Reports of Cases

JUDGMENT OF THE GENERAL COURT (Eighth Chamber, Extended Composition)

30 November 2022 *

(Law governing the institutions – Member of the EESC – Discharge procedure in respect of the implementation of the budget of the EESC for the financial year 2019 – Parliament resolution designating the applicant as the perpetrator of psychological harassment – Action for annulment – Act not open to challenge – Inadmissibility – Action for damages – Protection of personal data – Presumption of innocence – Obligation of confidentiality – Principle of good administration – Proportionality – Sufficiently serious breach of a rule of law intended to confer rights on individuals)

In Case T-401/21,

KN, represented by M. Casado García-Hirschfeld and M. Aboudi, lawyers,

applicant,

v

European Parliament, represented by R. Crowe, C. Burgos and M. Allik, acting as Agents,

defendant,

THE GENERAL COURT (Eighth Chamber, Extended Composition),

composed, at the time of the deliberations, of M. van der Woude, President, J. Svenningsen (Rapporteur), C. Mac Eochaidh, T. Pynnä and J. Laitenberger, Judges,

Registrar: L. Ramette, Administrator,

having regard to the written part of the procedure,

further to the hearing on 14 September 2022,

gives the following

* Language of the case: French.

Judgment

1 By his action, the applicant, KN, seeks, first, on the basis of Article 263 TFEU, annulment of Decision (EU, Euratom) 2021/1552 of the European Parliament of 28 April 2021 on discharge in respect of the implementation of the general budget of the European Union for the financial year 2019, Section VI – European Economic and Social Committee (OJ 2021 L 340, p. 140, 'the contested decision'), and of Resolution (EU) 2021/1553 of the European Parliament of 29 April 2021 with observations forming an integral part of the decision on discharge in respect of the implementation of the general budget of the European Union for the financial year 2019, Section VI – European Economic and Social Committee (OJ 2021 L 340, p. 141, 'the contested resolution') (together with the contested decision, 'the contested measures') and, secondly, on the basis of Article 268 TFEU, compensation for the damage he claims to have suffered on account of the contested measures.

Background to the dispute

2 The applicant is a member of the European Economic and Social Committee (EESC). He was President of the Employers' Group ('Group I') between April 2013 and October 2020.

3 On 6 December 2018, after having been informed of allegations concerning the applicant's behaviour towards other members of the EESC and of members of EESC staff, the European Anti-Fraud Office (OLAF) opened an investigation against him.

4 By letter of 16 January 2020, OLAF informed the applicant that the investigation had been closed and that its report ('the OLAF report') was to be forwarded to the Belgian Public Prosecutor's Office and to the President of the EESC. Since OLAF concluded, inter alia, that the applicant had harassed two EESC staff members, it recommended, first, that the EESC consider initiating the procedure under Article 8 of the Code of Conduct for Members of the EESC and take 'all necessary measures to prevent any further cases of harassment on the part of [the applicant] in the workplace' and, secondly, that the Belgian Public Prosecutor's Office initiate legal proceedings, since the facts established in its report were liable to constitute a criminal offence within the meaning of Article 442*bis* of the Belgian Criminal Code.

5 By Decision (EU) 2020/1984 of the European Parliament of 13 May 2020 on discharge in respect of the implementation of the general budget of the European Union for the financial year 2018, Section VI – European Economic and Social Committee (OJ 2020 L 417, p. 469), the European Parliament postponed the adoption of a decision on granting the Secretary-General of the EESC discharge in respect of the implementation of the budget of the EESC for the financial year 2018.

6 The following day, the Parliament adopted Resolution (EU) 2020/1985 with observations forming an integral part of the decision on discharge in respect of the implementation of the general budget of the European Union for the financial year 2018, Section VI – European Economic and Social Committee (OJ 2020 L 417, p. 470). Point 6 of that resolution states, in essence, that the Parliament expects to be informed by the EESC of the measures taken to follow up the OLAF report.

7 On 9 June 2020, the EESC Bureau adopted a number of measures to follow up OLAF's recommendations. In particular, in the first place, the EESC asked the applicant to resign from his duties as President of Group I and to withdraw his candidacy for presidency of the EESC and, in the second place, it discharged him from all supervisory and personnel management activities.

