



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

25 June 2020*

(Appeal — Civil service — European Parliament — Member of contract staff — Articles 12a and 24 of the Staff Regulations of Officials of the European Union — Psychological harassment — Request for assistance — Right to be heard — Rejection of a request for assistance — Article 41 of the Charter of Fundamental Rights of the European Union — Scope of judicial review)

In Case C-570/18 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 10 September 2018,

HF, represented by A. Tymen, avocate,

appellant,

the other party to the proceedings being:

European Parliament, represented by E. Taneva and T. Lazian, acting as Agents,

defendant at first instance,

THE COURT (Second Chamber),

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

Advocate General: H. Saugmandsgaard Øe,

Registrar: V. Giacobbo-Peyronnel, Administrator,

having regard to the written procedure and further to the hearing on 13 November 2019,

after hearing the Opinion of the Advocate General at the sitting on 29 January 2020,

gives the following

Judgment

- 1 By her appeal, the appellant asks the Court to set aside the judgment of the General Court of the European Union of 29 June 2018, *HF v Parliament* (T-218/17, EU:T:2018:393, 'the judgment under appeal'), by which that court dismissed her action seeking, first, annulment of the decision of the

* Language of the case: French.

European Parliament of 3 June 2016, by which the authority empowered to conclude contracts of employment of that institution rejected her request for assistance of 11 December 2014, and, second, compensation for the damage the appellant claims to have suffered as a result of the unlawful conduct of that authority in its handling of that request for assistance.

- 2 By its cross-appeal, the Parliament asks the Court to set aside the judgment under appeal on account of errors of law allegedly made by the General Court in paragraphs 80, 81 and 123 of that judgment, to dismiss the action at first instance and to order the appellant to pay the costs.

Legal context

- 3 Article 12a of the Staff Regulations of Officials of the European Union, in the version applicable to the proceedings ('the Staff Regulations'), 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.'

- 4 Article 24 of the Staff Regulations 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.'

- 5 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

- 6 The background to the dispute was set out in paragraphs 1 to 33 of the judgment under appeal and may be summarised as follows.
- 7 Between 2005 and 2015, the appellant, HF, worked in the Audiovisual Unit of the ‘Communication’ Directorate-General of the European Parliament under various forms of employment status, namely as a member of the staff for auxiliary tasks, as a member of the contract staff and as a member of the temporary staff.
- 8 By letter of 11 December 2014, addressed to the Secretary-General of the Parliament (‘the Secretary-General’), with the Chairman of the Advisory Committee on Harassment and its Prevention at the Workplace (‘the Advisory Committee’), the President of the Parliament and the Director-General of the Directorate-General (DG) for Personnel of the General Secretariat of the Parliament (‘the Director-General for Personnel’) in copy, the appellant submitted a request for assistance, within the meaning of Article 24 of the Staff Regulations, pursuant to Article 90(1) of those regulations (‘the request for assistance’). More specifically, she requested that urgent measures be adopted in order to immediately protect her from her alleged harasser and that an administrative inquiry be opened by the authority empowered to conclude contracts of employment (‘the AECE’) in order to establish that the allegations were true.
- 9 In support of that request, the appellant claimed that she had been the victim of psychological harassment, within the meaning of Article 12a of the Staff Regulations, by the head of the Audiovisual Unit (‘the Head of Unit’). That harassment took the form of conduct and spoken and written language on the part of the latter, in particular during unit meetings.
- 10 By letter of 4 February 2015, the Director-General for Personnel informed the appellant that a measure had been adopted reassigning her to the Visitors Programme Unit, in order to distance her from the Head of Unit.
- 11 By letter of 8 December 2015, the Director-General for Personnel informed the appellant of his intention to consider her request for assistance unfounded further to, inter alia, the Advisory Committee hearing the submissions of the Head of Unit and of 14 other officials and servants of the Audiovisual Unit.
- 12 By letter of 17 December 2015, the appellant requested that she be provided with what she called ‘the inquiry report’ drawn up by the Advisory Committee. That request was repeated in a letter of 5 February 2016.
- 13 By letter of 9 February 2016, the Director-General for Personnel gave the appellant until 1 April 2016 to lodge her written observations on his intention to refuse her request for assistance. He also stated that the Advisory Committee had merely provided him with an opinion finding that there had been no psychological harassment. It was not unusual that the Advisory Committee had not provided him with any report such as that referred to in Article 14 of the Internal Rules on Harassment, as such reports were drawn up by the Advisory Committee only when it found that psychological harassment had occurred.
- 14 On 1 April 2016 the appellant lodged her written observations, in which she reiterated the claim that the Head of Unit’s behaviour towards her constituted psychological harassment within the meaning of Article 12a of the Staff Regulations, and challenged in particular the statement of the Director-General for Personnel that the Advisory Committee had not drawn up a report within the meaning of Article 14 of the Internal Rules on Harassment but merely issued an opinion. In that regard, she

