Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 22 March 2018 [1]

**Case C-390/17 P**

**Irit Azoulay,**
**Andrew Boreham,**
**Mirja Bouchard,**
**Darren Neville**
**v**

**European Parliament**

(Appeal — Civil service — Remuneration — Family allowances — Education allowance — Refusal to reimburse education costs — Autonomous interpretation of the concept of education costs — Article 3(1) of Annex VII to the Staff Regulations of officials)

## I. Introduction

1. Just as some Member States implement a family policy which includes a pecuniary element, the institutions of the European Union make provision for payment of family allowances to their staff. Those allowances comprise a household allowance payable to an official with responsibility for a family, plus an allowance for each dependent child and an education allowance designed to cover the education costs incurred by the official in connection with his child's attendance at an educational establishment. It is the conditions that govern entitlement to the latter allowance which form the basis of the dispute between the parties in the present case.

2. The conditions that need to be met in order to receive the education allowance were amended when the Staff Regulations of officials of the European Union were reformed in 2004. Whereas, so far as primary and secondary school were concerned, that allowance was previously paid [2] to officials irrespective of the establishment which their children attended, the reform introduced the condition that the establishment must charge fees in order for entitlement to the allowance to arise. [3] The objective was to ensure that 'the education allowance [would] be aligned more closely, in future, on actual expenditure'. [4]

1 Original language: French.

2 The education allowance was paid in the form of a lump sum. Payment to officials in receipt of the allowance was phased out over a five-year period (Article 16 of Annex XIII to the Staff Regulations in the version resulting from Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities (OJ 2004 L 124, p. 84)).

3 Article 3(1) of Annex VII to the Staff Regulations in the version resulting from Regulation No 723/2004. The requirement of attendance at a school which charges fees does not apply, on the other hand, in the case of attendance at a *higher* education (or university) establishment; the education allowance is then paid in the form of a monthly fixed allowance equal to the maximum allowance.

4 Recital 26 of Regulation No 723/2004.

3. It was in reliance on the fact that the establishment attended by the appellants' children did not charge fees that the European Parliament refused to grant them the requested education allowance in 2015, although it had paid that allowance to them in previous years. The appellants maintain that they are entitled to continue to receive it.

4. The origin of that divergence lies in the particular manner in which the appellants' financial participation was sought by the educational establishments concerned. Those establishments are subsidised by the local public authority, which means that they are required to provide the free access to education provided for in the Belgian Constitution.[5] In order to ensure their funding, however, the establishments in question also rely on non-profit associations linked to them, to which pupils' parents are invited to make a contribution. It is that contribution which the appellants seek to have reimbursed by way of the education allowance.

5. In this case involving the civil service, which is one of the first cases in which the Court has exercised its appellate jurisdiction since the Civil Service Tribunal was dissolved and its jurisdiction restored to the General Court, the Court is required to determine whether, in the particular circumstances of the case, the General Court was entitled to conclude that the payment of such a contribution could not be covered by the education allowance.

## II. Legal framework

6. The legal framework of this case is determined by the following provisions of the Staff Regulations of officials of the European Union ('the Staff Regulations').[6]

7. In accordance with Article 67(1)(c) of the Staff Regulations, the family allowances to which officials are entitled as part of their remuneration are to include the education allowance.

8. Article 3(1) of Annex VII to the Staff Regulations sets out the conditions governing entitlement to the education allowance:

'Subject to the conditions laid down in the general implementing provisions, an official shall receive an education allowance equal to the actual education costs incurred by him up to a maximum of EUR 260.95[7] per month for each dependent child … who is at least five years old and in regular full-time attendance at a primary or secondary school which charges fees or at an establishment of higher education. The requirement of attendance at a school which charges fees shall not apply to the reimbursement of the costs of school transport.

…'

5 Article 24(3) of the Belgian Constitution.

6 In the version applicable since 1 January 2014.

7 This amount was applicable at the material time. It is now EUR 273.60.

9. On the basis of Article 110 of the Staff Regulations, the Parliament on 18 May 2004 adopted the general implementing provisions on granting the education allowance laid down in Article 3 of Annex VII to the Staff Regulations ('the GIPs').[8] Article 1 of the GIPs distinguishes education allowance A, a flat-rate allowance, paid for children less than five years old or not yet attending a primary school, and education allowance B. As regards the latter allowance, Article 3 of the GIPs provides:

'Subject to the maximum amounts prescribed in the first and third subparagraphs of Article 3(1) of Annex VII to the Staff Regulations, education allowance B shall cover:

(a) registration and attendance fees at educational establishments

(b) transport costs

excluding all other costs, and in particular:

– compulsory expenditure such as for the purchase of books, school equipment, sports equipment, school insurance and medical expenses cover, examination fees, costs of joint extra-curricular activities (school excursions, visits and trips, sports courses, etc.), and other expenses connected with following the curriculum of the educational establishment attended;

– costs incurred as a result of the child's participation in organised trips to winter, seaside and countryside resorts and similar activities.'

