Reports of Cases

JUDGMENT OF THE GENERAL COURT (First Chamber)

10 June 2020*

(Civil Service – Officials – Rights and obligations of an official – Publication of a matter dealing with the work of the Union – Obligation to provide information in advance – Article 17a of the Staff Regulations – Staff report – Liability)

In Case T-608/18,

Mark Anthony Sammut, residing in Foetz (Luxembourg), represented by P. Borg Olivier, lawyer,

applicant,

v

European Parliament, represented by M. Sammut and I. Lázaro Betancor, acting as Agents,

defendant,

APPLICATION based on Article 270 TFEU seeking, in essence, (i) annulment of the decision of the Parliament of 4 January 2018 in so far as it did not accede to the applicant's request that a statement made in his 2016 staff report be removed and (ii) compensation for the material and non-material damage that he allegedly suffered as a result of that decision,

THE GENERAL COURT (First Chamber),

composed of H. Kanninen, President, M. Jaeger and N. Półtorak (Rapporteur), Judges,

Registrar: S. Bukšek Tomac, Administrator,

having regard to the written part of the procedure and further to the hearing on 28 January 2020,

gives the following

Judgment

Background to the dispute

1 The applicant, Mark Anthony Sammut, is an official of the European Parliament.

* Language of the case: Maltese.

2 In November 2016, the applicant published, in Malta, a book entitled *L-Aqwa fl-Ewropa. Il-Panama Papers u l-Poter* (The Best in Europe: The Panama Papers and Power, 'the book in question').

3 On 13 March 2017, the applicant informed the Director-General of the Parliament's Directorate-General (DG) for Translation of his intention to publish a second edition of the book in question. On 7 April 2017, the Parliament held that the applicant's request was not admissible since it concerned a second edition and so it could not be considered to be advance notice of the publication of that book.

4 The applicant's staff report for 2016 contains a statement that the applicant 'appears not to have informed the Appointing Authority of his intention to publish a book, "L-Aqwa fl-Ewropa. Il-Panama Papers u l-Poter", during 2016' ('the contested statement'). That statement appears in the 'Conduct' section, under '3. Compliance with rules and procedures', of the staff report.

5 On 17 May 2017, the applicant submitted a request to the Reports Committee for a review of his 2016 staff report. He requested, inter alia, the removal of the contested statement.

6 On 4 January 2018, the Director-General of DG Translation sent the applicant a letter informing the latter of his decision to proceed in accordance with the Reports Committee's findings of 8 November 2017 and therefore change his 2016 staff report by merely removing the statement concerning the applicant's output per day of presence ('the decision of 4 January 2018'). He thus refused to remove the contested statement from the staff report.

7 On 26 March 2018, the applicant lodged a complaint under Article 90(2) of the Staff Regulations of Officials of the European Union ('the Staff Regulations') against the decision of 4 January 2018. In that complaint he requested inter alia that the Appointing Authority should take the necessary steps to ensure that the contested statement would be removed from his 2016 staff report.

8 By letter of 6 July 2018, the Appointing Authority rejected the applicant's complaint ('the decision rejecting the complaint').

Procedure and forms of order sought

9 The applicant brought the present action by application lodged at the Court Registry on 8 October 2018.

10 By a document lodged at the Court Registry on 11 March 2019, the applicant submitted a request for the examination of witnesses. On 1 April 2019, the Parliament submitted its observations on that request.

11 Following a change in the composition of the Chambers of the Court pursuant to Article 27(5) of the Rules of Procedure of the General Court, the Judge-Rapporteur was assigned to the First Chamber, to which the present case was accordingly allocated.

12 At the hearing on 28 January 2020, the parties presented oral argument and replied to oral questions put by the Court.

13 The applicant claims that the Court should:

– annul in part the decision of 4 January 2018;

– annul the decision rejecting the complaint;

– order the removal of the contested statement from his 2016 staff report;

– order the Parliament to compensate for various damage resulting from the decision of 4 January 2018;

– order the Parliament to pay the costs.

14 The Parliament contends that the Court should:

– dismiss the application;

– order the applicant to pay the costs.

