Reports of Cases

OPINION OF ADVOCATE GENERAL
RANTOS
delivered on 12 June 2025[1]

Case C-209/24 P

VP
v

European Centre for the Development of Vocational Training (Cedefop)

(Appeal – Civil service – Member of the temporary staff – Refusal to renew a contract for an indefinite period as a member of the temporary staff – Article 266 TFEU – Measures necessary to comply with a judgment delivered by the General Court annulling a measure – Distortion of evidence – Rules of Procedure of the Court of Justice – Article 151(1) – Legal professional privilege)

Introduction

1. By her appeal, VP ('the appellant') seeks to have set aside the judgment of the General Court of the European Union of 7 February 2024, *VP* v *Cedefop* (T-563/22, 'the judgment under appeal', EU:T:2024:72), by which the General Court dismissed her action seeking, first, the annulment of the decision of the Executive Director of the European Centre for the Development of Vocational Training (Cedefop) of 17 December 2021 ('the contested decision') and the decision of Cedefop's Appeals Committee of 17 June 2022 ('the decision rejecting the complaint') and, second, payment of compensation of EUR 5 000 000 for the non-material damage she claims to have suffered.

2. The contested decision and the decision rejecting the complaint were adopted by Cedefop following the judgment of the General Court of 16 December 2020, *VP* v *Cedefop* (T-187/18, 'the annulment judgment', EU:T:2020:613), which annulled, inter alia, decisions by which Cedefop had rejected a request submitted by the appellant for the renewal of her contract as a member of the temporary staff at that agency.

3. In accordance with the request of the Court of Justice, this Opinion will focus, first, on the first ground of appeal, alleging infringement of Article 266 TFEU and a manifest error of assessment, on the ground that the General Court distorted the evidence regarding the implementation of the annulment judgment, and, second, on Cedefop's request for a document containing an exchange of correspondence between two lawyers to be withdrawn from the case file.

[1] Original language: French.

Background to the dispute

4. On 16 November 2007, the appellant was recruited by Cedefop as a member of the temporary staff to perform the duties of Legal Advisor by fixed-term contract, which was renewed until 15 November 2017. Before the latter date, she submitted to the Executive Director of Cedefop a request for the renewal of her contract for an indefinite period from 16 November 2017,[2] which was refused by decision of the Director of 12 May 2017. The appellant submitted a complaint against that decision, which was rejected by decision of 1 December 2017 of Cedefop's Appeals Committee ('the Appeals Committee'), then brought an action before the General Court.

5. By the annulment judgment, the General Court, first, annulled the decisions of 12 May and 1 December 2017,[3] second, ordered Cedefop to pay a sum of EUR 30 000 as compensation for the material damage sustained by the appellant and a sum of EUR 10 000 as compensation for the non-material damage sustained by her, third, dismissed the action as to the remainder and, fourth, ordered Cedefop to pay the costs.

6. On 8 January 2021, the appellant sent the new Executive Director of Cedefop a request to implement that judgment by the renewal of her contract and, following an initial decision[4] which was annulled by the Appeals Committee,[5] the new Director, after inviting her to submit her comments,[6] informed her, by the contested decision, that because Cedefop had paid in full the sums ordered by the General Court in the annulment judgment, there were no grounds to adopt additional measures in implementation of that judgment. A complaint against that decision, which was lodged by the appellant on 3 March 2022, was rejected by the decision rejecting the complaint.

The procedure before the General Court and the judgment under appeal

7. By application lodged at the Registry of the General Court on 2 September 2022, the appellant claimed, first, that the contested decision, including the connected and inseparable decision not to renew her employment contract for an indefinite period, and the decision rejecting the complaint should be annulled, second, that compensation should be awarded for the non-material damage that she had suffered as a result of those decisions and, third, that Cedefop should be ordered to pay the costs.

[2] Her request was based on Article 90(1) of the Staff Regulations of Officials of the European Union ('the Staff Regulations'), applicable to members of the temporary staff under Article 46 of the Conditions of Employment of Other Servants of the European Union.

[3] The General Court found, in essence, first, that the decision of 12 May 2017 was vitiated by a manifest error of assessment in so far as the reason given by that decision for the non-renewal of the appellant's contract was the proposed abolition of Cedefop's Legal Service and, second, in so far as it could not be ruled out that that decision may have been based on a distinct ground relating to the loss of trust in the appellant on the part of the Director of Cedefop, that the decision had been adopted in breach of the right to be heard, the rights of the defence and Article 26 of the Staff Regulations.

[4] By letter of 2 March 2021 ('the decision of 2 March 2021'), the Executive Director had asserted that the implementation of that judgment required only compensation for material and non-material damage, since the effects of the unlawfulness found by the General Court would be reversed by the payment of the compensation.

[5] Following a complaint submitted by the appellant under Article 90(2) of the Staff Regulations, on 29 July 2021 the Chairman of the Appeals Committee sent her a letter in which he stated that the Committee had decided, at its meeting of 16 July 2021, to uphold her complaint of 28 April 2021 and to 'annul' the decision of 2 March 2021, since the appellant had not had the opportunity to provide comments on that decision. In the meantime, the General Court dismissed the action brought by the appellant against the decision of 2 March 2021 by order of 20 May 2022, *VP* v *Cedefop* (T-534/21, EU:T:2022:327).