## III. Background to the dispute and procedure before the General Court

10. The appellants are members of the temporary staff and officials, respectively, of the European Parliament and live in Belgium. Their children attend educational establishments[9] which have the common feature that they are subsidised, but not entirely, by the French Community of Belgium. The two establishments concerned also have their own resources, which are supplied to them, in particular, by non-profit associations ('the associations') to which pupils' parents are invited to contribute.

11. Up to and including the school year 2013/2014, the Parliament reimbursed, in the form of the education allowance and up to the maximum prescribed amount, the contribution paid to the associations by the appellants, who already had children who attended those establishments. On 24 April 2015, the Parliament rejected the appellants' requests for reimbursement of the contribution which they had paid to the associations for the school year 2014/2015, on the ground that the conditions set out in Article 3(1) of Annex VII to the Staff Regulations were not satisfied ('the rejection decisions'). According to the Parliament, the two schools concerned were not schools which charge fees for the purposes of that provision, since the optional contributions made by the appellants to the associations fell outside the framework of compulsory free education as provided for in the Belgian legislation.

8 The version applicable on the date on which the General Court delivered the judgment under appeal. The version currently in force was adopted on 18 November 2016; the wording of Article 5, entitled 'Education allowance', reproduces the wording of the former Article 3.

9 The education establishments in question are the Ganenou secondary school in Brussels (Belgium) and the International School Le Verseau in Bierges (Belgium). The former is a denominational school which, in addition to the educational programme of the French Community of Belgium devotes several hours per week to teaching the Hebrew language, the history of Judaism, the Bible and the English language from the primary section. The latter is a non-denominational school where teaching is provided in French and English from the nursery stage by teachers who are native speakers of those languages.

12. Although the appellants' complaints against those decisions were also rejected on 17 and 19 November 2015, the Parliament nonetheless decided to grant the appellants, on an *ex gratia* basis and by way of exception, the education allowance for the year 2014/2015, but not to continue to grant it for future school years in respect of attendance at the establishments concerned.

13. On 17 February 2016, the appellants sought annulment of the Parliament's rejection decisions, with the exception, however, of the grant *ex gratia* and by way of exception of the education allowance for the year 2014/2015, and claimed that the Parliament should be ordered to pay them the education allowance for the year 2015/2016. In support of their action, the appellants relied on three pleas in law, alleging (i) infringement of Article 3(1) of Annex VII to the Staff Regulations and a manifest error of assessment, (ii) breach of the principle of the protection of legitimate expectations, and (iii) breach of the principles of equal treatment and sound administration.

14. In its judgment of 28 April 2017 ('the judgment under appeal'),[10] the General Court rejected each of those pleas and, consequently, dismissed the claim for annulment of the rejection decisions. Since the claim for annulment of those decisions had been rejected, the General Court held that there was no longer any need to adjudicate on the claim that the Parliament should be ordered to pay the appellants the education allowance for the year 2015/2016.

## IV. Procedure before the Court and forms of order sought

15. By a pleading of 28 June 2017, the appellants together lodged the present appeal against the judgment of the General Court.

16. The appellants claim that the Court should:

– set aside the judgment under appeal;

– grant the form of order sought at first instance by the appellants in the action brought in Case T-580/16;[11]

– order the respondent to pay all of the costs.

17. The Parliament contends that the Court should:

– dismiss the appeal as unfounded;

– order the appellants to pay the costs.