Law

Preliminary observations

15 By his first and second heads of claim, the applicant seeks the partial annulment of the decision of 4 January 2018 and annulment of the decision rejecting the complaint.

16 In that regard, it should be borne in mind that, according to case-law, an administrative complaint such as that referred to in Article 90(2) of the Staff Regulations, and its rejection, whether express or implied, constitute an integral part of a complex procedure and are no more than a precondition for bringing the matter before the court. Consequently, an action, even if formally directed against the rejection of the complaint, has the effect of bringing before the court the act adversely affecting the applicant against which the complaint was submitted (see, by analogy, judgment of 17 January 1989, *Vainker* v *Parliament*, 293/87, EU:C:1989:8, paragraphs 7 and 8), except where the rejection of the complaint has a different scope from that of the measure against which the complaint was lodged (judgment of 25 October 2006, *Staboli* v *Commission*, T-281/04, EU:T:2006:334, paragraph 26).

17 Every decision which is a rejection of a complaint, whether it be express or implied, only confirms the act or failure to act to which the complainant takes exception and is not, by itself, a decision which may be challenged, and accordingly the head of claim directed against that decision without content independent from the initial decision must be regarded as being directed against the initial act (see judgment of 19 June 2015, *Z* v *Court of Justice*, T-88/13 P, EU:T:2015:393, paragraph 141 and the case-law cited).

18 In the present case, the decision rejecting the complaint against the decision of 4 January 2018 merely confirms that decision since it does not amend its operative part or contain a re-examination of the applicant's situation in the light of new elements of law or of fact. The fact that the decision rejecting the complaint sets out the reasons for the decision of 4 January 2018 does not affect its confirmatory nature. In such circumstances, it is indeed the legality of the

initial act adversely affecting the official which must be examined, taking into account the reasons set out in the decision rejecting the complaint, those reasons being expected to be the same as those for that act (see, to that effect, judgment of 9 December 2009, *Commission* v *Birkhoff*, T-377/08 P, EU:T:2009:485, paragraph 55 and the case-law cited).

19 In those circumstances, as the decision rejecting the complaint is devoid of any independent content, the application for annulment must be regarded as being directed against the decision of 4 January 2018, the legality of which must be examined, taking into account the reasons given for the decision rejecting the complaint.

Admissibility of the third head of claim

20 The applicant's third head of claim seeks to have the Court issue directions to the Parliament to remove the contested statement from his 2016 staff report.

21 According to settled case-law in that regard, the General Court may not give directions to an EU institution, apart from the general obligation, set out in Article 266 TFEU, for the institution whose act has been declared void to take the necessary measures to comply with the judgment annulling it (see judgment of 15 January 2019, *HJ* v *EMA*, T-881/16, not published, EU:T:2019:5, paragraph 26 and the case-law cited).

22 The claim that the Court should order the removal of the contested statement from the applicant's 2016 staff report must therefore be rejected as inadmissible.

Admissibility of the reference to the arguments appearing in the complaint

23 In the application, the applicant refers to the complaint lodged on 26 March 2018, arguing that all of the points made in that complaint form an integral part of the present action.

24 It should be borne in mind in that regard that, under Article 21 of the Statute of the Court of Justice of the European Union and Article 44(1)(d) of the Rules of Procedure, each application is required to state the subject matter of the proceedings, the pleas in law and arguments on which the application is based and a summary of those pleas. That statement must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the application, if appropriate without other information (see, to that effect, judgment of 14 March 2013, *Fresh Del Monte Produce* v *Commission*, T-587/08, EU:T:2013:129, paragraph 268).

25 Furthermore, the annexes may be taken into consideration only in so far as they support or supplement pleas or arguments expressly set out by applicants in the body of their pleadings and in so far as it is possible to determine precisely what are the matters they contain that support or supplement those pleas or arguments. Whilst the text of the application can be supported by references to extracts in documents annexed to it, it is not for the Court to seek and identify in the annexes the pleas and arguments on which it may consider the action to be based, the annexes having a purely evidential and instrumental function (see, to that effect, judgment of 11 September 2014, *MasterCard and Others* v *Commission*, C-382/12 P, EU:C:2014:2201, paragraphs 40 and 41 and the case-law cited).