[6] On 7 September 2021, the new Director sent the appellant a letter in which he informed her that he would not adopt the additional measures requested by the appellant in her request on the ground that the annulment judgment had already been implemented in full and invited her to submit her comments on the proposed decision, which she did on 15 October 2021.

8. The appellant raised five pleas in law,[7] the first of which was withdrawn by her at the hearing, while the other four were rejected by the General Court in the judgment under appeal.

9. With regard, specifically, to the second plea in law, alleging infringement of Article 266 TFEU and a manifest error of assessment, first of all, the General Court observed, in paragraph 36 of the judgment under appeal, that the decision rejecting the complaint supplemented the reasons for the contested decision, in so far as it based the refusal to renew the appellant's contract not only on considerations set out in the contested decision, but also on considerations relating to the internal operation of Cedefop, as summarised in paragraph 37 of the judgment under appeal.

10. Next, the General Court held in paragraph 38 of the judgment under appeal that Cedefop had complied with the obligation to resume the procedure for examining the appellant's request for the renewal of her contract and to adopt a new decision replacing the decision of 12 May 2017,[8] since it was apparent from the statement of reasons for the decision rejecting the complaint that Cedefop, when examining the appellant's complaint, had considered that she should not be reinstated for considerations relating to Cedefop's internal organisation. Furthermore, in paragraph 41 of the judgment under appeal, the General Court stated that the grounds forming the basis of the new refusal to grant the appellant's contract renewal request were distinct from those that formed the basis of the decision of 12 May 2017.

11. Lastly, in paragraphs 43 and 44 of the judgment under appeal, the General Court ruled, first, that the appellant had not disputed the merits of the reason relating to developments in Cedefop's internal organisation and, second, that that reason was sufficient in itself to justify the decision not to renew her contract. The General Court thus concluded, in paragraph 46 of the judgment under appeal, that the arguments by which the appellant disputed the merits of the ground that no measures had to be taken following the annulment judgment, since the payment of the compensation provided for in that judgment was sufficient to ensure that it was properly implemented, had to be rejected as ineffective.

The procedure before the Court of Justice and the forms of order sought

12. On 17 March 2024, the appellant lodged an appeal against the judgment under appeal. She claims that the Court should set aside that judgment, order Cedefop to pay compensation for the non-material damage which she has suffered, assessed *ex aequo et bono* at EUR 5 000 000, and order Cedefop to pay the costs relating both to the appeal proceedings and to the proceedings before the General Court.

13. Cedefop contends that the Court should dismiss the appeal, order Annex C.1 to be withdrawn from the case file and order the appellant to pay the costs.

[7] Those pleas in law alleged the lack of competence of the Appeals Committee (first plea in law), infringement of Article 266 TFEU and a manifest error of assessment (second plea in law), breach of the duty of care (third plea in law), breach of the principles of protection of legitimate expectations, equal treatment and non-discrimination (fourth plea in law) and misuse of power (fifth plea in law).

[8] I note that the wording of paragraph 38 of the judgment under appeal may give rise to confusion. The General Court observed, first of all, that 'the applicant submit[ted] that it was for Cedefop, in implementing the [annulment judgment], to resume the procedure … and to adopt a new decision ' without explicitly taking a view on whether any such obligation existed and, second, responded to that argument by stating that, 'however, it should be noted that, in the present case, Cedefop [had] complied with *that obligation*' (emphasis added).

Analysis

14. As I stated in the introduction to this Opinion, my analysis will focus on the first of the nine grounds of appeal raised by the appellant, alleging a distortion of the evidence in the case file,[9] and the request made by Cedefop for Annex C.1 to be withdrawn from the case file.

First ground of appeal

15. By her first ground of appeal, after maintaining that in paragraph 38 of the judgment under appeal the General Court had upheld the second plea in law in her action at first instance by recognising that Cedefop was required to adopt a replacement decision in implementing the annulment judgment,[10] the appellant alleges that the General Court distorted the evidence, in particular the decision rejecting the complaint. She submits that, in paragraphs 22 and 34 to 38 of the judgment under appeal, the General Court incorrectly held that the contested decision and the decision rejecting the complaint implemented the annulment judgment, replacing the decisions of 12 May and 1 December 2017.

16. Hereinafter I will begin by recalling the relevant aspects of the assessment made by the General Court before examining whether the distortion of evidence alleged by the appellant exists.

The assessment by the General Court

17. As is clear from the operative part of the annulment judgment, the General Court annulled the decisions of 12 May and 1 December 2017 and ordered Cedefop to pay compensation for the material and non-material damage sustained by the appellant, while dismissing the action 'as to the remainder'. Aside from the order to pay compensation for material and non-material damage, the General Court did not give any guidance as to possible further measures to be adopted by Cedefop.