18. Before the Court, the appeal gave rise to a written procedure.

## V. Legal assessment

19. The appellants maintain that the judgment under appeal is vitiated by a number of errors of law, in particular distortion of the facts and failure to state reasons. In particular, they submit that the General Court, first, made an error of law and distorted the facts by rejecting an autonomous and uniform interpretation of the concept of 'education costs' within the EU legal order.[12] Secondly, they claim that the judgment under appeal contains a material inaccuracy in the findings made by the General

10 Judgment of 28 April 2017, *Azoulay and Others* v *Parliament* (T-580/16, EU:T:2017:291).

11 Judgment of 28 April 2017, *Azoulay and Others* v *Parliament* (T-580/16, EU:T:2017:291).

12 This criticism relates to paragraphs 31 to 36, 38 and 40 of the judgment under appeal.

Court.[13] Thirdly, the General Court is alleged to have made an error of law in the interpretation of the settled case-law applicable to the rule requiring correspondence between the administrative complaint and the action.[14] Lastly, they claim that the General Court failed to fulfil its obligation to state reasons when responding to the plea alleging breach of the principles of equal treatment and sound administration.[15]

### *A. Admissibility*

20. I note that, before the General Court, the appellants sought annulment of the decisions rejecting their requests for the education allowance for the school year 2014/2015. However, in the decisions rejecting their complaints, which the appellants also sought to have annulled, with the exception of the point that the Parliament granted them, *ex gratia* and by way of exception, the education allowance for that year, that allowance was in fact granted. The appellants therefore did indeed receive the requested allowance.

21. As regards the subsequent school years, the Parliament, solely in its decisions rejecting the complaints, stated that the education allowance would not continue to be granted to the appellants for future school years.[16]

22. The General Court considered that the decisions rejecting the complaints lacked any independent nature and that it was therefore required to adjudicate only on the action against the rejection decisions,[17] which related only to the school year 2014/2015. This point has not been challenged by the appellants in their appeal.

23. As regards the school year 2015/2016 in particular, the appellants also requested the General Court to order the Parliament to pay the education allowance for that year. The Parliament contended before the General Court that that request was inadmissible, since the education allowance was granted by the administration only for one school year and the appellants ought to have pursued the administrative procedure before bringing their action.[18]

24. The General Court considered that, in view of the fact that the claim for annulment of the rejection decisions had been dismissed (concerning the school year 2014/2015), there was no longer any need to adjudicate on the claim relating to the school year 2015/2016.[19] This point, too, has not been challenged by the appellants in their appeal.

25. In those circumstances, and in the event that the Court should consider it necessary to examine of its own motion the condition of admissibility of the action for annulment before the General Court[20] linked with the interest in bringing an action, I am of the view that the appellants have an interest in bringing an action against the rejection decisions for the year 2014/2015, which is sufficient for the action to be admissible. Admittedly, the education allowance was paid to them for that year; however, although the appellants were in fact reimbursed, that reimbursement was made solely in the form of an exceptional, *ex gratia* measure adopted by the Parliament to offset the excessive time which it had

13 This criticism relates to paragraphs 45 and 46 of the judgment under appeal.

14 This criticism relates to paragraph 47 of the judgment under appeal.

15 This criticism relates to paragraphs 55 and 56 of the judgment under appeal.

16 So long as the establishments concerned do not satisfy the requirements prescribed for the grant of the education allowance.

17 Paragraph 12 of the judgment under appeal.

18 Paragraphs 68 to 74 of the Parliament's defence before the General Court.

19 Paragraph 65 of the judgment under appeal.

20 Concerning the Court's jurisdiction to raise of its own motion, for the first time in the proceedings on appeal, the inadmissibility of the action before the General Court, see judgment of the Court of Justice of 23 April 2009, *Sahlstedt and Others* v *Commission* (C-362/06 P, EU:C:2009:243, paragraph 22).

taken to deal with their claims.[21] The decisions rejecting their claims and containing a definitive position taken by the administration with regard to them were nonetheless not withdrawn and determine their rights. The appellants thus retain an interest in bringing an action against those decisions, which, by refusing them the right to the education allowance, adversely affect them.

26. As regards the appeal, the Parliament has not disputed its admissibility and I see no reason why the Court should raise the inadmissibility of the appeal of its own motion.