maintained that the refusal by the Director-General for Personnel to disclose to her the findings of the Advisory Committee in full infringed her rights of defence and rendered the observations she submitted ineffective.

- 15 By decision of 3 June 2016, the Director-General for Personnel, acting in his capacity as AECE, refused the request for assistance ('the decision at issue'). In that decision, he stated, *inter alia*, that a detailed explanation of all of the grounds on which he intended to refuse the request for assistance had been provided to the appellant on 8 December 2015. Further, the Director-General for Personnel took the view, first, that the appellant had no individual right to be provided with an inquiry report, opinion or other records of witness hearings compiled by the Advisory Committee. The Director-General for Personnel also repeated his analysis as set out in the letter of 8 December 2015 and, accordingly, decided not to endorse the position that the situation as described by the appellant came within the definition of psychological harassment within the meaning of Article 12a of the Staff Regulations.
- 16 On 6 September 2016, the appellant lodged a complaint against the decision at issue under Article 90(2) of the Staff Regulations. In support of that complaint, she pleaded infringement of the rights of the defence, of Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter'), of the right to be heard and of the *audi alteram partem* rule, as well as irregularities in the procedure followed by the Advisory Committee, manifest errors of assessment, infringement of Articles 12a and 24 of the Staff Regulations and infringement of the obligation to provide assistance and of the duty of care.
- 17 By decision of 4 January 2017, the Secretary-General, in his capacity as AECE, rejected that complaint.
- 18 With regard to the appellant's complaint concerning the AECE's failure to provide the report drawn up by the Advisory Committee and the records of witness hearings, the Secretary-General stated, *inter alia*, that, in the light of the case-law established in the judgments of 11 July 2013, *Tzirani v Commission* (F-46/11, EU:F:2013:115), and of 23 September 2015, *Cerafogli v ECB* (T-114/13 P, EU:T:2015:678), there was no obligation on the AECE to disclose those documents to the appellant, *inter alia* because, within the Parliament, the Advisory Committee was required to work with the utmost confidentiality and its proceedings were secret. Accordingly, in order to ensure freedom of speech for all those involved, including witnesses, it was impossible for the AECE to disclose those documents to the appellant.
- 19 As regards the existence, in the present case, of 'psychological harassment' within the meaning of Article 12a(3) of the Staff Regulations, the Secretary-General stated that 'considered overall, the facts relied upon by [the appellant] do not appear to constitute improper conduct by a head of unit in relation to a subordinate'.

The procedure before the General Court and the judgment under appeal

- 20 By document lodged at the General Court Registry on 12 April 2017, the appellant brought an action seeking, first, annulment of the decision of the Parliament of 3 June 2016 by which the AECE rejected her request for assistance of 11 December 2014 and, second, compensation for the damage she claims to have suffered as a result of the unlawful conduct of that authority in its handling of that request.
- 21 In support of her claim for annulment, the appellant relied on three pleas in law; in the first plea she alleged infringement of the rights of the defence, of Article 41 of the Charter, of the right to be heard and of the *audi alteram partem* rule, in the second, procedural errors, namely that the procedure followed by the Advisory Committee was irregular and biased, and, in the third, manifest errors of assessment, infringement of the obligation to provide assistance and the duty of care, and infringement of Articles 12a and 24 of the Staff Regulations.