18. Following that annulment judgment, Cedefop adopted the contested decision and, in response to the complaint submitted by the appellant, the decision rejecting the complaint which was the subject of the judgment under appeal.

[9] The other grounds relied on by the appellant allege a breach by the General Court of the obligation to verify of its own motion and establish the lack of competence of the Appeals Committee to adopt a decision in relation to the implementation of the annulment judgment (second and third grounds of appeal), breach of the principle of the 'tribunal established by law' recognised in Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter), and the lack of jurisdiction of the General Court to set aside the annulment judgment (fourth and fifth grounds of appeal), infringement of Article 266 TFEU (sixth ground of appeal), breach of the legal principle arising from the judgments of 25 October 2013, *Commission* v *Moschonaki* (T-476/11 P, EU:T:2013:557, paragraphs 71 and 73), and of 16 October 2019, *ZV* v *Commission* (T-684/18, EU:T:2019:748, paragraph 20) (seventh ground of appeal), a defective statement of grounds (eighth ground of appeal) and, lastly, infringement of the right to be heard enshrined in Article 47 of the Charter (ninth ground of appeal). All those grounds of appeal are directed solely at the reasoning in the judgment under appeal on which the General Court relied in rejecting the second plea in law raised at first instance, alleging infringement of Article 266 TFEU and a manifest error of assessment (see, in that regard, point 9 of this Opinion).

[10] By that plea in law, the appellant submitted, first, that it was for Cedefop, in implementing the annulment judgment, to resume the procedure for examining the request for the renewal of her contract and to adopt a new decision replacing the contested decision and, second, that the renewal of her contract was the only possible measure to remedy the illegalities established in the annulment judgment. I note that although the appellant asserts, in the heading of point VII.1 and in paragraph 52 of her appeal, that the General Court 'upheld' the second plea in law at first instance, she is, in my view, referring to the fact that the General Court, while rejecting that plea in law, did, according to her, recognise Cedefop's 'obligation to adopt a replacement decision'.

19. In in paragraph 34 of the judgment under appeal the General Court stated that, in implementing the annulment judgment, Cedefop was required to re-examine the appellant's request for the renewal of her contract and to take a new decision replacing the decision of 12 May 2017, in compliance with the operative part of that judgment and the grounds which constituted its essential basis. That having been stated, in paragraph 47 of the judgment under appeal, the General Court ruled that the appellant was not justified in claiming that Cedefop had infringed Article 266 TFEU and made a manifest error of assessment in deciding not to renew her employment contract. The General Court based that conclusion on the following two grounds.

20. In the first place, in paragraph 38 of that judgment, the General Court held, in essence, that Cedefop had complied with the obligation, mentioned by the appellant, to resume the procedure concerning the request for renewal and to adopt a new decision.[11] In paragraph 35 of that judgment, it noted that by the *contested decision* the Executive Director of Cedefop had considered that, other than paying the compensation awarded to the appellant by the annulment judgment, 'he was not required to take any additional implementing measures'. In addition, in paragraphs 36 and 37 of the judgment under appeal, it stated that by the *decision rejecting the complaint* the Appeals Committee had 'supplemented the reasons' for the contested decision 'by also basing the refusal to renew the applicant's contract on considerations relating to the internal operation of Cedefop', in particular on the fact that Cedefop 'intended to reorganise the way in which the legal function was working within the agency … without intending to reinstate persons or past working organisations'.[12]

21. In the second place, in paragraphs 39 to 43 of the judgment under appeal, the General Court held that Cedefop was not obliged to renew the appellant's contract given that a member of the temporary staff has no right to the renewal of his or her contract and that, as to the argument that reinstating the appellant in her post was in the interests of the service, the appellant did not specifically challenge the merits of the reason relating to developments in Cedefop's internal organisation.[13] However, in paragraph 46 of that judgment, the General Court stated that Cedefop's argument that no further measures had to be taken in implementing the annulment judgment was ineffective given that in the contested decision, assessed in the light of the reasons contained in the decision rejecting the complaint, Cedefop had taken a decision on the request for the renewal of the contract.[14]

22. Therefore I conclude that in the judgment under appeal the General Court based the rejection of the second plea in law raised at first instance solely on the ground, summarised in point 20 of this Opinion, relating to 'developments in Cedefop's internal organisation', in particular on the idea that Cedefop 'intended to develop its internal organisation and reorganise the way in which the legal function was carried out within the agency'.

23. Having made that clarification, it must be determined whether, as the appellant claims, the General Court, in concluding that Cedefop had correctly implemented the annulment judgment, distorted the evidence, in particular the decision rejecting the complaint.

[11] See footnote 8 to this Opinion.

[12] That ground is apparent from pages 16 and 17 of the decision rejecting the complaint.

[13] Paragraph 44 of that judgment states that 'that reason, put forward in the decision rejecting the complaint, was sufficient in itself to justify the decision not to renew the applicant's contract'.

[14] In other words, the General Court rejected the appellant's argument that Cedefop had infringed Article 266 TFEU and made a manifest error of assessment on the ground that, regardless whether measures had to be taken, Cedefop had in any event adopted a decision implementing the annulment judgment.