### *B. First ground of appeal, alleging an error of law and distortion of the facts in the interpretation of the concept of education costs*

#### *1. The autonomous interpretation of the concept of 'education costs'*

27. The appellants complain that the General Court failed to give an autonomous and uniform interpretation of the concept of 'education costs' within the EU legal order. They invoke the case-law of the Court of Justice, which has held that, in accordance with Article 1a of the Staff Regulations, officials are to be entitled to equal treatment under those regulations, meaning that as a general rule the Staff Regulations must be given an autonomous and uniform interpretation throughout the European Union. That interpretation must take account of the context of the provision and the objective pursued by the legislation in question.[22]

28. As regards education costs in particular, the appellants rely on the judgment in *Bovagnet* v *Commission* to support their claim that for the purposes of reimbursement that concept cannot depend on the existing designations or classifications applied at national level, but must be dependent only on the actual nature and constituent elements of the cost to be reimbursed.[23] In the appellants' submission, the General Court interpreted that concept in the light of the Belgian legislation.

29. I find the appellants' arguments unconvincing. Like the Parliament, I believe that the General Court gave an autonomous interpretation of the concept of 'education costs' that takes account of the purpose of the education allowance and does not depend on the classifications made at national level.

30. Thus, in paragraph 30 of the judgment under appeal, the General Court defines the 'education costs' that are reimbursable under the education allowance as covering the fees that enable a pupil to access an educational establishment (registration fees) and the fees that enable him to attend classes and participate properly in the programmes provided by that establishment (attendance fees).

31. That definition reproduces the definition applied by the Civil Service Tribunal in the judgment in *Bovagnet* v *Commission*,[24] the facts of which belonged to a different national context, since the educational establishment concerned was in Luxembourg.

32. In considering whether the costs incurred by the appellants did indeed constitute registration and attendance fees within the meaning of the judgment in *Bovagnet* v *Commission*,[25] the General Court stated in paragraphs 31 and 32 of the judgment under appeal that registration at the establishments concerned and the education provided there were not conditional upon payment of a sum of money covering the registration and attendance fees. Likewise, non-payment to the associations of the contribution sought did not have the consequence that registration was refused or the pupil excluded.

21 Paragraphs 66 and 67 of the Parliament's defence before the General Court.

22 The appellants cite in that regard the judgment of 15 October 2015, *Axa Belgium* (C-494/14, EU:C:2015:692, paragraphs 21 and 24).

23 Judgment of 8 September 2011, *Bovagnet* v *Commission* (F-89/10, EU:F:2011:129, paragraph 22).

24 Judgment of 8 September 2011, *Bovagnet* v *Commission* (F-89/10, EU:F:2011:129, paragraph 23).

25 Judgment of 8 September 2011, *Bovagnet* v *Commission* (F-89/10, EU:F:2011:129, paragraph 23).

In other words, the establishments *did not require* payment of a sum of money in order for the children to have access to them and to follow the courses there, and the parents were not *required* to pay fees. The General Court concluded from this that the costs incurred by the appellants could not be classified as education costs.

33. The General Court thus interpreted education costs within the meaning of Article 3(1) of Annex VII to the Staff Regulations as having to be *compulsory* for the official in order to register his child in a particular establishment and enable the child to pursue his studies there.

34. That condition was already imposed in the judgment in *Bovagnet* v *Commission*. Reimbursable costs were defined in that judgment as fees on which the actual admission of the pupil to the school and its programme, and therefore to education, is conditional, and payment of which is thus compulsory. [26]

35. That interpretation fulfils the requirements of the Staff Regulations. As the Parliament observes, the provisions of EU law that give entitlement to financial benefits must be interpreted strictly. [27]

36. Reimbursing a contribution paid by an official on an optional and voluntary basis would not meet that requirement of strict interpretation. Furthermore, that would run counter to the intention of the legislature, which, when the Staff Regulations were reformed in 2004, made reimbursement of costs conditional on the child's attendance at an establishment that charges fees [28] and ceased payment of the education allowance in the form of a lump sum made available to officials. [29] Consequently, the Staff Regulations do not allow the education allowance to be regarded as additional remuneration that the official would dispose of freely, in particular by paying voluntary contributions or making gifts.

37. The General Court did not interpret the concept of 'education costs' in accordance with Belgian law. Although it refers [30] to a national circular of the French Community of Belgium entitled 'Free Compulsory Education', [31] it does so only to support the finding — not disputed by the appellants — that the establishments did not require them to pay registration and attendance fees. The General Court states that that circular, which was applicable to the establishments in question, provides that a subsidised establishment cannot make registration conditional on payment of a sum of money and that non-payment of the fees that an establishment may seek [32] cannot have a consequence for attendance at the establishment by the pupil concerned.

