Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

4 June 2020 *

(Appeal – Civil service – European External Action Service (EEAS) – Member of the temporary staff – Psychological harassment – Request for assistance – Rejection of the request – Action for annulment and damages – Article 41 of the Charter of Fundamental Rights of the European Union – Right to be heard – Article 266 TFEU – Compliance with the annulling judgment)

In Case C-187/19 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 22 February 2019,

European External Action Service (EEAS), represented by S. Marquardt and R. Spac, acting as Agents,

appellant,

the other party to the proceedings being:

Stéphane De Loecker, former member of the temporary staff of the EEAS, residing in Brussels (Belgium), represented by J.-N. Louis, lawyer,

applicant at first instance,

THE COURT (Seventh Chamber),

composed of P.G. Xuereb, President of the Chamber, T. von Danwitz and A. Kumin (Rapporteur), Judges,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: French

Judgment

1 By its appeal, the European External Action Service (EEAS) asks the Court to set aside the judgment of the General Court of the European Union of 13 December 2018, *De Loecker* v *EEAS* (T-537/17, not published, EU:T:2018:951; 'the judgment under appeal'), by which the General Court, first, annulled the decision of the EEAS of 10 October 2016 rejecting the request for assistance made by Mr De Loecker under Articles 12a and 24 of the Staff Regulations of Officials of the European Union ('the contested decision') and, secondly, dismissed Mr De Loecker's action in so far as it sought compensation for the harm he allegedly suffered.

Legal framework

2 Article 12a of the Staff Regulations of Officials of the European Union, in the version applicable to this dispute ('the Staff Regulations'), which applies by analogy to members of the temporary staff under Article 11 of the Conditions of Employment of other servants of the European Union ('the CEOS'), provides:

'1. Officials shall refrain from any form of psychological or sexual harassment.

…

3. "Psychological harassment" means any improper conduct that takes place over a period, is repetitive or systematic and involves physical behaviour, spoken or written language, gestures or other acts that are intentional and that may undermine the personality, dignity or physical or psychological integrity of any person.

…'

3 Article 24 of the Staff Regulations, applicable by analogy to members of the temporary staff under Article 11 of the CEOS provides:

'The Union shall assist any official, in particular in proceedings against any person perpetrating threats, insulting or defamatory acts or utterances, or any attack to person or property to which he or a member of his family is subjected by reason of his position or duties.

It shall jointly and severally compensate the official for damage suffered in such cases, in so far as the official did not either intentionally or through grave negligence cause damage and has been unable to obtain compensation from the person who did cause it.'

4 Under Article 90 of the Staff Regulations:

'1. Any person to whom these Staff Regulations apply may submit to the appointing authority a request that it take a decision relating to him. The authority shall notify the person concerned of its reasoned decision within four months from the date on which the request was made. If at the end of that period no reply to the request has been received, this shall be deemed to constitute an implied decision rejecting it, against which a complaint may be lodged in accordance with the following paragraph.

2. Any person to whom these Staff Regulations apply may submit to the appointing authority a complaint against an act affecting him adversely, either where the said authority has taken a

decision or where it has failed to adopt a measure prescribed by the Staff Regulations. The complaint must be lodged within three months …

…

The authority shall notify the person concerned of its reasoned decision within four months from the date on which the complaint was lodged. If at the end of that period no reply to the complaint has been received, this shall be deemed to constitute an implied decision rejecting it, against which an appeal may be lodged under Article 91.'

Background to the dispute

5 The background to the dispute is set out in paragraphs 5 to 39 of the judgment under appeal and may be summarised as follows.

6 Mr De Loecker was recruited by the EEAS under a four-year contract as a member of the temporary staff to fill, with effect from 1 January 2011, the post of Head of the European Union Delegation to Bujumbura (Burundi) ('the Delegation'), as an agent seconded from the Belgian diplomatic services.