26 In the present case, the applicant merely makes a general reference to all the points made in the complaint, without being precise. That reference must therefore be rejected as manifestly inadmissible.

Substance

The application for annulment

27 In support of his application for annulment, the applicant puts forward two pleas, which should be examined together. The first alleges infringement of the fundamental right of freedom of expression. The second alleges incorrect application of Article 17a(2) of the Staff Regulations.

28 Those pleas divide in essence into three separate complaints. First, the applicant argues that the book in question is not liable seriously to prejudice the legitimate interests of the European Union and that it was therefore wrong to discipline him in his 2016 staff report. Secondly, the applicant considers that it was in the light of too broad an interpretation of the concept of 'work of the Union' that the book in question was regarded as dealing with that work. Thirdly, the applicant considers that the decision rejecting the complaint does not state the reasons on which it is based.

29 The Court considers it appropriate to examine the third complaint first.

– The third complaint

30 The applicant claims a failure to state reasons for the decision of 4 January 2018, alleging that it is based simply on a mere opinion, not on facts or legal considerations. In that regard, he argues, first, that the Appointing Authority's use of the words 'I consider that', in the decision rejecting the complaint, shows that that decision is based on an opinion and not on objective evidence providing an adequate degree of reasoning. Secondly, he contends that the Appointing Authority did not read the book in question and concluded on the basis of its title alone that it dealt with the work of the Union. In that regard, the Head of the Maltese Language Unit of DG Translation admitted moreover that the book makes no reference to the work of the Union or to that of the Parliament. Consequently, the statement of reasons for the decision of 4 January 2018 does not comply with the requirements that must be met in a ruling on possible infringement of a fundamental right.

31 The Parliament contests the applicant's arguments.

32 As a preliminary point, it should be noted that the obligation to state reasons, referred to in Article 296 TFEU and repeated in Article 41(2)(c) of the Charter of Fundamental Rights of the European Union, constitutes an essential principle of EU law, which is intended, on the one hand, to provide the persons concerned with sufficient details to enable them to assess whether the decision was well founded and whether it would be expedient to bring legal proceedings to contest its legality and, on the other hand, to enable the EU Courts to review the decision (see judgment of 3 July 2019, *PT* v *EIB*, T-573/16, not published, EU:T:2019:481, paragraph 374 and the case-law cited).

33 The statement of reasons for a measure must be considered with reference not only to its wording but also to its context and the whole body of legal rules governing the matter in question. Thus the grounds stated for a decision are sufficient if the measure was adopted in circumstances known to the official concerned which enable him to understand its scope (see judgment of 1 April 2004, *N* v *Commission*, T-198/02, EU:T:2004:101, paragraph 70 and the case-law cited).

34 It must be borne in mind, however, that the obligation to state reasons is an essential procedural requirement, as distinct from the question whether the reasons given are correct, which goes to the substantive legality of the contested measure (see judgment of 1 March 2017, *Silvan* v *Commission*, T-698/15 P, not published, EU:T:2017:131, paragraph 17 and the case-law cited).

35 It is in the light of those considerations that the Court must decide whether, in particular in view of the reasons contained in the decision rejecting the complaint, an adequate statement of reasons is given for the decision of 4 January 2018 in the present case.

36 In that regard, it should be pointed out that, in the decision rejecting the complaint, the Appointing Authority first recalled the rights and duties set out in Article 17a of the Staff Regulations regarding the publication of any matter by EU officials. Then it stated that the applicant had not informed the Parliament in advance of his intention to publish the book in question. Lastly, it explained the following to the applicant:

'As the title of your book suggests and as you describe at paragraph 2 of your complaint, your book deals with the Panama Papers and offshore companies. The Parliament has taken measures in the field of the use of offshore companies for money laundering and tax evasion. In fact, in June 2016, the PANA committee … was established and investigated Panama papers relating to the EU and its Member States. Consequently, I consider that there is a link between the book and the work of the Parliament.'

37 In that context, first, the applicant contends that the use of the words 'I consider' shows that that decision is not based on objective evidence and that it does not therefore provide the depth of reasoning required. It should be noted nonetheless that, contrary to the applicant claims, the Appointing Authority's use of the words 'I consider' is by no means sufficient to show that the reasoning for the decision of 4 January 2018 is subjective. The use of those words cannot on its own affect the legality of that decision.