8 By letter of 7 July 2020, the President of the EESC informed the Parliament of the measures adopted by the EESC Bureau on 9 June 2020.

9 By decision of 15 July 2020, the EESC plenary assembly, at the request of the auditorat du travail de Bruxelles (Office of the Brussels Labour Auditor, Belgium), waived the immunity enjoyed by the applicant. Next, by decision of 28 July 2020, the EESC plenary assembly decided that that body would act as a civil party in the proceedings initiated against the applicant before the tribunal correctionnel de Bruxelles (Criminal Court, Brussels, Belgium).

10 By Decision (EU) 2020/2046 of the European Parliament of 20 October 2020 on discharge in respect of the implementation of the general budget of the European Union for the financial year 2018, Section VI – European Economic and Social Committee (OJ 2020 L 420, p. 16), the Parliament ultimately refused to grant the Secretary-General of the EESC discharge in respect of the implementation of the budget of the EESC for the financial year 2018. In that resolution, the Parliament expressed inter alia its concerns about what the EESC had done to follow up on the OLAF report.

11 On 25 March 2021, the Parliament's Committee on Budgetary Control ('Cocobu'), in the context of the discharge procedure in respect of the implementation of the budget of the EESC for the financial year 2019, submitted a report in which it recommended that discharge be granted to the Secretary-General of the EESC.

12 On 28 April 2021, the Parliament adopted the contested decision, by which it decided to grant the Secretary-General of the EESC discharge in respect of the implementation of the budget of the EESC for the financial year 2019.

13 The following day, the Parliament adopted the contested resolution, which is worded inter alia as follows:

'Refusal of discharge in 2018, conflict of interest, harassment, whistleblowing

[The Parliament]

66. Recalls that several members of staff suffered acts of psychological harassment by the then president of Group I over a long period of time; regrets that the anti-harassment measures in place in the Committee failed to tackle and remedy this case sooner because of the senior position of the member concerned; … condemns the length of time that the Committee took to take the necessary measures to adapt the Committee's rules of procedure and code of conduct in order to avoid such [a] situation in the future; …

68. Points out that the Committee's failings in this case have resulted in a material loss of public funds with respect to legal costs, sick leave, victim protection, reduced productivity, meetings of the bureau and other bodies, etc.; considers it therefore to be a matter of concern regarding accountability, budgetary control and good governance of human resources in the Union institutions, bodies, offices and agencies; …

69. Recalls that Parliament refused to grant the Committee's secretary-general discharge in respect of the financial year 2018, among other reasons on the ground of a flagrant breach of the duty of care and the lack of action by the administration, along with the financial consequences; reminds the Committee that being refused discharge is a serious matter, requiring immediate action; deeply regrets the lack of decisive action, in particular prevention and reparative measures, by the then director of HR and finance, now secretary-general, until the refusal of the 2018 discharge;

70. Notes that during the 2018 and part of the 2019 discharge procedures, the secretary-general was unable to provide sufficient, transparent and reliable information to Parliament's Committee on Budgetary Control …

75. … is concerned that that particular member who was found responsible for harassment was still active in the bureau after the OLAF recommendation and managed to delay the adoption of the new code of conduct for members; …

80. … is, however, gravely concerned that the perpetrator has been appointed by the Council as member for a new mandate; and that victims and whistleblowers risk facing retaliation by him or by people supporting him in the Committee; highlights the fact that he does not acknowledge or regret his wrongdoings, which demonstrates a complete lack of self-reflection and respect for the victims concerned; …

83. Notes that the plenary session of the Committee on 15 and 16 July 2020 confirmed the decision of 9 June 2020 of the bureau as regards the Committee joining as a civil party in the procedure that will be opened by the Brussels Labour Auditor before the Brussels Criminal Court; notes that the Brussels Labour Auditor has been informed of the waiving of the member's immunity, but no further information about the proceedings have been received to date …'

Forms of order sought

14 The applicant claims that the Court should:

– annul the contested decision and the contested resolution;

– order the Parliament to pay him the sum of EUR 100 000 as compensation for the non-material damage he has suffered;

– order the Parliament to pay the costs.