7 From 10 June to 14 June 2013, the Delegation was inspected by a joint mission of the EEAS' Delegation Support and Evaluation Service and the European Commission's Directorate-General (DG) 'Development and cooperation – EuropeAid' ('the evaluation mission'). The draft evaluation report described serious shortcomings in Mr De Loecker's management of the Delegation, in terms of both his leadership and the organisation and management of conflicts between members of staff. The draft contained seventeen recommendations, including the recommendation that Mr De Loecker be recalled to the EEAS headquarters immediately for consultation.

8 Between 21 June and mid-August 2013, the Chief Operating Officer of the EEAS had a number of telephone conversations with the Chairman of the Executive Committee of the Belgian Ministry of Foreign Affairs regarding the Mr De Loecker's situation.

9 On 24 June 2013, the Chief Operating Officer telephoned Mr De Loecker to inform him that he was being recalled, with immediate effect, to the EEAS headquarters in Brussels (Belgium).

10 At a meeting held on 27 June 2013, the Chief Operating Officer gave Mr De Loecker an extract from the draft evaluation report, which contained the main conclusions that had been reached concerning him.

11 On 4 July 2013, a meeting was held in Brussels, chaired by the Managing Director of the EEAS' 'Africa' department and attended by several members of the EEAS management and by Mr De Loecker, in order to discuss the draft evaluation report. At that meeting, Mr De Loecker was given a time limit of five working days to submit written observations. Furthermore, Mr De Loecker submits that, at the start of the meeting, he was informed by the Chairman of the meeting that 'the decision in principle [to recall him to headquarters] [had] already [been] taken'.

12 On 7 July 2013, Mr De Loecker submitted his comments on the draft evaluation report.

13 By decision of the High Representative of the Union for Foreign Affairs and Security Policy ('the High Representative'), acting in his capacity as the authority empowered to conclude contracts of employment ('the AECE'), of 15 July 2013, Mr De Loecker was transferred in the interests of the service, with immediate effect, to the EEAS headquarters in Brussels to occupy a post in the Human Resources Directorate of the Directorate-General for Administration and Finances of the EEAS. The last recital in that decision states that the decision was adopted in the light of the findings made as a result of several missions to the Delegation, including the evaluation mission, which had taken place in 2012 and 2013 and had revealed serious shortcomings in the management of the Delegation giving rise to, among other consequences, the risk of adversely affecting the implementation of EU cooperation and development policies.

14 On 23 August 2013, Mr De Locker brought an application for interim measures and an action for annulment of that decision. These were registered under numbers F-78/13 R and F-78/13 respectively. By order of 12 September 2013, *De Loecker* v *EEAS* (F-78/13 R, EU:F:2013:134), the President of the European Union Civil Service Tribunal dismissed the application for interim measures. By judgment of 13 November 2014, *De Loecker* v *EEAS* (F-78/13, EU:F:2014:246), the Civil Service Tribunal dismissed the action for annulment.

15 By letter of 9 December 2013, on the basis of Articles 12a and 24 of the Staff Regulations, Mr De Loecker sent to the High Representative a document entitled 'Complaint' in which he alleged psychological harassment on the part of the Chief Operating Officer, and requested that an administrative investigation be opened ('the request for assistance').

16 By letter of 20 December 2013, the High Representative acknowledged receipt of the request for assistance and informed Mr De Loecker that he had forwarded it to the Commission's DG 'Human Resources and Security' so that it could be dealt with by the latter, in collaboration with the EEAS services, 'within the applicable time limit laid down in the Staff Regulations'.

17 On the same day, the High Representative, in his capacity as the AECE, informed Mr De Loecker of his decision to terminate his contract as a member of the temporary staff with effect from 31 March 2014. On 28 March 2014, Mr De Loecker brought an action for annulment of that decision, which was dismissed by the Civil Service Tribunal by judgment of 9 September 2015, *De Loecker* v *EEAS* (F-28/14, EU:F:2015:101).

18 By decision of 14 April 2014, the High Representative, acting in his capacity as the AECE, rejected the request for assistance. In that decision, the High Representative stated that, because the request for assistance contained accusations against the Chief Operating Officer, the Investigation and Disciplinary Office of the Commission (IDOC) had been involved in dealing with the file and, since it considered itself to have been sufficiently well informed by the documents in the file, the IDOC had concluded that it was not necessary to open an administrative investigation.