38 That argument must therefore be rejected as unfounded.

39 Secondly, the applicant claims that it is because the Appointing Authority has not read the book in question that it concluded that the latter dealt with the work of the Union, despite the contrary opinion expressed by the Head of the Maltese Language Unit of DG Translation.

40 First, it should be noted in that regard that the contrary opinion of a head of Unit in DG Translation regarding the content of the book in question is irrelevant for the purposes of establishing whether the statement of reasons for the decision of 4 January 2018 is adequate.

41 Secondly, it must be stated that the considerations concerning the content of the book in question relate to review of the substantive legality of the decision and not to review of its statement of reasons and cannot therefore be accepted in the context of a complaint alleging breach of the duty to state reasons. In any event, it should be noted that the Parliament stated at the hearing that the content of that book had been explained to the Appointing Authority.

42 Lastly, it is clear from paragraph 36 above that the statement of reasons for the decision of 4 January 2018 was, in essence, based on the fact that the book in question concerned the 'Panama Papers' and offshore companies, and had a link with the work of the Parliament. It is in the light of those factors that it was held that the applicant had failed to fulfil his obligations under Article 17a of the Staff Regulations.

43 In that context, it must be held that the statement of reasons was sufficient to enable the applicant to determine whether the decision of 4 January 2018 was well-founded or whether it was vitiated by a defect which would permit its legality to be contested. On the basis of the reasons set out above, the applicant was in a position to understand the specific reasons why the Parliament had held that he should have informed the Appointing Authority of his intention to publish the book in question. It should be noted, however, that those reasons are challenged by the applicant in the context of the present action. Furthermore, those reasons are also sufficient to enable the Court to review the legality of the decision of 4 January 2018.

44 It cannot therefore be disputed that that decision fulfils the conditions laid down by the case-law, as they are set out in paragraphs 32 to 34 above. The applicant's complaint that the decision of 4 January 2018 is flawed by a failure to state reasons must therefore be rejected.

– ***The first complaint***

45 The applicant claims that the Appointing Authority imposed on him an obligation that was more binding than that provided for by Article 17a(2) of the Staff Regulations. The fact that the Parliament had set up a committee of inquiry to investigate alleged contraventions and maladministration in the application of EU law in relation to money laundering, tax avoidance and tax evasion ('the PANA Committee') does not mean that he can express views on issues relating to the Panama Papers only where he has criticised the work of that committee, of the Parliament or of the European Union, in a way that has seriously prejudiced the legitimate interests of the Union. The applicant cites in that regard the judgment of 6 March 2001, *Connolly* v *Commission* (C-274/99 P, EU:C:2001:127), from which it is clear that it is not necessary in the present case to know whether he failed to give notice of his proposal to publish the book in question, but rather to determine whether the legitimate interests of the Union could be seriously threatened by the book's content. Thus, since the book in question does not present such a threat, it cannot be regarded as falling within the condition laid down in Article 17a(2) of the Staff Regulations, or as being related to the work of the Union.

46 The Parliament contests the applicant's arguments.

47 As a preliminary point, it must be stated that it is not for the General Court to substitute its own assessment for that of the persons responsible for appraising the work of the person on whom they are reporting. Reporting officers enjoy a wide discretion when appraising the work of persons upon whom they must report. Consequently, review by the EU Courts of the content of staff reports is limited to ensuring that the procedure is conducted in a regular manner, the facts are materially correct, and there is no manifest error of assessment or misuse of powers (see, to that effect, judgments of 1 June 1983, *Seton* v *Commission*, 36/81, 37/81 and 218/81, EU:C:1983:152, paragraph 23, and of 25 October 2005, *Cwik* v *Commission*, T-96/04, EU:T:2005:376, paragraph 41).

48 Moreover, it should be noted that, according to settled case-law, the officials and other employees of the European Union enjoy the right of freedom of expression, even in areas falling within the scope of the activities of the EU institutions. That freedom extends to the expression, orally or in writing, of opinions that dissent from or conflict with those held by the employing institution (see judgment of 6 March 2001, *Connolly* v *Commission*, C-274/99 P, EU:C:2001:127, paragraph 43 and the case-law cited).