15 The Parliament contends that the Court should:

– dismiss the action for annulment as inadmissible and, in the alternative, unfounded;

– dismiss the claim for damages as inadmissible and, in the alternative, unfounded;

– order the applicant to pay the costs.

Law

16 Without formally raising a plea of inadmissibility under Article 130 of the Rules of Procedure of the General Court, the Parliament submits that the claims for annulment and for compensation are inadmissible.

Admissibility of the claims for annulment

17 The Parliament submits, first, that the contested measures, which are addressed solely to the EESC, are not intended to produce binding legal effects altering the legal position of third parties. It submits, secondly, that the applicant is neither directly nor individually concerned by the contested measures and therefore he does not have standing to bring proceedings against them.

18 The applicant disputes that line of argument and submits in essence that the contested measures adversely affect him in so far as they are directed against him in relation to alleged harassment. In that regard, he states that, in view of their publication, those measures directly affect his reputation and dignity by distinguishing him individually in the same way as their addressee.

19 As a preliminary point, in so far as the contested resolution contains observations which form an integral part of the contested decision, it is necessary to examine the admissibility of the claims for annulment directed against the contested measures together.

20 In that regard, it should be noted that the applicant does not seek annulment of the contested measures in so far as the Parliament granted the Secretary-General of the EESC discharge in respect of the implementation of the budget of that body for the financial year 2019, but solely in so far as he is identified or at least identifiable in the contested resolution as the perpetrator of psychological harassment.

21 In other words, the applicant seeks the annulment of the contested measures only in so far as he is targeted by certain observations contained in the contested resolution which form an integral part of the contested decision, without calling into question the operative part of that decision by which the Parliament granted the EESC discharge.

22 In that connection, it is important to recall that, according to settled case-law, only the operative part of an act is capable of producing legal effects and, consequently, of adversely affecting a person's legal interests, regardless of the grounds on which that act is based. By contrast, the assessments made in the recitals of an act are not in themselves capable of forming the subject of an action for annulment and can be subject to review by the European Union judicature only to the extent that, as grounds for an act adversely affecting a person's interests, they constitute the necessary basis for the operative part of that act (see, to that effect, judgments of 17 September 1992, *NBV and NVB* v *Commission*, T-138/89, EU:T:1992:95, paragraph 31, and of 1 February 2012, *Région wallonne* v *Commission*, T-237/09, EU:T:2012:38, paragraph 45).

23 In the present case, the observations in the contested resolution concerning the applicant do not constitute the necessary basis for the operative part of the contested decision. The Parliament decided to grant the Secretary-General of the EESC discharge in respect of the implementation of the budget of that body for the financial year 2019 irrespective of the part of the contested resolution which makes it possible to identify the applicant as the perpetrator of psychological harassment.

24 Accordingly, the reference in the contested resolution to the applicant as the perpetrator of psychological harassment is not, in itself, capable of forming the subject matter of an action for annulment brought by the applicant before the Court and, in any event, where it cannot be linked to the operative part of the contested decision, it cannot be subject to judicial review by the Courts of the European Union.

25 The applicant's argument that the part of the contested resolution which concerns him adversely affects him does not invalidate that conclusion. The applicant is not denied access to justice since an action for non-contractual liability under Article 268 and the second paragraph of Article 340 TFEU is available if the conduct of the Parliament in question is of such a nature as to entail liability on the part of the European Union (see, to that effect, judgment of 12 September 2006, *Reynolds Tobacco and Others* v *Commission*, C-131/03 P, EU:C:2006:541, paragraph 82).

26 On that point, in so far as the purpose of the claim for annulment is indissociable from that of the claim for compensation, the rejection of the claim for annulment as inadmissible because no act is open to challenge by the applicant does not have the effect of denying the Court the possibility of referring, where appropriate, to the pleas in law and arguments relied on in support of that claim in order to assess the lawfulness of the conduct alleged against the Parliament in the claim for compensation (see, to that effect, judgment of 9 December 2010, *Commission* v *Strack*, T-526/08 P, EU:T:2010:506, paragraph 50 and the case-law cited).

