76 It is apparent from the judgment under appeal that the Joint Committee's opinion was issued having regard to the facts as presented in the context of the appraisal dialogue which took place between the appellant, his line manager and the countersigning officer. In addition, the opinion refers to aspects of the procedure, in particular the fact that the time-limits were not observed by the countersigning officer. Lastly, the Committee states its view that there is no need to amend the appraisal report.

77 As it was correctly noted in paragraph 63 of the judgment under appeal, the appellant did not submit any information substantiating his claims concerning the alleged failure by the Joint Committee to verify that the appraisal procedure had been conducted properly. Under Article 35(1)(e) and (f) of the Tribunal's Rules of Procedure, the applicant must include in the application the pleas in law and the arguments of fact and law relied on and any necessary supporting evidence for those pleas and arguments. The Tribunal therefore in no way reversed the burden of proof in reaching such a finding.

78 Furthermore, inasmuch as the appellant's arguments as to the purported failure by the Joint Committee to verify that the appraisal procedure had been conducted properly and as to the alleged errors vitiating that procedure are designed to call into question the Tribunal's findings made in paragraphs 63 and 64 of the judgment under appeal, it must be held that, since no distortion is claimed, those arguments are inadmissible in the present appeal proceedings, pursuant to the case-law cited in paragraph 34 above.

79 As regards the ground of appeal alleging that the statement of reasons for the Joint Committee's opinion was inadequate, it must be observed that the Tribunal impliedly held, when it found in paragraph 64 of the judgment under appeal that the Joint Committee's opinion, although in summary form, described the aspects verified by the Committee, that the statement of reasons for that opinion was adequate.

80 It is appropriate to recall, in this connection, the settled case-law according to which, first, the extent of the obligation to state reasons depends on the specific circumstances, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressee of the measure may have in obtaining explanations, and that in order to assess the adequacy of a statement of

reasons, it must be viewed in the factual and legal context in which the contested measure was adopted. Secondly, the reasons given for a decision are adequate if it was adopted in circumstances known to the staff member concerned which enable him to understand the scope of the measure concerning him (see judgment of 19 March 2010 in *Bianchi* v *ETF*, T-338/07 P, ECR-SC, EU:T:2010:103, paragraph 75 and the case-law cited).

81 Thus, in paragraph 64 of the judgment under appeal, the Tribunal rightly held, in essence, that the Joint Committee's opinion, although in summary form, mentioned the aspects of the appraisal procedure verified and in doing so took account of the facts apparent from the comments made, in particular by the appellant himself, in the dialogue forming part of that procedure. Having regard to the context in which that opinion was issued and to all the legal rules governing the appraisal procedure, the Tribunal did not err when it impliedly held that the opinion at issue clearly and unambiguously showed the Committee's reasoning.

82 The ninth and tenth grounds of appeal raised by the appellant must therefore be rejected.

The eleventh and thirteenth grounds of appeal, relating to the appraisal of the appellant's conduct

83 By his eleventh ground of appeal, the appellant submits that the Tribunal incorrectly interpreted as alleging a manifest error of assessment the submissions he had put forward concerning the inadequacy of the statement of reasons in the appraisal report with regard to the comments on his conduct. By his thirteenth ground of appeal, the appellant alleges, in essence, infringement of the principle of proportionality on account of those negative comments on his conduct.

84 It is settled case-law that a plea based on infringement of the obligation to state reasons is a separate plea from one based on a manifest error of assessment. The obligation to state reasons is a separate question from that of the merits of those reasons (see judgment of 9 September 2011 in *Dow AgroSciences and Others* v *Commission*, T-475/07, ECR, EU:T:2011:445, paragraph 245 and the case-law cited).

85 It is apparent from the judgment under appeal that, at first instance, the appellant in his fourth plea in law essentially objected to the fact that he was not informed during the period covered by the appraisal of the weaknesses for which he was criticised in the appraisal report, which would have enabled him to address them at that earlier stage. In the application at first instance, he reiterates the observations he made during the appraisal procedure concerning that assessment of his conduct.