49 Nonetheless, freedom of expression may be subject to the limitations set out in Article 10(2) of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, in terms of which the exercise of that freedom, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, (see judgment of 13 December 2012, *Strack* v *Commission*, T-199/11 P, EU:T:2012:691, paragraph 137 and the case-law cited).

50 It is also legitimate in a democratic society to subject public servants, on account of their status, to obligations such as those contained in Article 17a of the Staff Regulations. Such obligations, which admittedly constitute restrictions on the exercise of the right of freedom of expression, are intended to preserve the relationship of trust which must exist between the institution and its officials or other employees (judgment of 13 December 2012, *Strack* v *Commission*, T-199/11 P, EU:T:2012:691, paragraph 138; see, by analogy, judgment of 6 March 2001, *Connolly* v *Commission*, C-274/99 P, EU:C:2001:127, paragraph 44).

51 In that regard, it is apparent from Article 17a(2) of the Staff Regulations that an official who intends to publish or to cause to be published, whether alone or with others, any matter dealing with the work of the European Union must inform the Appointing Authority in advance. The latter must submit any objections within 30 working days of receipt of the information, failing which it shall be deemed to have given its implicit agreement in that regard. Case-law states that such agreement may be refused only as an exception, where the proposed publication is liable seriously to prejudice the legitimate interests of the Union (see, to that effect, judgment of 15 September 2017, *Skareby* v *EEAS*, T-585/16, EU:T:2017:613, paragraphs 80 and 81).

52 It appears from this that the procedure to be followed by officials who intend to publish any matter dealing with the work of the Union consists of two separate stages. In first stage, the official is required to inform the Appointing Authority of his intention to proceed with the publication, where the matter in question deals with the work of the Union. In the second stage the Appointing Authority is required, where it is able to demonstrate that that matter is liable seriously to prejudice the legitimate interests of the Union, to inform the official concerned, in writing, of its decision within 30 working days.

53 The different rules for each of those stages correspond to the specific purpose of the procedure provided for by Article 17a of the Staff Regulations. Thus, advance notice of the intention of the official concerned to publish any matter dealing with the work of the Union enables the institutions to exercise the supervision they are required to undertake in accordance with the second subparagraph of Article 17a(2) of the Staff Regulations. In the light of those considerations, the potential of the material in question seriously to prejudice the legitimate interests of the Union is not, therefore, a relevant criterion to be taken into account at the stage of notice of the intention to publish any matter dealing with the work of the Union.

54 In the present case, it should be noted that the Appointing Authority was not informed in advance of publication of the book in question. In that regard, in the decision of 4 January 2018, the Parliament stated merely that the contested statement – which appeared in the 'Conduct' section, under the heading '3. Compliance with rules and procedures', of the applicant's 2016 staff report – was justified with regard to Article 17a(2) of the Staff Regulations, thus finding that he had failed to fulfil his duty to give advance notice. It did not, however, express any view on whether the book in question was liable to present any threat to the legitimate interests of the Union.

55 It must therefore be held that the applicant's contention that the book in question is not liable seriously to threaten the legitimate interests of the Union is irrelevant for the purposes of assessing the legality of the decision of 4 January 2018.

56 It is therefore necessary to reject the complaint that, since the book in question is not liable seriously to threaten the legitimate interests of the Union, the Parliament imposed on the applicant an obligation that was more onerous than that provided for by Article 17a(2) of the Staff Regulations, in considering that the applicant should have given the Appointing Authority notice of the proposed publication.

– ***Second complaint***

57 First, the applicant claims that officials intending to publish any matter are under a duty to provide information of their intention only where that matter deals with the work of the Union. In that regard, the Appointing Authority is required to adopt a strict interpretation of the concept of 'work of the Union', particularly in the light of other guidance establishing the context within which that concept should be interpreted. In the present case, the mention of a mere link between the book in question and the work of the Union is not sufficient to establish that the applicant was required to inform the administration of his intention to proceed with that publication.