- 22 In support of her claim for compensation for the harm that she allegedly suffered, the appellant maintained that she had suffered non-material damage as a result of the unlawful conduct of the AECE in its handling of her request for assistance. On those grounds, she claimed EUR 70 000 in compensation. Moreover, the appellant claimed a further amount of EUR 20 000 in compensation for non-material damage resulting from the irregularities that affected the inquiry procedure, namely irregularities in the proceedings of the Advisory Committee. According to the appellant, the AECE infringed, inter alia, the ‘reasonable time’ principle in its handling of the request for assistance.
- 23 By the judgment under appeal, the General Court dismissed the action in its entirety as unfounded.

Forms of order sought

Form of order sought on appeal

- 24 By its appeal, the appellant claims that the Court should:
- set aside the judgment under appeal and, consequently;
 - grant the form of order sought by the appellant at first instance;
 - annul the decision at issue;
 - order the Parliament to pay compensation for non-material damage, set ex æquo et bono at EUR 90 000; and
 - order the Parliament to pay all of the costs at first instance and on appeal.
- 25 The Parliament contends that the Court should:
- dismiss the appeal as unfounded; and
 - order the appellant to pay the costs.

Forms of order sought in the cross-appeal

- 26 By its cross-appeal, the Parliament claims that the Court should:
- set aside the judgment under appeal;
 - rule on the merits and dismiss the action; and
 - order the appellant to pay the costs.
- 27 The appellant contends that the Court should:
- uphold the judgment under appeal as regards the principles established in paragraphs 80, 81 and 123 of that judgment;
 - set aside the judgment under appeal in so far as it dismissed the appellant’s claims and, consequently,
 - grant the form of order sought by the appellant at first instance;

- annul the decision at issue;
- order the Parliament to pay compensation for non-material damage, set ex æquo et bono at EUR 90 000; and
- order the Parliament to pay all of the costs at first instance and on appeal.

The cross-appeal

Arguments of the parties

- 28 The Parliament puts forward two grounds in support of its cross-appeal, alleging, first, an error of law on the part of the General Court in so far as it held, in paragraph 81 of the judgment under appeal, that that institution should have disclosed the opinion of the Advisory Committee to HF and, secondly, an error of law, in paragraph 123 of the judgment under appeal, in so far as the General Court did not limit itself to examining whether there had been a manifest error of assessment.
- 29 The appellant challenges that line of argument.

Findings of the Court

- 30 It must be recalled from the outset that it is for the Court to examine of its own motion any question relating to the admissibility of an appeal or the grounds of the appeal (see, to that effect, judgment of 28 February 2008, *Neirinck v Commission*, C-17/07 P, EU:C:2008:134, paragraph 38 and the case-law cited).
- 31 It should be noted, in that regard, that, under the first and second paragraphs of Article 56 of the Statute of the Court of Justice of the European Union, an appeal may be brought before the Court of Justice against final decisions of the General Court by any party which has been unsuccessful, in whole or in part, in its submissions.
- 32 Moreover, Article 178(1) of the Rules of Procedure of the Court of Justice requires that a cross-appeal is to seek to have set aside, in whole or in part, the decision of the General Court.
- 33 In the present case, as observed, in essence, by the Advocate General in point 37 of his Opinion, given that the General Court dismissed the appellant's action and thus her application for annulment of the decision at issue, the European Parliament may not be regarded as having been unsuccessful in its submissions.
- 34 Since the two grounds of the cross-appeal seek, in actual fact, only to obtain a substitution of grounds as regards the analysis carried out by the General Court in paragraphs 80, 81 and 123 of the judgment under appeal, they cannot be upheld (see, to that effect, judgment of 27 March 2019, *Canadian Solar Emea and Others v Council*, C-236/17 P, EU:C:2019:258, paragraph 75 and the case-law cited).
- 35 It follows that the two grounds of the cross-appeal must be rejected as inadmissible.
- 36 As regards the European Parliament's request regarding the allocation of costs, it suffices to note that, under Article 58 of the Statute of the Court of Justice of the European Union, no appeal is to lie regarding only the amount of the costs or the party ordered to pay them. Given that the two grounds of the cross-appeal are inadmissible, that request by the European Parliament cannot be upheld.
- 37 In the light of the foregoing considerations, the cross-appeal must be dismissed in its entirety.