Distortion of the evidence

24. The appellant claims that up to September 2023 Cedefop consistently maintained that no decision in relation to the implementation of the annulment judgment was required or had been taken [15], even though in the judgment under appeal the General Court had presumed, based on a distortion of the facts, that a decision replacing the annulled decisions of 12 May and 1 December 2017 had been adopted, taking the view that the decision rejecting the complaint constituted such a replacement decision. Cedefop contends that, although it was not bound to do so, it re-examined the appellant's request for the renewal of her contract and, after that re-examination, rejected it. In the decision rejecting the complaint, the Appeals Committee concluded, primarily, that Cedefop was not necessarily required to re-examine the request for the renewal of the contract and, on a subsidiary basis, that it nevertheless examined (and rejected) that request.

25. In that regard, I recall that, under the first paragraph of Article 266 TFEU, the institution whose act has been declared void must take the necessary measures to comply with the judgment. [16]

26. Furthermore, in accordance with the settled case-law of the Court of Justice, it follows from the second subparagraph of Article 256(1) TFEU and the first paragraph of Article 58 of the Statute that the General Court has exclusive jurisdiction, first, to establish the facts, except where the substantive inaccuracy of its findings is apparent from the documents submitted to it, and, second, to assess those facts. It follows that the appraisal of the facts by the General Court does not constitute, save where the clear sense of the evidence produced before it is distorted, a question of law which is subject, as such, to review by the Court of Justice. [17] There is such distortion where, without recourse to new evidence, the assessment of the existing evidence is clearly incorrect or manifestly at odds with its wording. However, 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. Furthermore, where an appellant claims that the evidence has been distorted, it must indicate precisely the evidence alleged to have been distorted by the General Court and show the errors of appraisal which, in its view, led to that distortion. [18]

27. In the present case, following the annulment judgment, Cedefop adopted the contested decision, subsequently confirmed by the decision rejecting the complaint, which, as the General Court states in paragraph 38 of the judgment under appeal, is also relevant in assessing the lawfulness of the contested decision.

[15] At the same time, and in a somewhat contradictory manner, the applicant submits that the Executive Director of Cedefop had rejected her request for reinstatement, despite the annulment judgment being delivered.

[16] The Court of Justice has ruled that, under that provision, when an act is annulled or declared invalid, the institutions which adopted that act are required only to take the measures necessary in order to comply with the judgment. Consequently, the institutions have broad discretion to decide the measures to put into effect in order to remedy the illegality established, it being understood that such measures must be compatible with the operative part of the judgment in question and the grounds that constitute its essential basis (see, inter alia, judgment of 29 November 2018, *Bank Tejarat* v *Council*, C-248/17 P, EU:C:2018:967, paragraph 68 and the case-law cited). The General Court has explained that it is for the administration, in the exercise of the discretion conferred on it by Article 266 TFEU, to choose between the various possible measures which are consistent with the grounds of the judgment annulling the original act and with the principles and rules of EU law, in order to reconcile the interests of the service and the need adequately to protect the rights of the applicant, and that, in deciding on the implementing measure, the institution or body concerned must, in particular, ensure, in order to comply with the principles and rules of EU law, that the measures adopted are not vitiated by the same irregularities as those identified in the judgment annulling the original act (see, inter alia, judgment of 23 October 2024, *ZR* v *EUIPO*, T-634/22, EU:T:2024:746, paragraphs 42 and 45 and the case-law cited).

[17] See judgment of 12 December 2024, *DD* v *FRA* (C-130/22 P, EU:C:2024:1018, paragraph 26 and the case-law cited).

[18] See judgment of 12 December 2024, *DD* v *FRA* (C-130/22 P, EU:C:2024:1018, paragraph 27 and the case-law cited).

28. I take the view that, in doing so, Cedefop complied with the annulment judgment in accordance with Article 266 TFEU and fulfilled its obligation to reply to the request and the subsequent complaint from the appellant. In her arguments, the appellant seems to confuse two distinct aspects: on the one hand, the question of the *existence* of a decision implementing the annulment judgment and, on the other, the *merits* of the decision by which Cedefop considers it has implemented the annulment judgment (namely, the contested decision, supplemented by the decision rejecting the complaint).

29. However, it must be determined whether, as the appellant claims, the General Court, in concluding that Cedefop had properly implemented that judgment, distorted the evidence, in particular the decision rejecting the complaint.

30. In that respect, in the first place, I note that, by the contested decision, the Executive Director of Cedefop replied to the request for the implementation of the annulment judgment submitted by the appellant, stating, in essence, that the effects of the unlawfulness found by the General Court in the annulment judgment would be reversed by the payment of the compensation ordered by that court.