86 Thus, in the light of what the appellant essentially claimed, the Tribunal was right, in paragraph 77 of the judgment under appeal, to interpret the submissions in question, including that relating to the weaknesses in the appellant's conduct, as relating to a manifest error of assessment.

87 Moreover, the inevitable conclusion is that the Tribunal duly took into account the appellant's arguments when it stated, in paragraph 74 of the judgment under appeal, that he was objecting to the fact that the ECDC had not provided any example of the behavioural weaknesses for which he had been criticised in the appraisal report.

88 The Tribunal also found, in paragraph 79 of the judgment under appeal, that the remarks concerning the appellant's behaviour, read in the context in which they were made, could not be regarded as relating to behavioural weaknesses or as comparable to negative remarks, but rather as suggestions indicating fields in which the appellant could improve his performance.

89 Inasmuch as the appellant's arguments relating to the lack of objectivity, fairness and proportionality in the appraisal of his conduct and to the irregular nature of the procedure in that regard seek to call into question that finding of fact by the Tribunal, they are inadmissible in the present appeal proceedings, pursuant to the case-law cited in paragraph 34 above.

90 In any event, pursuant to the settled case-law according to which it is not for the court at first instance to determine whether the assessment by the administration of the occupational abilities of an official is well founded when such an assessment involves complex value judgments which, by their very nature, are not amenable to objective verification (judgment of 31 January 2007 in *Aldershoff* v *Commission*, T-236/05, ECR-SC, EU:T:2007:27, paragraph 83), the appellant's arguments must be rejected since they seek to challenge the Tribunal's rejection of his submissions concerning a lack of objectivity and proportionality in the appraisal of his conduct, as well as concerning the inclusion in the appraisal report of remarks relating to his conduct.

91 Accordingly, the eleventh and thirteenth grounds of appeal raised by the appellant must be rejected in their entirety.

The twelfth and fourteenth grounds of appeal relating to the appellant's workload

92 Under Article 11(1) of Annex I to the Statute of the Court of Justice, an appeal to the General Court must be limited to points of law. Thus, the appraisal of the facts does not, except where the facts relied on before the Tribunal or the items of evidence supporting them have been distorted, constitute a point of law which, as such, is subject to review by the Court on appeal.

93 In his twelfth and fourteenth grounds of appeal, the appellant contests the findings made by the Tribunal concerning the factual issue relating to his workload. It must be stated that no distortion of the facts or evidence has been claimed by the appellant. Rather, the appellant's arguments seek a straightforward re-examination of the arguments submitted before the Tribunal, which the General Court does not have jurisdiction to undertake (see, to that effect, judgment in *Bianchi* v *ETF*, paragraph 80 above, EU:T:2010:103, paragraph 60).

94 In those circumstances, the twelfth and fourteenth grounds of appeal raised by the appellant must be rejected as inadmissible.

95 Since all the grounds of appeal put forward by the appellant have been rejected as inadmissible or unfounded, the appeal, including the appellant's second head of claim seeking annulment of the decision challenged at first instance, must be dismissed in its entirety.

Costs

96 Pursuant to Article 211(2) of the Rules of Procedure of the General Court, where the appeal is unfounded, that court is to make a decision as to costs.

97 Under Article 134(1) of those Rules, which apply to the procedure on appeal by virtue of 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.

98 Since the appellant has been unsuccessful and the ECDC has applied for costs, the appellant must bear his own costs and be ordered to pay those incurred by the ECDC in the present proceedings.

On those grounds,

THE GENERAL COURT (Appeal Chamber),

hereby:

1) **Dismisses the appeal;**

2) **Orders Mr Ioannis Ntouvas to pay the costs.**

Jaeger Papasavvas Frimodt Nielsen

Delivered in open court in Luxembourg on 14 January 2016.

[Signatures]