58 The applicant thus contends, in essence, that the book in question does not refer to any work of the Union but concerns purely and simply a Maltese internal political discussion. Since the Parliament is involved in many issues in a variety of fields, to accept the Appointing Authority's reasoning would amount to preventing EU officials from speaking on any subject related to the work of the PANA Committee and the Parliament. However, since the book in question makes no reference either to the work of the Committee or to that of the European Union, it does not deal with the work of the Union. Therefore, the applicant has not harmed his relationship of trust or failed to comply with his duties of loyalty and impartiality to the European Union by failing to give notice of his proposal to publish. Lastly, if the subject matter of that book did relate to work of the Union, which is not so in the present case, he contends that it would at most supplement the thinking of the Appointing Authority and of the PANA Committee's investigation.

59 Secondly, the applicant adds that, by disciplining him, the Appointing Authority assumed greater discretionary powers than those granted to it under Article 17a(2) of the Staff Regulations, and that it therefore infringed his right of freedom of expression.

60 Thirdly, the applicant contends that, as a result of the cumulation of the various time limits laid down in Article 17a(2) and Article 90(2) of the Staff Regulations, the time limit for applications for review of publications subject to advance notice is a period of five months. In view of the length of that period, the duty to give notice should be limited to publications relating strictly to the work of the Union.

61 The Parliament contests the applicant's arguments.

62 In the first place, as regards the applicant's argument that the book in question concerns a Maltese internal political discussion (see paragraphs 57 and 58 above), it should be noted that the reasoning for the decision of 4 January 2018 is, in essence, that the Appointing Authority considered that the book in question concerned the so-called 'Panama Papers' issue and offshore companies, and that, since that subject was related to the work of the Parliament, the latter should have been informed in advance of the applicant's intention to publish the book.

63 In that regard, it should be noted that, on 8 June 2016, the Parliament adopted Decision (EU) 2016/1021 on setting up a Committee of Inquiry to investigate alleged contraventions and maladministration in the application of Union law in relation to money laundering, tax avoidance and tax evasion, its powers, numerical strength and term of office (OJ 2016 L 166, p. 10). Paragraph 2 of Decision 2016/1021 states that the PANA Committee should, inter alia, investigate the activities of all the Member States of the European Union, including Malta.

64 Moreover, although the final report of the PANA Committee was drawn up after the book in question was published, it should nonetheless be noted that it bears out what is stated in paragraph 63 above in that it refers to a fact-finding field mission that was actually sent to Malta on 20 February 2017. Moreover, it is also clear from the documents before the Court that page 86 of the book in question mentions an invitation, received by a minister in the Maltese Government, to appear before a Parliament committee in order to provide explanations concerning the company he owned in Panama. In the light of this, it must therefore be held that the work of the PANA Committee was related to the situation in Malta, in particular with regard to investigations there into possible infringements in the application of EU law on money laundering, tax avoidance and tax evasion.

65 Consequently, it must be held that the subject matter of the book in question did relate to the powers of the PANA Committee, since the latter was required to assess the situation of Member States of the European Union, and in particular Malta, with regard to money laundering, tax avoidance and tax evasion.

66 Furthermore, it should be noted that the applicant is wrong to claim that there is no reference to the work of the Union in the book in question and that the latter merely deals with its subject matter from a purely internal viewpoint.

67 Indeed, the title of the book in question, *The Best in Europe: The Panama Papers and Power*, clearly establishes it in a European context, especially since a reproduction of the European Union's flag appears on its cover. Moreover, the book also includes several references to the work of the Union and individuals with connections to the European Union's institutional framework. The following in particular may be mentioned in that regard: references to the work of the PANA Committee, the Maltese Presidency of the Council of the European Union, and a Member of the European Parliament. Moreover, an annex to the book in question addresses the matter of Brexit and refers expressly to the European Union's internal market.

68 In the light of the above, it cannot be claimed that the book in question concerns purely and simply a discussion of Maltese internal politics and that it does not deal in any way with the work of the Union. Although it is considered that the book's subject is addressed mainly from a national point of view, in so far as it deals with Maltese politics and politicians, the fact remains that the latter were at the same time the subject of the PANA Committee's work. It must therefore be held that the book in question deals with the work of the Union. Moreover, the book in question includes many specific references to such work, as is clear from paragraph 67 above.