27 In the light of the foregoing, the claims for annulment must be rejected as inadmissible.

Admissibility of the claim for damages

28 While accepting that a claim for damages would be admissible if the applicant had not also sought the annulment of the contested measures, the Parliament nevertheless submits that the claim for damages in the present case should be rejected as inadmissible in accordance with the case-law which states that claims for compensation for material or non-material damage must be rejected where they have a close link with the claim for annulment which has itself been rejected as unfounded or inadmissible.

29 It is true that, according to settled case-law in civil service matters, where an application for compensation is closely related to an application for annulment, as is the case here, the rejection of the latter, either as inadmissible or as unfounded, also results in the rejection of the application for compensation (see, to that effect, judgments of 6 March 2001, *Connolly* v *Commission*, C-274/99 P, EU:C:2001:127, paragraph 129, and of 30 September 2003, *Martínez Valls* v *Parliament*, T-214/02, EU:T:2003:254, paragraph 43).

30 However, as regards, in particular, the inadmissibility of an application for annulment of an act, that case-law was developed in cases in which the applicants had either failed to challenge, by means of an action for annulment, the acts which gave rise to the damage which they claimed to have suffered, or they did so out of time (judgment of 8 November 2018, *Cocchi and Falcione* v *Commission*, T-724/16 P, not published, EU:T:2018:759, paragraph 82). In so far as it seeks to avoid a circumvention of remedies, that case-law is therefore applicable only where the alleged damage is said to flow exclusively from a measure which has become definitive, which the party concerned could have challenged by means of an action for annulment (see, to that effect, order of 4 May 2005, *Holcim (France)* v *Commission*, T-86/03, EU:T:2005:157, paragraph 50).

31 In the present case, it is therefore sufficient to note, in order to reject the plea of inadmissibility raised by the Parliament, that the claims for annulment were rejected as inadmissible on the ground that there was no act open to challenge and not because the applicant had failed to challenge that act or had done so out of time.

32 In those circumstances, the claim for damages is admissible.

The merits of the claim for damages

33 The European Union may incur non-contractual liability under the second paragraph of Article 340 TFEU only if three cumulative conditions are fulfilled, namely the unlawfulness of the conduct alleged against the EU institution, the fact of damage and the existence of a causal link between the conduct of the institution and the damage complained of (see, to that effect, judgment of 16 December 2020, *Council and Others* v *K. Chrysostomides & Co. and Others*, C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P, EU:C:2020:1028, paragraph 79).

34 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 on the part of the European Union (see judgment of 25 February 2021, *Dalli* v *Commission*, C-615/19 P, EU:C:2021:133, paragraph 42 and the case-law cited).

35 In the present case, in order to establish that the Parliament acted unlawfully, the applicant puts forward four complaints alleging infringements of rules of law intended to confer rights on individuals, namely, first, the right to the protection of personal data, secondly, the principle of the presumption of innocence, thirdly, the principle of the confidentiality of OLAF's investigations and, fourthly, the right to good administration and the principle of proportionality.

The first complaint, alleging infringement of the right to protection of personal data

36 The applicant submits that the publication of personal data concerning him in the contested resolution does not constitute lawful processing within the meaning of Article 5 of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ 2018 L 295, p. 39).

37 In particular, he submits that the processing of his personal data was not necessary for the performance of a task carried out in the public interest within the meaning of Article 5(1)(a) of that regulation as OLAF concluded in its report that the applicant's conduct had not had any financial impact on the EU budget. Accordingly, the publication of information concerning him is not necessary for the purposes of taking a decision concerning discharge in respect of the implementation of the budget of the EESC.

38 The Parliament disputes that argument.

39 Under Article 5(1)(a) of Regulation 2018/1725, the processing of personal data is lawful only if and to the extent that it is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the Union institution or body.

40 In that regard, it should be recalled that, under Article 14 TEU, the Parliament, jointly with the Council of the European Union, is to exercise legislative and budgetary functions and functions of political control and consultation as laid down in the Treaties. In the context of the democratic scrutiny of the use of public funds provided for in Article 319 TFEU, the Parliament has a wide margin of discretion in its observations on the way in which the institutions and bodies of the Union have implemented the section of the budget relating to them.