19 On 14 July 2014, Mr De Loecker lodged a complaint under Article 90 of the Staff Regulations against the decision rejecting his request for assistance. That complaint was rejected by decision of the Executive Secretary-General of the EEAS of 14 November 2014.

20 By application lodged at the Registry of the Civil Service Tribunal on 24 February 2015, Mr De Loecker brought an action for annulment of the High Representative's decision of 14 April 2014 rejecting his request for assistance.

21 By judgment of 16 December 2015, *De Loecker* v *EEAS* (F-34/15, EU:F:2015:153), the Civil Service Tribunal annulled that decision on the ground, set out in paragraph 45 of that judgment, that the EEAS had failed to respect Mr De Loecker's right to be heard and, consequently, infringed Article 41(2)(a) of the Charter of Fundamental Rights of the European Union ('the Charter'). The basis for that finding, set out in paragraph 44 of that judgment, was that it was apparent from the documents before the Court that, after receiving the request for assistance, the EEAS had merely acknowledged receipt of it on 20 December 2013 and had never heard Mr De Loecker, in the course of dealing with his request, prior to the adoption of that decision.

22 By letter of 17 December 2015, Mr De Loecker asked the EEAS what measures it intended to adopt in order to comply with Article 266 TFEU. By letters of 26 February 2016 and 24 March 2016, he repeated that request.

23 By letter of 14 April 2016, the EEAS told Mr De Loecker that it was necessary to examine his complaint in the light of the judgments of the Civil Service Tribunal of 13 November 2014, *De Loecker* v *EEAS* (F-78/13, EU:F:2014:246), and of 9 September 2015, *De Loecker* v *EEAS* (F-28/14, EU:F:2015:101), which had 'upheld' the decisions taken by the EEAS concerning his recall to the EEAS headquarters in Brussels and the termination of his contract as a member of the temporary staff. The EEAS proposed to Mr De Loecker that he consider the response signed by the High Representative on 14 April 2014 as a draft response to his request for assistance regarding harassment, and that he should communicate to the EEAS the facts, observations and relevant evidence that he wished to add to all the documents and explanations he had already provided as part of his initial request, in order to demonstrate that there were circumstantial factors, constituting prima facie evidence of conduct by the Chief Operating Officer at that time, such as to justify classifying that conduct as harassment, which warranted opening an administrative investigation into his conduct. It was stated that the EEAS' proposal amounted to conducting a hearing of Mr De Loecker concerning the administration's intention to reject his complaint in accordance with the judgment of the Civil Service Tribunal of 16 December 2015, *De Loecker* v *EEAS* (F-34/15, EU:F:2015:153).

24 By letter of 4 May 2016, Mr De Loecker replied to the High Representative, recalling certain events.

25 By letter of 12 July 2016, the EEAS informed Mr De Loecker that his request for assistance was going to be re-examined by the Commission services, in accordance with the arrangements it had made with the Commission. The EEAS added that, in the course of that re-examination, an assessment would be carried out, on the basis of the documents in the file, to establish whether there was a need to open an administrative investigation, and that, following that re-examination, the AECE's response would be communicated to him.

26 By the contested decision, in compliance with the judgment of the Civil Service Tribunal of 16 December 2015, *De Loecker* v *EEAS* (F-34/15, EU:F:2015:153), the Secretary-General of the EEAS rejected the request for assistance made by the applicant under Articles 12a and 24 of the Staff Regulations as being, in part, inadmissible and, in any event, unfounded.

27 On 10 January 2017, Mr De Loecker lodged a complaint against the contested decision under Article 90 of the Staff Regulations. That complaint was rejected by decision of the AECE on 3 May 2017.

Proceedings before the General Court and the judgment under appeal

28 By application lodged at the Registry of the General Court on 11 August 2017, Mr De Loecker brought an action, first, for annulment of the contested decision and, secondly, seeking compensation for the non-material damage suffered.