The main appeal

38 The appellant puts forward three grounds in support of her appeal. The first alleges infringement of the right to be heard enshrined in Article 41(2)(a) of the Charter. The second alleges infringement of Article 41(1) of the Charter and of the General Court's obligation to state reasons and distortion of the content of the file and its arguments. The third alleges infringement of Article 31(1) of the Charter, Article 12a(1) and (3) of the Staff Regulations and Article 24 of those regulations.

Arguments of the parties

39 According to the appellant, in the first place, the General Court infringed Article 12a(1) and (3) and Article 24 of the Staff Regulations by taking into account, in paragraphs 84 and 85 of the judgment under appeal, only one of the objectives of handling a request for assistance, namely that of restoring the smooth running of the service concerned, without taking into account another of those objectives which had, nevertheless, been referred to in paragraph 83 of that judgment, namely ensuring effective application of the prohibition of any form of psychological harassment.

40 In the second place, the appellant claims that the judgment under appeal is vitiated by a failure to state reasons and by a contradiction in so far as the General Court held that the records of witness hearings should not be disclosed to the appellant in order to protect the anonymity of those witnesses. Although the General Court stated, in paragraph 80 of the judgment under appeal, that the opinion of the Advisory Committee could be drafted in a non-confidential form respecting the anonymity granted to witnesses, the General Court did not express a view on that question in relation to the records of the hearings. Thus, without explanation, the General Court did not apply the same criteria to the two documents concerned as regards whether they could be disclosed. The General Court also contradicted itself in so far as it did not take account of the possible anonymisation of the records of witness hearings, even though the same objective of guaranteeing the anonymity of witnesses applies both to disclosure of the opinion of the Advisory Committee and to disclosure of those records of the hearings.

41 According to the appellant, as the alleged illegalities in paragraphs 83 to 85 of the judgment under appeal led the General Court to hold that the records of witness hearings did not have to be disclosed to her before she submitted her observations, the General Court infringed Article 41(2)(a) of the Charter and her right to be heard.

42 In the third place, the appellant submits, in essence, that in paragraph 89 of the judgment under appeal the General Court implicitly but necessarily acknowledged that her right to be heard had not been protected, in so far as it recognised that, in order to rule on the request for assistance, the AECE needed the records of the hearings to supplement the brief opinion of the Advisory Committee.

43 In the fourth place, the appellant considers, in essence, that, although the General Court accepted, in paragraph 90 of the judgment under appeal, that she had put forward new arguments based on the records of the hearings at the litigation stage, which were likely to lead to a different outcome as regards the request for assistance, it held that there had been no infringement of the right to be heard. According to the appellant, the General Court's assessment in that regard was based on the incorrect premiss that the records of the hearings did not have to be disclosed to her.

44 In response, the Parliament contends, in essence, that the first ground of appeal must be rejected as unfounded.

45 The Parliament argues, in the first place, that, under Article 41(2)(b) of the Charter, confidentiality constitutes a legitimate limit on the right to be heard.