41 Moreover, a certain amount of discretion is afforded to the institutions for the purposes of determining the extent to which the processing of personal data may be necessary for the performance of a task entrusted to the public authorities (see, to that effect, judgment of 20 July 2016, *Oikonomopoulos* v *Commission*, T-483/13, EU:T:2016:421, paragraph 57 (not published) and the case-law cited).

42 Thus, the applicant's argument involves ascertaining whether the Parliament exceeded its discretion in considering that the processing of the applicant's personal data was necessary for the performance of its task carried out in the public interest of monitoring the implementation of the budget by the EESC during the financial year 2019.

43 In the present case, it is important to recall, first, that, when monitoring the implementation of the budget for the financial year 2018, the Parliament refused to grant discharge to the EESC, inter alia because it considered that the measures taken by that body to follow up on the OLAF report and to avoid the recurrence of such a situation in the future were, in essence, insufficient.

44 In accordance with Article 262(2) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ 2018 L 193, p. 1), it is for the Parliament to follow up on the measures taken by the person to whom the discharge is addressed to act on the observations accompanying the discharge decision.

45 In the present case, since the Parliament considered that the measures taken by the EESC to implement the observations in the resolution relating to the financial year 2018 were, in essence, insufficient, the processing of the applicant's personal data appeared to be necessary for the performance of the task of monitoring the implementation of the budget of the EESC for the financial year 2019.

46 Secondly, the gravity of the financial consequences resulting from the failures found by the Parliament also made it possible to establish the need for such processing.

47 In view of the fact that the psychological harassment attributed to the applicant was the cause of serious problems within the EESC which resulted in expenditure which could have been avoided and which that body is alleged to have suffered in paragraph 68 of the contested resolution, cited in paragraph 13 above, the Parliament had to record it.

48 Thus, in view of the risk of recurrence of such conduct and its effects on the good governance of human resources, the processing of the applicant's personal data appeared necessary in order to attain the objective set out in recital A of the contested resolution, namely, in essence, to strengthen the democratic legitimacy of the Union institutions by promoting inter alia good governance of human resources.

49 Thirdly, even though the applicant considers that the publication of the contested resolution constitutes processing of his personal data which is contrary to Article 5 of Regulation 2018/1725, it is important to recall that, under Article 37(1) of Regulation 2018/1046, '… the accounts [are to be] presented in accordance with the principle of transparency'.

50 In that regard, it has been held that the principle of transparency, enshrined in Article 15 TFEU, enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system (judgment of 9 November 2010, *Volker und Markus Schecke and Eifert*, C-92/09 and C-93/09, EU:C:2010:662, paragraph 68). That provision is an expression of the right, in a democratic society, for taxpayers and public opinion generally, to be kept informed of the use of public revenues, in particular as regards expenditure on staff. Such information may make a contribution to the public debate on a question of general interest, and thus serves the public interest (see, to that effect, judgment of 20 May 2003, *Österreichischer Rundfunk and Others*, C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 85).

51 Thus, in the context of the discharge procedure, the publication of the contested measures is intended to strengthen public scrutiny of the implementation of the budget and contribute to the appropriate use of public funds by the administration of the Union (see, by analogy, judgment of 9 November 2010, *Volker und Markus Schecke and Eifert*, C-92/09 and C-93/09, EU:C:2010:662, paragraph 69 and the case-law cited).

52 It follows that the publication of the contested resolution was necessary for the performance of the task carried out by the Parliament in the public interest.

53 It follows from all the foregoing that the Parliament did not exceed the limits of its discretion in considering that it was necessary to process the applicant's personal data in order to carry out its task of monitoring the implementation of the budget by the EESC. The processing of the applicant's personal data is therefore lawful within the meaning of Article 5(1)(a) of Regulation 2018/1725.

54 The applicant's argument that OLAF stated in its report that the acts imputed to him had no financial impact does not invalidate that conclusion.

55 The contested resolution was adopted in the context of monitoring the implementation of the EESC's budget and it is therefore not intended to review or pass judgment on the applicant's conduct.

56 The contested resolution is intended solely to express an assessment of the way in which the EESC has implemented its budget and observations on the implementation of expenditure in the future. In that regard, in paragraph 68 of the contested resolution, the Parliament clearly identified the financial repercussions which conduct involving psychological harassment, such as that at issue in the present case, could have on the proper functioning of EU bodies and institutions. In view

of the serious administrative shortcomings which were found, the fact that OLAF considered that the applicant's conduct towards certain members of staff had no financial impact did not therefore prevent the Parliament from recording it.