29 In support of his claim for annulment, he raised two pleas in law, the first alleging infringement of Article 266 TFEU, and the second alleging infringement of the rights of the defence, and more specifically, of the right to be heard and the right of access laid down in Article 41 of the Charter.

30 The General Court held that it was appropriate to examine together those two pleas by which Mr De Loecker claimed, according to that court, that, by not hearing him during the preliminary analysis, the EEAS had failed to comply properly with the judgment of the Civil Service Tribunal of 16 December 2015, *De Loecker* v *EEAS* (F-34/15, EU:F:2015:153).

31 In paragraph 56 of the judgment under appeal, the General Court held that the EEAS had inferred from the annulment of the decision of 14 April 2014 that Mr De Loecker should have been heard before the adoption of that decision. According to that court, by indicating that Mr De Loecker could have persuaded the EEAS to adopt a different decision, and in particular, to open an administrative investigation, the Civil Service Tribunal had considered that the procedural defect had occurred not at the stage in the procedure at the end of which the EEAS adopted a final decision, but at the stage in which the IDOC carried out an analysis as a result of which it adopted its preliminary analysis report.

32 Moreover, in paragraph 58 of the judgment under appeal, the General Court held that that interpretation is consistent with the grounds of the judgment of 14 February 2017, *Kerstens* v *Commission* (T-270/16 P, not published, EU:T:2017:74), which, contrary to what had been argued by the EEAS, is applicable in the present case.

33 In paragraph 65 of the judgment under appeal, the General Court held that 'by not hearing [Mr De Loecker] in the preliminary analysis prior to the opening of an administrative investigation, the EEAS failed to comply properly with the judgment of the [Civil Service Tribunal of] 16 December 2015, *De Loecker* v *EEAS* (F-34/15, EU:F:2015:153), and infringed [Mr De Loecker's] right to be heard'. Consequently, the General Court annulled the contested decision.

Forms of order sought

34 By its appeal, the EEAS claims that the Court should:

– set aside the judgment under appeal;

– dismiss the originating application as unfounded as regards the application for annulment of the contested decision, and

– order Mr De Loecker to pay the costs.

35 Mr De Loecker contends that the Court should:

– principally, dismiss the appeal as inadmissible, or at least manifestly unfounded, and

– order the EEAS to pay all the costs;

– in the alternative, should the Court set aside the judgment under appeal, find that the state of the proceedings does not permit judgment to be given, refer the case back to the General Court and reserve the costs.

The appeal

Admissibility of the appeal

36 Mr De Loecker contends that the appeal is manifestly inadmissible on the ground that the EEAS merely repeats the arguments it put forward, first, before the Civil Service Tribunal in the case which gave rise to the judgment of 16 December 2015, *De Loecker* v *EEAS* (F-34/15, EU:F:2015:153), and, secondly, before the General Court. The appeal therefore amounts in reality to a request for a re-examination of the application submitted to the General Court and, in particular, a reassessment of the facts.

37 In that regard, the Court would point out that, according to settled case-law, where a party challenges the interpretation or application of European Union law by the General Court, the points of law examined at first instance may be discussed again in the course of an appeal. Indeed, if a party could not thus base its appeal on pleas in law and arguments already relied on before the General Court, an appeal would be deprived of part of its purpose (see judgment of 28 July 2011, *Diputación Foral de Vizcaya and Others* v *Commission*, C-474/09 P to C-476/09 P, not published, EU:C:2011:522, paragraph 60 and the case-law cited).

38 Accordingly, since the EEAS complains that the General Court misinterpreted Article 41 of the Charter in its assessment of the judgment of the Civil Service Tribunal of 16 December 2015, *De Loecker* v *EEAS* (F-34/15, EU:F:2015:153), the fact that it reiterates the arguments it had already put forward at first instance does not make those arguments inadmissible.

39 It follows that the appeal is admissible.

Substance

40 In support of its appeal, the EEAS puts forward a single ground of appeal. It submits that the General Court erred in law by holding, in paragraph 65 of the judgment under appeal, that, in not having heard Mr De Loecker in the context of the preliminary analysis prior to the opening of the administrative investigation, the EEAS did not properly comply with the judgment of the Civil Service Tribunal of 16 December 2015, *De Loecker* v *EEAS* (F-34/15, EU:F:2015:153), and infringed Mr De Loecker's right to be heard.