31. In the second place, I would observe that by the decision rejecting the complaint the Appeals Committee inter alia examined the ground relating to the infringement of Article 266 TFEU by Cedefop. In particular, on pages 16 and 17 of that decision Cedefop rejected the arguments concerning the 'considerations [of the annulment judgment] on abolishing the Legal Service and the non-renewal of the complainant's contract'.[19] That part of the decision essentially consists of three arguments by which the Appeals Committee stated that:

– first, compensation for the entire material and non-material damage had been determined *ex aequo et bono* by the General Court, taking into account that, on account of the irregularities found, the appellant had suffered a 'loss of opportunity' of her contract being extended[20] and that the General Court did not and could not take a position on the question of the recreation of the internal Legal Service at Cedefop;[21]

– second, the decision to establish a post of internal Legal Advisor in Cedefop[22] had been taken by the Executive Director and supported by the Executive Board[23] and that that decision was disconnected from (i) the specific case of the appellant, (ii) the analysis on which the former Director took the decision not to renew her contract, and (iii) the annulment judgment;

– lastly, based on a thorough and transparent assessment of the status quo, Cedefop intended to reorganise the way the legal function worked to mitigate the identified risks without intending to reinstate persons or past working organisations.

[19] Those passages form the last part of point C of that decision.

[20] The Appeals Committee emphasises that the appellant herself had requested the payment of compensation for the material damage suffered due to the non-renewal of her contract.

[21] The Appeals Committee notes that, in accordance with settled case-law, the General Court may not, in the exercise of its jurisdiction, issue directions to the EU institutions or assume the role assigned to them.

[22] That decision was apparent from the conclusions of the Executive Board presented on 3 March 2021, which were mentioned by the appellant in her complaint.

[23] The Appeals Committee states that the timeline proposed for the launch of the selection procedure in question was closely connected to the results of the selection procedure for a Head of Human Resources.

32. In the third and last place, it should be pointed out that, in paragraph 18 of the judgment under appeal, the General Court held that by the contested decision 'the Executive Director of Cedefop essentially decided … that the applicant's employment contract should not be renewed' and, in paragraph 38 of that judgment, stated that by the decision rejecting the complaint – which, according to its assessment in paragraph 22 of the judgment, supplemented the reasons for the contested decision – Cedefop had examined and rejected the request for the renewal of the contract, 'relying on considerations relating to Cedefop's internal organisation'. [24]

33. Against that background, it must be determined whether, in holding that by the decision rejecting the complaint the Appeals Committee had added a supplementary reason for rejecting the appellant's request, the General Court distorted the evidence in the judgment under appeal. That determination essentially relates to the interpretation of the third argument set out in point 31 of this Opinion, according to which the Committee considered that the internal organisation of Cedefop, and in particular of its legal service, did not imply any intention to reinstate persons or past working organisations. [25]

34. It is true that it is not obvious that the Appeals Committee intended, by that argument, also to justify the refusal to renew the appellant's contract by relying on a ground supplementary to that on which the contested decision was based, namely, as the General Court states in paragraph 38 of that judgment, 'on considerations relating to Cedefop's internal organisation' [26] However, it is conceivable that that passage may be construed as implicitly rejecting the appellant's request for the renewal of her contract. In observing that, for reasons unrelated to the appellant's personal situation but connected with the internal organisation of the legal service, Cedefop did not intend to 'reinstate persons or past working organisations', the Appeals Committee could only be referring, implicitly, to the absence of any need to renew the appellant's contract, which constitutes a subsidiary reason distinct from the single reason for the contested decision, which simply found that Cedefop was not required to adopt any other measures in implementing the annulment judgment.

35. Therefore, in the light of that possibility, which is at least defensible, I consider that the necessary conditions for finding a distortion of evidence, as summarised in point 26 of this Opinion, are not met and, specifically, that the assessment of the evidence, namely the decision rejecting the complaint, by the General Court is not *manifestly at odds* with the wording of that decision.

36. In the event that the Court of Justice concurred with this interpretation, the first ground of appeal should therefore be dismissed.

37. On the other hand, if the Court of Justice takes the view that the General Court's reasoning is vitiated by a distortion of evidence, the first ground of appeal should be upheld and, consequently, the judgment under appeal should be set aside. As is evident from paragraphs 37, 43 and 44 of that judgment, in dismissing the action at first instance, the General Court relied solely on the ground

[24] The General Court relies on the third argument mentioned in point 31 of this Opinion.

[25] That passage of the decision rejecting the complaint reads as follows: 'based on a thorough and transparent assessment of the status quo performed in 2021 on the basis of 2020 data, Cedefop intends to reorganise the way the legal function works to mitigate the identified risks without intending to reinstate persons or past working organisations'.

[26] In other words, by that argument the Appeals Committee seems simply to refute the appellant's allegation claiming, in essence, that the decision of the Executive Director of Cedefop to re-establish a post of internal Legal Adviser in Cedefop, supported by the Executive Board, necessarily implied the renewal of her contract, without taking a view on whether such renewal was necessary or appropriate.

of the contested decisions based on developments in Cedefop's internal organisation.[27] In that case, it will be necessary to examine the possibility for the Court of Justice to give a ruling on the action at first instance, a question that will be addressed in the following points of this Opinion.