38. In order to determine whether payment of the fees which the appellants seek to have reimbursed is a condition of the admission of their children to the establishments concerned, the General Court therefore referred to Belgian law as a relevant indicium and not as a decisive criterion, [33] which is illustrated by the use of the adverb 'indeed'. [34]

39. The appellants maintain that the restrictive interpretation applied by the General Court makes reimbursement of the education fees dependent on the various education systems of the Member States.

26 Judgment of 8 September 2011, *Bovagnet* v *Commission* (F-89/10, EU:F:2011:129, paragraphs 26 and 27).

27 Judgments of 30 November 1994, *Dornonville de la Cour* v *Commission* (T-498/93, EU:T:1994:278, paragraph 38 and the case-law cited), and of 30 June 2015, *Petsch* v *Commission* (F-124/14, EU:F:2015:69, paragraph 33).

28 Where the child attends a primary or secondary school.

29 See point 2 of this Opinion.

30 See paragraphs 31, 33 and 36 of the judgment under appeal, which are expressly challenged by the appellants.

31 Circular No 4516 of 29 August 2013.

32 Such as fees for swimming and cultural and sporting activities.

33 See, as regards the concept of 'primary education', judgment of 29 June 2004, *Hivonnet* v *Council* (T-188/03, EU:T:2004:194, paragraph 28), and, as regards the concept of 'education costs', judgment of 8 September 2011, *Bovagnet* v *Commission* (F-89/10, EU:F:2011:129, paragraph 21).

34 '*Indeed*, such a situation, as is apparent from Circular No 4516 …' (paragraph 31 of the judgment under appeal); 'as is *indeed* confirmed by Circular No 4516' (paragraph 36 of the judgment under appeal).

40. That is wrong. It is not the reimbursement of the education fees that may vary from one Member State to another or from one establishment to another, but the actual existence and the amount of the education fees to be reimbursed.

41. Thus, where an establishment makes the registration and attendance of a pupil conditional on payment of fees, it is the nature and constituent elements of those fees that, in accordance with the judgment in *Bovagnet* v *Commission*[35] and independently of the national designations and classifications, will determine whether they will be reimbursed. On the other hand, where the establishment does not make the registration and attendance of a pupil conditional on payment of fees, for whatever reason, the official concerned is not entitled to receive the education allowance.

42. The appellants submit, next, that an autonomous interpretation ought to have taken account of the fact that, without the contributions which they are invited to pay, the establishments concerned would be unable to fund the specific education for which the appellants chose to register their children there. They maintain that the contributions therefore constitute costs actually incurred by the appellants for their children's education.

43. In holding that the education costs do not cover all the costs actually incurred for education, but only those which an establishment requires as registration and attendance fees, however, the General Court interpreted that concept in accordance with the wording and the purpose of the applicable provisions of the Staff Regulations.

44. The appellants maintain, lastly, that in treating, in paragraph 40 of the judgment under appeal, the contributions paid as 'other expenses' for the purposes of Article 3 of the GIPs, the General Court considerably restricts the autonomous concept of 'education costs' laid down in the Staff Regulations. According to the appellants, the General Court considered that the contributions paid come within the category of 'other expenses' solely because they are not linked with the official Belgian education programme.

45. That is not how I read the judgment of the General Court. After concluding, for the reasons set out above,[36] that the contributions paid did not come within the category of reimbursable education costs, the General Court classified them by exclusion in the residual category of 'all other expenses', which are non-reimbursable. As the list of cases stated to fall within that category is not exhaustive, the General Court was entitled to regard the contributions in question as 'other expenses connected with following the curriculum of the educational establishment attended'.[37]

46. This complaint must therefore be rejected.

*2. Distortion of the facts*

47. The appellants maintain that in stating, in paragraph 31 of the judgment under appeal, that the charging of education costs by the associations would not be consistent with Belgian law, the General Court distorted the facts.

48. In that regard, there is such distortion where, without recourse to new evidence, the assessment of the existing evidence appears to be clearly incorrect.[38]

35 Judgment of 8 September 2011, *Bovagnet* v *Commission* (F-89/10, EU:F:2011:129, paragraphs 22 and 23).

36 Points 32 to 36 of this Opinion.

37 See paragraph 40 of the judgment under appeal.

38 Judgment of 18 January 2007, *PKK and KNK* v *Council* (C-229/05 P, EU:C:2007:32, paragraph 37).

49. However, in the present case such distortion of national law is not established, since the appellants have not shown either that the circular in question was not binding or that the General Court made an assessment that clearly ran counter to the content of that circular. In particular, they have not shown, in support of their argument, that the establishments or associations would be authorised to request payment of fees relating to the specific educational project of those establishments.