41 That ground of appeal consists of three parts alleging, in essence, first, that the General Court failed to take account of the fact that Mr De Loecker had been heard, secondly, that the judgment of the Civil Service Tribunal of 16 December 2015, *De Loecker* v *EEAS* (F-34/15, EU:F:2015:153), was misinterpreted, and thirdly, that the General Court erred in so far as it applied to the present case the grounds of its judgment of 14 February 2017, *Kerstens* v

Commission (T-270/16 P, not published, EU:T:2017:74), in order to support its interpretation of the judgment of the Civil Service Tribunal of 16 December 2015, *De Loecker* v *EEAS* (F-34/15, EU:F:2015:153).

The first part of the single ground of appeal

42 By the first part of this ground of appeal, the EEAS complains, in essence, that the General Court failed to take account of the procedure which had been followed and of the fact that the EEAS had heard Mr De Locker by giving him the opportunity to submit any evidence additional to his initial complaint, before resubmitting the file to the Commission services so that they could carry out the preliminary analysis.

– *Arguments of the parties*

43 The EEAS claims, in essence, that in order to comply with the judgment of the Civil Service Tribunal of 16 December 2015, *De Loecker* v *EEAS* (F-34/15, EU:F:2015:153), it resumed the proceedings on the basis of the evidence provided by Mr De Loecker in his initial complaint lodged on 9 December 2013. It states that it did, however, allow Mr De Loecker to provide any additional evidence he wanted in relation to that complaint, prior to the file being resubmitted to the competent Commission services and to the IDOC for the purpose of a fresh preliminary analysis. The EEAS considers that, by giving Mr De Loecker that option, it provided him with the opportunity to be heard before the IDOC carried out a fresh preliminary examination of the file, and therefore before the contested decision was adopted. However, the General Court did not take that into account in its analysis.

44 Moreover, the EEAS states that it considered it more appropriate, for the purposes of the preliminary analysis, to ask Mr De Loecker to resubmit his point of view in writing, accompanied by additional evidence if necessary, than simply to resend his initial complaint to the competent administrative services or to hear Mr De Loecker immediately after the first preliminary analysis. In the absence of any new evidence, those services clearly did not arrive at a conclusion different from that of the first examination. Since Mr De Loecker did not submit any new evidence, there was no requirement for him to be heard a second time during the fresh preliminary analysis.

45 The EEAS recalls that, in this case, it did not delegate its powers to the IDOC, and states, in essence, that it falls to the EEAS alone, as the AECE, to ensure that the right to be heard is respected. It states that, while it is not excluded that, during such an analysis, the IDOC may find some inconsistencies or consider that certain evidence requires clarification by the person who lodged the complaint, the IDOC could suggest that the EEAS ask the complainant to provide additional information. However, such an approach does not fall within the scope of application of the right to be heard and the rights of the defence, but rather concerns the investigation of the file by the administration.

46 The EEAS infers from the foregoing that the General Court erred in law by holding that the right to be heard which is laid down in Article 41(2)(a) of the Charter applied during the procedure for the adoption of a preparatory act. It also erred in failing to take account of the fact that Mr De Loecker had been heard before the IDOC carried out the fresh preliminary analysis of the file.

47 In response, Mr De Locker contends that he was never given a proper hearing in the context of the examination of his request for assistance.

48 In particular, Mr De Loecker notes that, in this case, he forwarded to the EEAS a letter from the Chairman of the Executive Committee of the Belgian Ministry of Foreign Affairs confirming the various matters raised in support of his request for assistance. He contends that, since he was not heard by the IDOC, he was unable to raise those matters before the IDOC or forward a copy of that letter to it, or to request that the author of that letter be heard during the course of the administrative investigation. The General Court was therefore right to hold that his right to be heard effectively before the EEAS rejected his request for assistance had been infringed.