The action at first instance

38. Under Article 61 of the Statute, where the Court quashes the decision of the General Court, it may itself give final judgment in the matter where the state of the proceedings so permits.

39. I consider that would be the case here, if the Court held that the judgment under appeal had to be set aside. In such a situation, it would have all the information necessary to give a ruling on the second plea in law raised at first instance alleging infringement of Article 266 TFEU and a manifest error of assessment.[28]

40. By that plea in law, the appellant essentially raises two arguments. She submits, in the first place, that it was for Cedefop, in implementing the annulment judgment, to resume the procedure for examining the request for the renewal of her contract and to adopt a new decision replacing the contested decision and, in the second place, that the renewal of that contract was the only possible measure to remedy the illegalities established in the annulment judgment.

41. With regard to the first argument, I recall that, under the first paragraph of Article 266 TFEU, the institution whose act has been declared void must take the necessary measures to comply with that judgment, and that, following the annulment judgment, Cedefop was required to take the necessary measures to comply with that judgment[29] and, as the General Court itself recognises in paragraph 34 of the judgment under appeal, to adopt a new measure replacing the decision of 12 May 2017.

42. Following the annulment judgment, Cedefop adopted the contested decision, confirmed by the decision rejecting the complaint. Although by the contested decision Cedefop did not re-examine the appellant's request for the renewal of her contract, it nevertheless replied that it was not required to adopt any measure other than payment of the compensation ordered by the General Court, which ultimately amounted, implicitly, to concluding that the appellant's employment contract should not be renewed.[30]

43. In the decision rejecting the complaint, the Appeals Committee endorsed that reasoning, in particular highlighting the fact that the compensation ordered by the General Court in the annulment judgment – applied for by the appellant herself to compensate for the material damage caused by the non-renewal of her contract – constituted 'fair compensation for the entire material damage suffered by [her]', as the General Court had ruled in paragraph 201 of the annulment judgment.

[27] It must be stated that it is difficult to understand the reason that led the General Court to rule on only one of the grounds which it identified in the contested decision, as supplemented by the decision rejecting the complaint, without deeming it necessary to rule on the principal ground, according to Cedefop, for rejecting the appellant's request, namely that no further measures had to be taken in implementing the annulment judgment, which the General Court simply considered to be ineffective.

[28] Since the subject of this Opinion is limited to the first ground of appeal, this analysis is without prejudice to the examination of the other grounds of appeal.

[29] See point 17 of this Opinion.

[30] The General Court ruled to that effect in paragraph 18 of the judgment under appeal.

44. In the light of those considerations, I take the view that by the contested decision, as confirmed by the decision rejecting the complaint, Cedefop implicitly reassessed the appellant's request for the renewal of her contract, considering that it was not required to adopt any measure other than payment of the compensation ordered by the General Court.

45. With regard to the second argument, I note that, as the General Court states in paragraphs 25, 26 and 41 of the judgment under appeal, a member of the temporary staff has no right to the renewal of his or her contract, the possibility of renewing the contract being merely an option left to the discretion of the competent authority and the institutions, which have a wide discretion in the organisation of their departments. [31] Those considerations are all the more relevant when it comes to replacing a fixed-term contract by a contract for an indefinite period, which creates a more stable link with no time limits between the institution and the staff member concerned. [32] It follows that the implementation of the annulment judgment did not necessarily have to result in the renewal of the appellant's contract. [33]

46. Therefore, irrespective of the validity of its response, which is the subject of the other grounds of appeal, [34] I consider that Cedefop adopted the necessary measures to comply with the annulment judgment pursuant to Article 266 TFEU.

47. In conclusion, in the event that the Court took the view that it should uphold the first ground of appeal and, consequently, give final judgment on the action at first instance, I propose that the second plea in law raised at first instance should be dismissed.

The request to withdraw Annex C.1 from the case file

48. By its response, Cedefop requests the Court of Justice, pursuant to Article 151 of its Rules of Procedure, to withdraw from the case file Annex C.1 to the appeal, containing an exchange of correspondence between the appellant, her former legal counsel and a third party, which included the copy-and-pasted content of an email sent on 2 April 2021 by Cedefop's legal counsel to the appellant's former legal counsel concerning the opportunity to enter into discussions between the parties to settle the dispute amicably. [35] In essence, Cedefop maintains that the correspondence in question is covered by legal privilege in accordance with the Belgian Code of ethics for lawyers, asserting that neither the appellant nor her current counsel were recipients of the contested email, whereas the appellant argues that the privilege provided for

[31] See inter alia, to that effect, judgment of 12 December 2024, *DD* v *FRA* (C-130/22 P, EU:C:2024:1018, paragraph 39).

[32] That is confirmed by the settled case-law of the General Court (see judgment of 9 November 2022, *QM* v *Europol* (T-164/21, EU:T:2022:695, paragraph 83 and the case-law cited).