57 It follows from the foregoing that the first complaint does not establish the existence of unlawful conduct on the part of the Parliament.

The second complaint, alleging infringement of the principle of the presumption of innocence

58 The applicant submits that the Parliament disregarded the principle of the presumption of innocence by identifying him, in the contested resolution, as the perpetrator of psychological harassment even though no court has convicted him of those acts. In response to a measure of organisation of procedure adopted by the Court, the applicant stated in that regard that, when the contested resolution was adopted, the criminal proceedings were only at the 'judicial investigation' stage and that the Brussels Labour Auditor could, inter alia, still decide to close the file without further action.

59 In that context, the Parliament's statements are said to reflect the feeling that the applicant is guilty or at the very least encourage the public to believe in his guilt or even prejudge the assessment of the facts by the competent court.

60 The Parliament disputes that argument.

61 As a preliminary point, it should be recalled that compliance with the principle of the presumption of innocence, set out in Article 6(2) of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), and in Article 48(1) of the Charter of Fundamental Rights of the European Union ('the Charter'), requires that everyone charged with a criminal offence is to be presumed innocent until proved guilty according to law (see, to that effect, judgment of 6 June 2019, *Dalli* v *Commission*, T-399/17, not published, EU:T:2019:384, paragraph 168 and the case-law cited).

62 First, that principle is not restricted to a procedural guarantee in criminal matters, its scope is wider and requires that no public authority declare that a person is guilty of an offence before his guilt has been established by a court (see, to that effect, judgment of 6 June 2019, *Dalli* v *Commission*, T-399/17, not published, EU:T:2019:384, paragraph 173 and the case-law cited). Thus, the presumption of innocence may be undermined not only by a judge or a court but also by other public authorities (see judgment of 12 July 2012, *Commission* v *Nanopoulos*, T-308/10 P, EU:T:2012:370, paragraph 92 and the case-law cited).

63 Secondly, Article 6(2) ECHR and Article 48(1) of the Charter cannot, in the light of Article 10 ECHR and Article 11 of the Charter, which guarantee freedom of expression, prevent the authorities from informing the public about criminal investigations in progress, but they require that they do so with all the discretion and circumspection necessary if the presumption of innocence is to be respected (see, to that effect, judgment of 8 July 2008, *Franchet and Byk* v *Commission*, T-48/05, EU:T:2008:257, paragraph 212 and the case-law cited).

64 Moreover, it has been held that, as long as the person accused of an offence has not been finally convicted by a court, a parliamentary assembly is bound to respect the principle of the presumption of innocence and, therefore, to exercise discretion and restraint when it expresses its

views, in a resolution, concerning the acts for which that person is the subject of criminal proceedings (see, to that effect, ECtHR, 18 February 2016, *Rywin v. Poland*, CE:ECHR:2016:0218JUD000609106, paragraphs 207 and 208 and the case-law cited).

65 In the present case, it is common ground that, on 29 April 2021, the date on which the contested resolution was adopted, no court had established that the applicant was guilty of the offences alleged against him. At most, on that date, criminal proceedings, initiated by the Belgian authorities in 2020, were ongoing. Moreover, the applicant has stated, without being contradicted by the Parliament, that those criminal proceedings had still not been concluded and that no court adjudicating on the substance of the case had been seised to examine the disputed facts.

66 That said, the applicant's argument that the principle of the presumption of innocence prevents the Parliament from referring to the OLAF report identifying him as the perpetrator of psychological harassment without awaiting the outcome of the criminal proceedings must be rejected.

67 With regard to statements made by a public authority after an OLAF investigation has closed, it has already been held that respect for the principle of the presumption of innocence did not preclude, in the interests of informing the public as precisely as possible of actions implemented in the context of possible failures or fraud, an EU institution from reporting, using balanced and measured wording and in an essentially factual manner, the main findings of the OLAF report concerning a member of an institution (see, to that effect, judgment of 6 June 2019, *Dalli* v *Commission*, T-399/17, not published, EU:T:2019:384, paragraphs 175 to 178).