– ***Findings of the Court***

49 In the first place, inasmuch as the EEAS claims that the General Court did not take account of the fact that the EEAS had heard Mr De Loecker by giving him the opportunity to submit any evidence additional to his initial request before it resubmitted the file to the competent Commission services, the General Court did note that fact in paragraph 49 of the judgment under appeal, before stating, inter alia in paragraph 57 thereof, that the procedural defect occurred at the stage of the procedure during which the IDOC had carried out a preliminary analysis and at the end of which the IDOC adopted its preliminary analysis report for the EEAS.

50 In the second place, inasmuch as the EEAS submits that, in holding that the right to be heard applied during the procedure for the adoption of a preparatory act, the General Court disregarded the fact that the EEAS had not delegated its powers to the IDOC, it is clear from paragraphs 57, 59 and 65 of the judgment under appeal that the General Court held that Mr De Loecker should have been heard during the investigation carried out by the IDOC, in other words, at the stage of the procedure in which the IDOC carried out a preliminary analysis and at the end of which it adopted its preliminary analysis report.

51 Therefore, the General Court did not fail to take account of the information referred to by the EEAS, but merely drew other legal conclusions from it.

52 It follows that the first part of the single ground of appeal must be rejected as unfounded.

The second and third parts of the single ground of appeal

53 The second part of the single ground of appeal is directed against paragraphs 55 to 57 of the judgment under appeal. By that part of the ground of appeal, the EEAS submits, in essence, that the General Court misinterpreted the judgment of the Civil Service Tribunal of 16 December 2015, *De Loecker* v *EEAS* (F-34/15, EU:F:2015:153). It claims that the General Court misinterpreted that judgment as imposing an obligation on the EEAS to hear Mr De Loecker at the preliminary analysis stage.

54 By the third part of the single ground of appeal, the EEAS considers, in essence, that the General Court made an error of assessment in applying to the present case the grounds of the judgment of the General Court of 14 February 2017, *Kerstens* v *Commission* (T-270/16 P, not published, EU:T:2017:74). It argues that the General Court failed to take account of the fact that, unlike in the case that gave rise to that judgment, which concerned the right to be heard during an administrative investigation, the present case concerns the alleged infringement of that right during the preliminary analysis carried out by the Commission services on behalf of the EEAS prior to the administrative investigation.

– ***Arguments of the parties***

55 The EEAS claims, in essence, that the General Court's interpretation of the judgment of the Civil Service Tribunal of 16 December 2015, *De Loecker* v *EEAS* (F-34/15, EU:F:2015:153), is incorrect, since the General Court wrongly held that that judgment required the EEAS to hear Mr De Loecker during the stage of the IDOC's preliminary analysis. However, the EEAS considers that, in paragraphs 44 to 49 of that judgment, the Civil Service Tribunal held only that the EEAS had infringed Mr De Loecker's right to be heard before the adoption of the contested decision closing the procedure without further action and thus rejecting his complaint. The Civil Service Tribunal therefore held that the obligation to hear Mr De Loecker had been fulfilled before the adoption of a final decision by the EEAS, which necessarily took place after the IDOC's preliminary analysis of the file.

56 The EEAS submits, in the first place, that that preliminary analysis is not an act adversely affecting Mr De Loecker's rights, but an internal act of a purely preparatory nature, which allows the AECE to assess whether or not an administrative investigation should be opened. In that regard, it relies on the judgment of 12 July 2012, *Commission* v *Nanopoulos* (T-308/10 P, EU:T:2012:370, paragraph 85). When the AECE decides whether or not to open an administrative investigation, it takes several factors into account, including the preliminary analysis carried out by the IDOC. Thus, it is not the preliminary analysis which adversely affects the person concerned, but the decision rejecting the request for assistance. However, before making the latter decision, the AECE hears that person, thus giving him the opportunity to put forward any arguments and produce any documents that he did not provide when the request for assistance was lodged.

57 In the second place, the EEAS notes that it is its responsibility to ensure that the right to be heard before the adoption of the final decision is respected. Accordingly, the IDOC merely provides assistance, under a Service-Level Agreement (SLA) concluded between the EEAS and the competent Commission services.