[33] In that regard, the appellant seems to confuse, on the one hand, Cedefop's obligation, following the annulment judgment, to adopt a new decision on the request for the renewal of her contract and, on the other, the grounds on which the new decision (the contested decision, confirmed by the decision rejecting the complaint) is based. In other words, the question whether the grounds set out in those decisions are well founded is closely linked to the merits of those decisions, regardless whether Cedefop adopted a decision implementing the annulment judgment.

[34] See footnote 9 to this Opinion.

[35] That email followed the appellant's request to Cedefop for the implementation of the annulment judgment by the renewal of her contract, which Cedefop opposed.

under that Code constitutes an internal rule of the Brussels Bar Association (Belgium), which is not binding on her, and that that correspondence constitutes crucial evidence in support of her position. [36]

49. I note as a preliminary point that EU law does not include any specific rules on the use of evidence. According to the Court's settled case-law, the applicable principle in that regard is that of the unfettered evaluation of evidence, from which it follows that the admissibility of evidence produced in good time can be contested before the European Union Courts only on the ground that it has been improperly obtained. [37] In particular, where evidence has been improperly produced by a party, it is necessary to weigh the interests of the respective parties to the proceedings in connection with their right to a fair hearing, taking into account the interests protected by the rules that have been breached or circumvented in obtaining that evidence. [38] It follows that the EU Court hearing a request for the withdrawal of evidence must weigh in the balance, on the one hand, the interest of the applicant who produced those items of evidence, having regard, inter alia, to their usefulness for the purposes of assessing the merits of the action brought before it and, on the other hand, the interests of the opposing party which the retention in the file of those items of evidence could specifically and effectively harm. [39]

50. I also note, as far as the situation in the present case is concerned, that it is true that the right to respect for the confidentiality of correspondence between lawyer and client has long been recognised by the Court, [40] in particular as an expression of the principles of the right to a fair trial and respect for private life, as enshrined, respectively, in Articles 47 and 7 of the Charter [41] and in Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (ECHR). [42]

[36] For the sake of clarification, I note that the appellant also raises the preliminary objection that that application is inadmissible, since it was not submitted by a separate document. I consider, however, that that objection cannot be upheld. As Cedefop submits, in accordance with Article 151(1) of the Rules of Procedure of the Court of Justice, that application had to be submitted by a separate document only if Cedefop had applied to the Court for a decision on that application not going to the substance of the case, which was not the situation in the present case.

[37] See, inter alia, judgment of 12 July 2022, *Nord Stream 2* v *Parliament and Council* (C-348/20 P, EU:C:2022:548, paragraph 129 and the case-law cited). See also, in legal literature, Lenaerts, K., et al., *EU Procedural Law*, 2nd ed., Oxford University Press, 2023, p. 790. In that regard, the Court has decided to remove a document from the case file in particular in the case of legal opinions issued, for internal use, by the legal services of the institutions (orders of 23 October 2002, *Austria* v *Council*, C-445/00, EU:C:2002:607, paragraph 12, and of 14 May 2019, *Hungary* v *Parliament*, C-650/18, EU:C:2019:438, paragraphs 8 to 19) or by a national administrative authority (order of 23 March 2007, *Stadtgemeinde Frohnleiten and Gemeindebetriebe Frohnleiten*, C-221/06, EU:C:2007:185, paragraphs 19 to 23).

[38] See, by analogy, judgment of 12 July 2022, *Nord Stream 2* v *Parliament and Council* (C-348/20 P, EU:C:2022:548, paragraph 130). That case concerned internal documents covered by Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43), the production of which has been neither authorised by the institution concerned nor ordered by an EU Court.

[39] See, to that effect, judgment of 12 July 2022, *Nord Stream 2* v *Parliament and Council* (C-348/20 P, EU:C:2022:548, paragraph 131).

[40] See judgment of 18 May 1982, *AM & S Europe* v *Commission* (155/79, EU:C:1982:157, paragraphs 18 to 27).

[41] See, with respect to the bases of the protection of lawyers' professional secrecy more broadly, Opinion of Advocate General Poiares Maduro in *Ordre des barreaux francophones et germanophone and Others* (C-305/05, EU:C:2006:788, points 36 to 46 and the case-law cited). See also, in legal literature, Van Gerven, D., 'Professional Secrecy in Europe', in *Professional Secrecy of Lawyers in Europe*, Cambridge University Press, 2013, pp. 6 to 8.

[42] As I noted in my Opinion in *Orde van Vlaamse Balies and Others* (C-694/20, EU:C:2022:259, point 49), a point confirmed by the Court in its judgment of 8 December 2022, *Orde van Vlaamse Balies and Others* (C-694/20, EU:C:2022:963, paragraph 27), it is apparent from the case-law of the ECtHR that Article 8(1) ECHR protects the confidentiality of all correspondence between individuals and affords strengthened protection to exchanges between lawyers and their clients (see, to that effect, ECtHR, 6 December 2012, *Michaud v. France*, CE:ECHR:2012:1206JUD001232311, § 117 and 118). Like that provision, the protection of which covers not only the activity of defence but also legal advice, Article 7 of the Charter necessarily guarantees the secrecy of that legal consultation, both with regard to its content and to its existence. As the ECtHR has pointed out, individuals who consult a lawyer can reasonably expect that their communication is private and confidential (ECtHR, 9 April 2019, *Altay v. Turkey (No 2)*, CE:ECHR:2019:0409JUD001123609, § 49). Therefore, other than in exceptional situations, those persons must have a legitimate expectation that their lawyer will not disclose to anyone, without their consent, that they are consulting him or her.