68 Thus, the mere fact that, in paragraphs 66 to 70, 72, 75, 78, 79 and 82 of the contested resolution, listed by the applicant at the hearing, the Parliament is said to have enabled him to be identified as the perpetrator of psychological harassment, which corresponds to the main conclusion of the OLAF report, does not in itself constitute a breach of the principle of the presumption of innocence.

69 More specifically, what is important in assessing whether there has been a breach of that principle is the choice of the words used in the contested resolution.

70 In that regard, it should be noted that, in the application, apart from quotations from the contested resolution without comments in the introductory section, the applicant has not identified any paragraph in that resolution which, in the choice of words used, in his view infringes the principle of the presumption of innocence. Moreover, at the reply stage, he merely referred to certain extracts from documents drawn up in the context of the discharge procedure relating to the financial year 2018, that is to say the financial year preceding the financial year at issue, and those extracts cannot therefore be reviewed by the Court in the context of the present dispute.

71 In response to a question from the Court at the hearing, the applicant merely specifically criticised paragraph 75 of the French version of the contested resolution, cited in paragraph 13 above, on the ground that it states that he was 'jugé' (judged) to be responsible for harassment, even though no judgment had been delivered in that regard.

72 On that point, in the absence of any conviction on the part of the applicant, the use of the French term 'jugé' is admittedly inaccurate. The Parliament also acknowledged at the hearing that that wording was 'not particularly appropriate'.

73 However, in order to assess whether there has been a breach of the principle of the presumption of innocence, the case-law has emphasised the importance of taking into account the real meaning of the statements in question and not their literal form, and the particular circumstances in which they were made (see, to that effect, judgment of 8 July 2008, *Franchet and Byk* v *Commission*, T-48/05, EU:T:2008:257, paragraph 211 and the case-law cited).

74 In the present case, the particular circumstances of the case make it possible to understand that the use of the word 'jugé' (judged) in the French version of the contested resolution is intended to reflect OLAF's finding that the applicant's conduct towards two members of staff constituted psychological harassment. It follows from the foregoing that such a statement, which merely reiterates OLAF's findings, does not undermine the presumption of innocence in respect of the latter.

75 This conclusion is corroborated by various language versions of paragraph 75 of the contested resolution which contain no reference to a judgment in the judicial sense of the term, in particular the English ('was found responsible'), German ('verantwortlich gemacht wurde'), Spanish ('fue declarado responsable') or even the Dutch version ('verantwoordelijk werd bevonden'). The real meaning of those statements is therefore to highlight the applicant's responsibility for acts of psychological harassment, as set out in the OLAF report, without in any way prejudging his possible guilt in the criminal proceedings pending before the Belgian courts.

76 Moreover, it should be noted that, in paragraph 83 of the contested resolution, the Parliament also recalled that no further information about the criminal proceedings had been received by the date of adoption of the resolution. Such a reference makes it possible to avoid any confusion as to whether or not a 'judgment' had been delivered with regard to the applicant.

77 Consequently, the use of the word 'jugé' (judged) in paragraph 75 of the French version of the contested resolution, although inadequate and inappropriate, does not undermine the presumption of innocence in respect of the applicant.

78 Since the applicant specifically criticised only paragraph 75 of the contested resolution, it is not for the Court to investigate and examine whether other passages of that resolution might have undermined the presumption of innocence in his regard.

79 It follows from the foregoing that the second complaint does not establish the existence of unlawful conduct on the part of the Parliament.

The third complaint, alleging a breach of the confidentiality of OLAF's investigations

80 First, the applicant complains, in essence, that OLAF disclosed the confidential content of its investigation report to the Parliament at a Cocobu meeting held on 3 February 2020, following which Cocobu is said to have submitted a draft report on the discharge of the EESC which referred inter alia to the applicant by his surname. The contested resolution, based on that Cocobu report, is therefore said to have been adopted in breach of Regulation (EU, Euratom) No 883/2013 of the European Parliament of 11 September 2013 concerning investigations

conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ 2013 L 248, p. 1).