58 In the third place, the EEAS states that neither Annex IX to the Staff Regulations, on disciplinary proceedings, nor Article 41(2)(a) of the Charter indicate that the right to be heard is already applicable during the stage at which the preliminary analysis of the file is carried out.

59 In the present case, after providing Mr De Loecker with the opportunity to supply any additional facts in support of his harassment complaint, the EEAS considered, on the basis of the IDOC's preliminary analysis and the recommendation it issued, that the file did not contain sufficient information constituting prima facie evidence that he had been the victim of harassment. The EEAS therefore informed Mr De Loecker that there did not appear to be any justification for opening an administrative investigation against the person who allegedly committed acts of harassment against him. The EEAS considers that there was no need to hear Mr De Loecker again at this stage of the procedure. Conversely, the EEAS claims that, had there been a decision to open such an investigation, Mr De Loecker would have had the opportunity to be heard, that is to say, to present additional information and observations during and, in particular, before the closure of the administrative investigation.

60 By the third part of its single ground of appeal, the EEAS submits, in essence, that the grounds of the judgment of the General Court of 14 February 2017, *Kerstens* v *Commission* (T-270/16 P, not published, EU:T:2017:74), which is referred to in paragraph 58 of the judgment under appeal, are not applicable to the present case.

61 The EEAS notes that the judgment of the General Court of 14 February 2017, *Kerstens* v *Commission* (T-270/16 P, not published, EU:T:2017:74), concerned the question whether the disciplinary proceedings which had been opened against the EU official in question should have been preceded by an administrative investigation. The EEAS considers that, in that judgment, the General Court held that the Commission had failed to comply with its own implementing rules by initiating disciplinary proceedings without first conducting an administrative investigation during which the official concerned should have been heard. However, the circumstances here are clearly different from those at issue in the case which gave rise to that judgment, for two reasons. The EEAS states, first, that if an administrative investigation had been opened, it would have been directed against the alleged perpetrator of the acts of harassment, and not against Mr De Loecker. Secondly, in the present case, no administrative investigation or disciplinary proceedings were opened.

62 Therefore, by applying to the present case the grounds of the judgment of the General Court of 14 February 2017, *Kerstens* v *Commission* (T-270/16 P, not published, EU:T:2017:74), the General Court conflated the various stages of the procedure, namely the preliminary analysis, the administrative investigation and the pre-disciplinary and disciplinary proceedings.

63 Mr De Loecker disputes the merits of the EEAS' arguments concerning the interpretation of the grounds of the judgment of the Civil Service Tribunal of 16 December 2015, *De Loecker* v *EEAS* (F-34/15, EU:F:2015:153).

64 Furthermore, Mr De Loecker considers that the EEAS' argument that the judgment of the General Court of 14 February 2017, *Kerstens* v *Commission* (T-270/16 P, not published, EU:T:2017:74), is not applicable to the present case is manifestly inadmissible, since the EEAS does not set out any information which is relevant for that purpose and, in any event, disputes that line of argument.

– *Findings of the Court*

65 In paragraph 65 of the judgment under appeal, the General Court held that Mr De Loecker should have been heard during the first phase of the procedure, namely the stage at which the IDOC carries out the preliminary analysis at the end of which it adopts a report containing a recommendation concerning whether or not there is prima facie evidence of harassment, which is a necessary condition for the opening of an administrative investigation.

66 First of all, a person who has lodged a request for assistance under Articles 12a and 24 of the Staff Regulations on the ground that he has been the victim of psychological harassment may rely, by virtue of the principle of good administration, on the right to be heard regarding the facts concerning him (see, by analogy, judgment of 4 April 2019, *OZ* v *EIB*, C-558/17 P, EU:C:2019:289, paragraph 50)

67 Indeed, Article 41(2)(a) of the Charter provides that the right to good administration includes, inter alia, the right of every person to be heard, before any individual measure which would affect him or her adversely is taken.