51. That being so, it seems that protection of the confidentiality of communications between lawyer and client – which, moreover, is intended primarily to protect the interests of the client – does not under any circumstances extend to correspondence between lawyers, unless those communications form part of communications between lawyer and client.[43] Protection of the confidentiality of correspondence between lawyers is normally ensured, at national level, by the rules of professional ethics adopted by the competent bar associations, possibly as authorised by the legislature, and is binding only on the lawyers who are subject to those rules.[44]

52. Assuming that, as Cedefop claims, the ethical rules of the Brussels Bar Association have been infringed in this case by the appellant's former lawyer,[45] the responsibility arising from that infringement resides with that lawyer alone. Such an infringement, assuming it were established, could not on its own entail a prohibition on the applicant producing evidence which she had not obtained improperly.[46]

53. That conclusion is not called into question by the fact that the correspondence in this case envisaged the possibility of an amicable settlement of the dispute in so far as, in any event, that correspondence did not relate to any exchange of confidential information on the content of a possible amicable settlement of the dispute, but simply expressed Cedefop's willingness in principle to enter into such negotiations.[47] Furthermore, the case-law mentioned by Cedefop concerns access by third parties to certain documents prepared by the Commission in infringement proceedings and does not appear to be relevant in the present case.[48]

54. In those circumstances, I propose that the request made by Cedefop for Annex C.1 to be withdrawn from the case file be rejected.[49]

[43] See, inter alia, to that effect, Van Gerven, D., 'Professional Secrecy in Europe', in *Professional Secrecy of Lawyers in Europe*, Cambridge University Press, 2013, pp. 17 and 18.

[44] Furthermore, there is no uniformity in this respect in the national legal systems. In some systems such correspondence does enjoy almost unlimited protection (see, for example, in addition to Article 6(1) of the Belgian Code of ethics for lawyers cited by Cedefop, Article 3(1) of the National Rules of Procedure for the legal profession in France and Article 48 of the Code of Conduct for Italian Lawyers), but even in those cases the obligation arising from such protection continues to be incumbent upon the lawyers concerned. At European level, under Article 5.3.1 of the Code of conduct for European lawyers of the Council of Bars and Law Societies of Europe (CCBE) (2019 edition), available in English at: http://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/DEONTOLOGY/DEON_CoC/EN_DEON_CoC.pdf., 'if a lawyer intends to send communications to a lawyer in another Member State, which the sender wishes to remain confidential or without prejudice he or she should clearly express this intention prior to communicating the first of the documents'. Article 5.3.2 of that Code states that 'if the prospective recipient of the communications is unable to ensure their status as confidential or without prejudice he or she should inform the sender accordingly without delay'. Furthermore, the Commentary on Article 5.3 in the Explanatory Memorandum for that document describes differences in approach between the Member States.

[45] I note in that regard that, although the appellant's claim that Cedefop's representative himself had requested the appellant's former representative to disclose the content of his communication to the appellant is not supported by any evidence, in my view, the actual content of that communication required her to communicate to her client Cedefop's willingness to enter into discussions. I will not, however, take a view on the possibility of reproducing word-for-word the exchanges between the two colleagues concerned in their entirety, rather than summarising them, a question which, in any case, remains subject to the rules of the responsible bar association and is not relevant in the present case.

[46] In particular within the meaning of the case-law cited in point 49 of this Opinion.

[47] In that regard, in a similar situation, the General Court recognised, in essence, the possibility of asserting the existence of dialogue between the parties with a view to a possible amicable settlement of the dispute (judgment of 18 October 2023, *BZ* v *ECB*, T-162/21, EU:T:2023:647, paragraph 133).

[48] In that case-law, the General Court has ruled, in essence, that the preservation of the objective in question, namely an amicable settlement of the dispute between the Commission and the Member State concerned before the Court of Justice delivered judgment, justified refusal of access to documents drawn up in connection with the proceedings in question (see judgment of 12 September 2007, *API* v *Commission*, T-36/04, EU:T:2007:258, paragraph 121 and the case-law cited).

[49] That conclusion is, of course, without prejudice to the question of the probative value of that document, which will be assessed by the Court of Justice in accordance with the principle of unfettered evaluation of evidence mentioned in point 49 of this Opinion.

Conclusion

55. In the light of the foregoing considerations, I propose that the Court:

– dismiss the appeal or, in the event that the Court considers that the first ground of appeal should be upheld, set aside the judgment of the General Court of the European Union of 7 February 2024, *VP* v *Cedefop* (T-563/22, EU:T:2024:72), and reject the second plea in law raised by VP at first instance before the General Court;

– reject the request to withdraw Annex C.1 from the case file.