69 It must therefore be held that, since the book in question deals with the work of the Union, the Parliament cannot be regarded as having committed a manifest error of assessment or misused its powers in considering that the Appointing Authority should have been informed of the proposal to publish, as provided for in Article 17a(2) of the Staff Regulations.

70 The applicant's argument that Article 17a(2) of the Staff Regulations was incorrectly applied in the decision of 4 January 2018, thereby infringing his right of freedom of expression, must therefore be rejected.

71 In the second place, as regards the applicant's argument that the Appointing Authority assumed greater discretionary powers than those granted it under Article 17a (see paragraph 59 above), it should be noted that the present action concerns exclusively the legality of the decision of 4 January 2018, and therefore whether the Parliament had grounds for stating in the applicant's 2016 staff report that the applicant had failed to inform the Appointing Authority of the publication of the book in question in 2016.

72 It should also be noted that it follows from the case-law recalled in paragraphs 49 to 51 above that it is legitimate for EU officials to be made subject to obligations such as those contained in Article 17a of the Staff Regulations. Moreover, there is nothing to prevent the Appointing Authority from reporting a one-off incident in a staff report, particularly where, as in the present case, that incident represents an infringement of a clear and specific rule directly derived from the Staff Regulations. In those circumstances, the inclusion of a remark, such as the contested statement, in a staff report is not only not contrary to any of the provisions of the Staff Regulations, such as Article 43, but may even be regarded as having the legitimate objective of providing a means of warning the person concerned and helping to avoid a repeat of the infringement in question (see, to that effect, judgment of 26 March 2015, *CW* v *Parliament*, F-41/14, EU:F:2015:24, paragraph 55).

73 Moreover, it is apparent from the documents before the Court that the applicant puts forward no actual evidence to show that any disciplinary measure was imposed on him besides retention in the staff report of the contested statement, which appears in the 'Conduct' section, under heading '3. Compliance with rules and procedures'. It was stated in paragraph 69 above that the Parliament was justified in refusing to remove the contested statement from the applicant's 2016 staff report, since the applicant had failed to comply with the first subparagraph of Article 17a(2) of the Staff Regulations.

74 The applicant's argument that the Appointing Authority assumed greater discretionary powers than those granted it under Article 17a(2) of the Staff Regulations must therefore be dismissed.

75 In the third place, as regards the applicant's argument that the duty to give notice should be limited to publications relating strictly to the work of the Union, in view of the cumulative time limits laid down in Article 17a(2) and Article 90(2) of the Staff Regulations (see paragraph 60

above), it must be held that it is not such as to call in question the finding appearing in paragraph 70 above, that, in the present case, the applicant failed to inform the Appointing Authority of his intention to publish material that dealt with the work of the Union, thereby infringing Article 17a(2) of the Staff Regulations. That is precisely the conclusion reached by the Parliament in the decision of 4 January 2018, in the light of which the legality of that decision must be assessed.

76 That argument is therefore irrelevant for the purposes of assessing the legality of the decision of 4 January 2018 and it must be rejected on those grounds.

77 Since all the complaints put forward in support of the two pleas for annulment of the decision of 4 January 2018 have been rejected, the claim for annulment must be rejected.

The claim for damages

78 The applicant claims that, as the decision rejecting the complaint is based on an incorrect application of the Staff Regulations of Officials by the Appointing Authority and the use of discretionary powers goes beyond what is allowed under the Staff Regulations, he suffered non-material damage both at his place of work and in his private life. That damage had, inter alia, an effect on his literary activities. He also claims that he suffered material damage, in that he lost the advantage of a promotion and he is now liable to face disciplinary proceedings as a result of the decision of 4 January 2018. The applicant therefore claims that the Parliament should be ordered to pay him a sum determined by the Court in compensation for the non-material damage which he alleges he suffered. The applicant states in addition that the Parliament's decision in which it held that the notice he gave in advance of the publication of a second edition of the book in question was inadmissible, had the effect of deterring such publication.