68 The right to be heard guarantees every person the opportunity to make known his views effectively during an administrative procedure and before the adoption of any decision liable to affect his interests adversely (see, by analogy, judgment of 4 April 2019, *OZ* v *EIB*, C-558/17 P, EU:C:2019:289, paragraph 53 and the case-law cited).

69 Next, it should be stated that the right to be heard pursues a dual objective. First, to enable the case to be examined and the facts to be established in as precise and correct a manner as possible, and, secondly, to ensure that the person concerned is in fact protected. The right to be heard is intended, inter alia, to guarantee that any decision adversely affecting a person is adopted in full knowledge of the facts, and its purpose is to enable the competent authority to correct an error or to enable the person concerned to submit such information relating to his personal circumstances as will argue in favour of the adoption or non-adoption of the decision, or in favour of its having a specific content (see, to that effect, judgments of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, paragraph 38 and the case-law cited, and of 11 December 2014, *Boudjlida*, C-249/13, EU:C:2014:2431, paragraphs 37 and 59).

70 In the present case, the contested decision, by which the EEAS rejected the request for assistance made by Mr De Loecker under Articles 12a and 24 of the Staff Regulations constitutes an individual measure which would adversely affect him, within the meaning of Article 41(2) of the Charter.

71 As observed by the General Court in paragraph 59 of the judgment under appeal, and as claimed by the EEAS in its appeal, it was on the basis of the IDOC's preliminary analysis that the EEAS adopted the contested decision, which reflects the conclusions of that analysis. As regards the procedure for carrying out that analysis, it should be noted that, in accordance with Annex 6 to the service level agreement concluded between the EEAS and DG 'Human Resources and Security' with reference Ares (2013)859A35, although the EEAS is the AECE which takes the final decision, it is for the IDOC to carry out the 'operational' part of the procedure.

72 As is set out in paragraphs 24 and 25 of the present judgment, Mr De Loecker was heard before the IDOC carried out its analysis. Conversely, he was not heard either during the IDOC's preliminary analysis, or before the IDOC issued its recommendations to the EEAS, or before the EEAS adopted the contested decision.

73 However, since the EEAS adopted that decision on the basis of the preliminary analysis and of the IDOC's recommendations, it should have ensured that Mr De Loecker's right to be heard was respected by giving him the opportunity to submit his observations and provide any additional information in the context of the investigation conducted by the IDOC. Hearing Mr De Loecker could, if appropriate, have led the IDOC to draw a different conclusion, which may have resulted in the opening of an administrative investigation.

74 That assessment is supported by the fact that a decision rejecting a request for assistance in the context of a psychological harassment complaint, such as the contested decision, may entail serious consequences for the person concerned, as psychological harassment can have extremely destructive effects on the victim's health, and any recognition by the administration of the existence of such harassment is, in itself, liable to have a beneficial effect in the therapeutic process of that person's recovery.

75 In addition, the General Court did not infringe Article 41(2)(a) of the Charter or misinterpret the judgment of the Civil Service Tribunal of 16 December 2015, *De Loecker* v *EEAS* (F-34/15, EU:F:2015:153), in holding that Mr De Loecker's right to heard was infringed.

76 As regards the third part of the single ground of appeal, relating to the grounds of the judgment of 14 February 2017, *Kerstens* v *Commission* (T-270/16 P, not published, EU:T:2017:74), it is sufficient to note that, as is apparent from the use, in paragraph 58 of the judgment under appeal, of the words 'par ailleurs' ('moreover'), that part of the ground of appeal is directed against a superfluous ground of the General Court's judgment. In those circumstances, the third part of the single ground of appeal must be rejected as ineffective.

77 It follows that the second part of the single ground of appeal must be rejected as unfounded and the third part rejected as ineffective, and accordingly, that the appeal must be dismissed.

Costs

78 Under Article 138(1) of the Rules of Procedure of the Court, which applies to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As Mr De Loecker sought an order for costs against the EEAS, and the EEAS has been unsuccessful, it must be ordered to pay the costs.

On those grounds, the Court (Seventh Chamber) hereby:

1. Dismisses the appeal;

2. Orders the European External Action Service (EEAS) to pay the costs.

[Signatures]