50. This complaint must therefore also be rejected.

51. Consequently, the first ground of appeal is unfounded in its entirety.

### *C. Second ground of appeal, alleging a material inaccuracy in the findings*

52. The appellants maintain that, in the judgment under appeal, the response to their plea alleging breach of the principle of the protection of legitimate expectations contains a material inaccuracy in the findings. In their submission, the General Court adjudicated on the question whether the form produced by the Parliament, to be completed by the establishments concerned, demonstrated the existence of registration fees. On the other hand, it did not adjudicate on the existence of a consistent practice of the Parliament that would have caused the appellants to have a legitimate expectation.

53. In paragraphs 44 and 45 of the judgment under appeal, the General Court did, however, respond to the appellants' plea alleging breach of the principle of the protection of legitimate expectations. After recalling the three conditions that must be met in order to rely on the principle of the protection of legitimate expectations, the General Court held that, even if precise, unconditional and consistent assurances had been given by the administration, they could not give rise to a legitimate expectation on the part of the appellants as they did not comply with the provisions of the Staff Regulations.

54. The General Court's response to that plea relies, moreover, on settled case-law. [39]

55. In that context, the form sent to the establishments concerned, which according to the General Court did not enable it to be established that the appellants had paid registration fees, is mentioned in paragraph 46 of the judgment under appeal only in response to the parties' argument that the sending of that form was accompanied by assurances that gave rise to a legitimate expectation on their part.

56. The second ground of appeal is, therefore, manifestly unfounded.

### *D. Third ground of appeal, alleging an error of law in the interpretation of the case-law relating to the rule requiring correspondence between the complaint and the action*

57. The appellants claim that, in rejecting as inadmissible their argument alleging breach of the principle of legal certainty on the ground that it had not been raised in the complaint, the General Court, in paragraph 47 of the judgment under appeal, failed to have regard to the case-law relating to correspondence between the complaint and the action.

58. In the appellants' submission, it was only in the decisions rejecting the complaints that the Parliament asserted that the education allowance was subject to an annual evaluation. They cite the case-law that provides for an exception to the rule requiring correspondence between the complaint and the action: in a situation where the complainant becomes aware of the statement of reasons for the act adversely affecting him by way of the response to his complaint, any plea put forward for the first time in the application stage which aims to dispute the merits of the reasons set out in the

39 Judgments of 6 February 1986, *Vlachou* v *Court of Auditors* (162/84, EU:C:1986:56, paragraph 6); of 27 March 1990, *Chomel* v *Commission* (T-123/89, EU:T:1990:24, paragraphs 25 to 30); and of 7 July 2015, *Kur* v *Commission* (F-53/14, EU:F:2015:81, paragraph 64).

response to the complaint must be deemed to be admissible.[40] The appellants therefore maintain that they were entitled to raise for the first time in their application their plea that the Parliament's right to subject the education allowance to an annual evaluation is inconsistent with the principle of legal certainty.

59. The Parliament contends that the decisions rejecting the complaints do not contain any reasoning that alters or substantially supplements the reasoning set out in the rejection decisions.

60. In that regard, it is true that the Parliament states for the first time in its response to the appellants' complaints that the education allowance is subject to an annual evaluation. However, that assertion is made in support of its argument that it did not give the appellants precise and unconditional assurances that they would receive the education allowance. It was therefore in response to the plea alleging breach of a legitimate expectation, raised by the appellants in their complaint, that the Parliament stated that the education allowance was the subject of an annual evaluation. That argument is not a ground of the rejection decisions that appeared only at the stage of the response to the complaints, but a reason why a legitimate expectation could not arise on the part of the appellants.

61. The judgment to which the appellants refer was, moreover, delivered in circumstances in which the administration, when rejecting the complaint, had departed from the statement of reasons contained in its initial decision and instead adopted other reasons.[41] That is not the position in the present case. The reason stated for rejecting the request for reimbursement is the same in the initial decisions and in the rejection of the complaints: the establishments concerned cannot be classified as establishments which charge fees in the words of the Staff Regulations and therefore do not fulfil the conditions for the appellants to be entitled to receive the education allowance.

62. It follows that, in rejecting as inadmissible the appellants' argument relating to the principle of legal certainty on the ground that it had not been raised in the complaint, the General Court did not fail to have regard to the case-law relating to the rule requiring correspondence between the administrative complaint and the action.