79 The Parliament contests the applicant's arguments.

80 First, in so far as the applicant's line of argument may be interpreted as meaning that he is seeking compensation for material damage, it should be noted that an application seeking compensation for damage caused by an EU institution must, in order to satisfy the requirements of Article 76(d) of the Rules of Procedure, state the evidence on which, in particular, the damage that the applicant claims to have suffered may be identified as well as the nature and extent of that damage (see, to that effect, judgment of 5 October 1999, *Apostolidis and Others* v *Commission*, C-327/97 P, EU:C:1999:482, paragraph 37). Moreover, an action for damages must be dismissed as inadmissible where the applicant has not established, nor even claimed, the existence of special circumstances justifying the omission to calculate, in the application, the alleged head of loss (see, to that effect, judgment of 23 September 2004, *Hectors* v *Parliament*, C-150/03 P, EU:C:2004:555, paragraph 62).

81 In the present case, the applicant has produced no details of how the material damage he alleges was calculated and has not justified that omission, so his claim for compensation for material damage must be rejected as inadmissible.

82 Secondly, as regards the claim for compensation for the non-material damage alleged by the applicant, the latter contends that that damage was caused by the Appointing Authority's incorrect application of the Staff Regulations and by the use of discretionary powers going beyond that allowed by the Staff Regulations.

83 It must nonetheless be noted in that regard that, according to settled case-law, the European Union can be held liable for damages only if a number of conditions are satisfied as regards the illegality of the allegedly wrongful act committed by the institution, body, agency or office concerned, the actual harm suffered and the existence of a causal link between the act and the damage alleged to have been suffered, those three conditions being cumulative (see judgment of 10 April 2019, *AV* v *Commission*, T-303/18 RENV, not published, EU:T:2019:239, paragraph 104 and the case-law cited).

84 If any one of those conditions is not satisfied, the action must be dismissed in its entirety and it is unnecessary to consider the other conditions for non-contractual liability (see judgment of 13 December 2018, *Wahlström* v *Frontex*, T-591/16, not published, EU:T:2018:938, paragraph 127 and the case-law cited).

85 In the present case, it should be noted that the applicant's claim for damages is based solely on the alleged illegality of the decision of 4 January 2018.

86 Since, for the reasons stated in the context of the examination of the applicant's application for annulment, it has been established that the decision of 4 January 2018 was not in any way unlawful, it must be found that the condition concerning the unlawfulness of the conduct alleged against the Parliament is not met.

87 Furthermore, the considerations relating to the Parliament's decision that the applicant's advance notice of the publication of a second edition of the book in question was inadmissible are irrelevant in the context of the present action, since the latter is directed only against the decision of 4 January 2018, in which the Parliament refused to remove the contested statement from the applicant's 2016 staff report.

88 The applicant's claim for damages must therefore be rejected.

The application for a measure of inquiry

89 The applicant requests the Court to hear a Maltese Member of the European Parliament and another Member of the Parliament, who are both figures active in the fight against corruption and for good governance in Malta.

90 It is clear from settled case-law that parties lodging a request for witnesses to be examined must put forward specific and relevant evidence to explain in what way the testimony sought may be of interest in resolving the dispute (see, to that effect, judgment of 23 April 2018, *Verein Deutsche Sprache* v *Commission*, T-468/16, not published, EU:T:2018:207, paragraph 22 and the case-law cited).

91 In the present case, the applicant has not provided any specific evidence in relation to the present case to explain how the hearing of the two witnesses might be necessary or appropriate. Similarly, he has not explained what facts or circumstances pertaining to this case might justify holding such a hearing. The applicant has not therefore shown that the hearing of the two witnesses which he requested is relevant or necessary in the present case.

92 Moreover, the documents before the Court already contain sufficient factual evidence for a ruling to be given in the present action.

93 There is therefore no need to grant the applicant's request for a measure of inquiry.

94 In the light of all the foregoing considerations, the action must be dismissed in its entirety.

Costs

95 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful he must be ordered to pay the costs in accordance with the form of order sought by the Parliament.

On those grounds,

THE GENERAL COURT (First Chamber)

hereby:

1. Dismisses the action;

2. Orders Mr Mark Anthony Sammut to pay the costs.

Kanninen Jaeger Półtorak

Delivered in open court in Luxembourg on 10 June 2020.

[Signatures]