81 Secondly, the applicant submits that the principle of confidentiality prohibits the Parliament from disclosing the content of a report used in the context of disciplinary or judicial proceedings, a principle which derives from Article 10 and Article 12(2) of Regulation No 883/2013.

82 The Parliament disputes that argument.

83 First, in so far as the applicant complains that OLAF breached its obligation to maintain confidentiality at a Cocobu meeting of 3 February 2020, it is sufficient to note that such an argument is inadmissible since it seeks to establish the unlawfulness of conduct attributable to that office and not to the defendant. The Commission, to which OLAF is attached, is not a party to the present proceedings.

84 Secondly, in so far as the applicant criticises the Parliament's conduct, it should be recalled that the obligation to maintain confidentiality is a corollary of the principle of the presumption of innocence (see, to that effect, judgment of 8 July 2008, *Franchet and Byk* v *Commission*, T-48/05, EU:T:2008:257, paragraph 213).

85 It follows from the foregoing that that principle does not prevent the Parliament, in the context of its task of scrutinising the use of public funds, from referring to the main findings of the OLAF report. In those circumstances, the Parliament cannot be criticised for having disregarded the confidentiality attaching to the OLAF report, of which it was aware pursuant to Article 17(4) of Regulation No 883/2013, by referring to the main finding of that report in the contested resolution.

86 It follows from the foregoing that the third complaint does not establish the existence of unlawful conduct on the part of the Parliament.

The fourth complaint, alleging infringement of the right to good administration and of the principle of proportionality

87 The applicant complains that the Parliament failed in its duty of impartiality and infringed the principle of proportionality by identifying a natural person in a document addressed to the EESC concerning the management of the budget.

88 The Parliament disputes that argument.

89 As regards the right to good administration, provided for in Article 41 of the Charter, it should be recalled that this does not, in itself, confer rights upon individuals, except where it constitutes the expression of specific rights such as the right to have affairs handled impartially, fairly and within a reasonable time (judgment of 4 October 2006, *Tillack* v *Commission*, T-193/04, EU:T:2006:292, paragraph 127). As regards the requirement of impartiality, which the applicant alleges was disregarded by the Parliament, this encompasses, on the one hand, subjective impartiality, in so far as no member of the institution concerned who is responsible for the matter may show bias or personal prejudice, and, on the other hand, objective impartiality, in so far as there must be

sufficient guarantees to exclude any legitimate doubt as to bias on the part of the institution concerned (see judgment of 11 July 2013, *Ziegler* v *Commission*, C-439/11 P, EU:C:2013:513, paragraph 155 and the case-law cited).

90 In the present case, in order to establish a breach by the Parliament of its duty of subjective impartiality, the applicant merely claims that the contested resolution contains 'information concerning [his] guilt on the basis of alleged actions presented in a confidential OLAF report'.

91 However, the fact that the contested resolution made the applicant identifiable as the perpetrator of psychological harassment, which is one of the conclusions of the OLAF report, does not in any way establish that a Member of the Parliament showed bias or personal prejudice in that regard.

92 Moreover, as regards the duty of objective impartiality, the applicant merely argues that his conduct did not, according to OLAF, have any financial impact.

93 Such an argument is not capable of casting doubt on the objective impartiality of the Parliament.

94 As regards the alleged infringement of the principle of proportionality, the applicant, in response to a question from the Court at the hearing, stated that the arguments put forward in that regard were not independent of those relied on in support of the first complaint.

95 In those circumstances, it must be concluded that the fourth complaint does not establish the existence of unlawful conduct on the part of the Parliament.

96 In the light of the foregoing, the claim for compensation must therefore be rejected in its entirety without there being any need to examine whether the other two conditions governing the establishment of liability on the part of the European Union are satisfied. Nor is it necessary to rule on the Parliament's request to remove from the case file the alleged minutes of the Cocobu meeting of 3 February 2020 since, in so far as it is relied on to demonstrate unlawful conduct on the part of OLAF, that document is of no relevance to the present dispute.

Costs

97 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 (Eighth Chamber, Extended Composition)

hereby:

1. Dismisses the action;

2. Orders KN to pay the costs.

van der Woude Svenningsen Mac Eochaidh

Pynnä Laitenberger

Delivered in open court in Luxembourg on 30 November 2022.

[Signatures]