63. The third ground of appeal is, therefore, unfounded.

### *E. Fourth ground of appeal, alleging breach of the obligation to state reasons*

64. The appellants claim that the General Court failed to fulfil its obligation to state reasons when it stated, in paragraph 56 of the judgment under appeal, that the first part of their third plea in law, alleging breach of the principle of equal treatment, was ineffective.

65. The appellants claimed before the General Court that officials of another institution of the European Union continued to receive reimbursement of the education costs for their children attending the same establishments. The appellants maintained that they were treated differently on the basis of the same rules of the Staff Regulations.

40 The appellants cite the judgment of 21 May 2014, *Mocová* v *Commission* (T-347/12 P, EU:T:2014:268, paragraph 44).

41 Judgment of 21 May 2014, *Mocová* v *Commission* (T-347/12 P, EU:T:2014:268, paragraph 32).

66. The General Court did indeed respond to that complaint, albeit succinctly, in two stages. After setting out the basis and the content of the principle of equal treatment, it emphasised, in paragraph 55 of the judgment under appeal, that that principle must be reconciled with the principle of legality. Consequently, and in application of settled case-law,[42] an official could not rely, in support of his claim, on an unlawful act committed in favour of another. As the General Court found, moreover, that the grant of reimbursement of costs such as those incurred by the appellants was not consistent with the provisions of the Staff Regulations, it inferred that the appellants could not rely on that unlawful act from which other officials benefited.

67. The General Court thus concluded that the complaint alleging breach of the principle of equal treatment was ineffective.

68. It does not appear to me that the General Court thus failed to fulfil its obligation to state reasons under Articles 36 and 53 of the Statute of the Court of Justice of the European Union. That obligation does not require the General Court to provide an account which follows exhaustively and one by one all the arguments put forward by the parties to the case. The reasoning on which the judgment is based must enable the persons concerned to know why the General Court has not upheld their arguments and provide the Court of Justice with sufficient material for it to exercise its power of review.[43] That is the position in the present case. The statement of reasons provided by the General Court in paragraphs 55 and 56 of the judgment under appeal enables those concerned to know why the General Court held that reliance on the principle of equal treatment was ineffective and did not deem it necessary to respond to all the arguments relating to compliance with that principle.

69. The appellants claim, next, that the General Court failed to adjudicate on the alleged infringement of Article 22 of the Charter of Fundamental Rights of the European Union, which requires that the European Union is to respect cultural, religious and linguistic diversity. I consider that although the appellants do indeed refer to that provision in their application before the General Court in the context of the second part of the third plea, relating to the breach of the principle of sound administration, they do so in terms that are too hypothetical and general for it to be possible to consider that they claim that there has been an infringement of that provision. The General Court cannot therefore be criticised for not having adjudicated in that regard.

70. It follows from the foregoing that in my view the fourth ground of appeal must also be rejected as unfounded and that, in consequence, the appeal must be dismissed in its entirety.

## VI. Costs

71. Under Article 138(1) of the Rules of Procedure of the Court of Justice, which, pursuant to Article 184(1) of those Rules of Procedure, is to apply to the procedure on appeal, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

72. As the Parliament has applied for costs and the appellants have been unsuccessful, they must be ordered, in addition to bearing their own costs, to pay the costs incurred by the Parliament.

42 Judgments of 4 July 1985, *Williams* v *Court of Auditors* (134/84, EU:C:1985:297, paragraph 14); of 11 July 2007, *Centeno Mediavilla and Others* v *Commission* (T-58/05, EU:T:2007:218, paragraph 155); and of 21 January 2014, *Van Asbroeck* v *Parliament* (F-102/12, EU:F:2014:4, paragraph 38).

43 See, in particular, judgments of 20 May 2010, *Gogos* v *Commission* (C-583/08 P, EU:C:2010:287, paragraph 30), and of 2 July 2010, *Kerstens* v *Commission* (T-266/08 P, EU:T:2010:273, paragraph 73).

## VI. Conclusion

73. Having regard to the foregoing considerations, I propose that the Court should:

(1) dismiss the appeal;

(2) order Ms Irit Azoulay, Mr Andrew Boreham, Ms Mirja Bouchard and Mr Darren Neville, in addition to bearing their own costs, to pay the costs incurred by the European Parliament.