- 46 In that regard, the Parliament states that it is essential to ensure that witness statements in administrative investigations remain confidential not only vis-à-vis the alleged harasser, but also vis-à-vis the complainant, in order to guarantee freedom of speech for the witnesses. First, a possible removal of such confidentiality, in particular during the proceedings before the Court, could impede the holding of neutral and objective inquiries with the unreserved cooperation of persons called as witnesses on a voluntary basis. Secondly, confidentiality provides guarantees to those witnesses in so far as they are thus given the assurance that they will not face either reprisals or pressure from the persons involved.
- 47 The Parliament adds that, in accordance with its internal rules in that regard, the Chairman of the Advisory Committee assures witnesses that their evidence will remain confidential.
- 48 In the second place, the Parliament notes that the objective of restoring the smooth running of the service is complementary to and inseparable from that of stopping harassment. Thus, removing confidentiality could potentially give rise to conflicts in the service by reviving any animosity within it. Accordingly, the appellant cannot claim that the General Court did not take the second of those objectives into account.
- 49 In the third place, the Parliament points out that the anonymisation of a hearing, namely deleting the names of the witnesses, is not sufficient to ensure that it is impossible to identify the person who gave testimony, since the witness may also be identifiable by cross-checking information and, in particular, by the actual facts he or she attests to.
- 50 In the fourth place, the Parliament contends that the appellant was placed in a position to properly exercise her right to be heard, in accordance with Article 41 of the Charter, on 1 April 2016, since she received, on that date, notification of the grounds on which the administration based its intention to reject her request for assistance. In that context, the Parliament observes that, according to the Courts of the European Union, as regards assistance for harassment, the person who made a request for assistance does not enjoy legal protection that is as broad as that granted in connection with the rights of the defence, but rather, in order for the right to good administration to be observed, enjoys the right to be heard, in accordance with Article 41(2)(a) of the Charter.
- 51 Therefore, a correct interpretation of Article 41 of the Charter means that the appellant is not entitled to receive all the documents drawn up in connection with the handling of her request for assistance, but only the reasons on which the administration based its intention to reject that request. It follows that the appellant cannot have access to the reports of the hearings in order to exercise her right to be heard.
- 52 In the fifth place, as regards the appellant's objection in relation to paragraph 90 of the judgment under appeal, the Parliament considers it to be ineffective since, in any event, the appellant may not have access to witness statements which are inherently confidential. Even if the appellant had such a right, the Parliament considers that she had not put forward any new arguments which could have had an impact on the decision of the Director-General for Personnel of 3 June 2016 rejecting the request for assistance.

Findings of the Court

- 53 By her first ground of appeal, the appellant complains, in essence, that the General Court infringed her right to be heard, guaranteed under Article 41(2)(a) of the Charter, in so far as it held that refusing to grant her access to the records of witness hearings drafted by the Advisory Committee, before the adoption of the decision at issue, was not contrary to that provision.

- 54 In the first place, it should be noted that the appellant was heard by the AECE on the basis of the letter of 8 December 2015 setting out the reasons why the Director-General for Personnel proposed to reject her request for assistance. However, the appellant did not have access to either the opinion of the Advisory Committee or the records of the hearings conducted by that committee for the purpose of making her observations on the grounds relied on by the AECE in that letter when rejecting the request for assistance.
- 55 In the second place, as the General Court observed in paragraphs 73 and 74 of the judgment under appeal, the decision at issue constitutes an individual measure which concerns the appellant and adversely affects her, within the meaning of Article 41(2) of the Charter, since it rejected the request for assistance and, therefore, concluded that there had been no psychological harassment.
- 56 In the third place, it should be noted that, in a procedure such as that at issue, the alleged victim of harassment may rely on the right to be heard, in accordance with the principle of sound administration. Article 41 of the Charter, entitled 'Right to good administration', states, in paragraph 1, that every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the European Union.
- 57 Moreover, the second paragraph of that article provides that the right to good administration includes the right of every person to be heard, before any individual measure which would affect him or her adversely is taken, the right of every person to have access to his or her file, while respecting legitimate expectations as regards confidentiality and professional and business secrecy, and the obligation on the part of the administration to give reasons for its decisions.
- 58 More specifically, 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 judgment of 4 April 2019, *OZ v EIB*, C-558/17 P, EU:C:2019:289, paragraph 53).
- 59 It is therefore for the Court of Justice to ascertain whether the General Court erred in law in holding, in paragraphs 82 to 87 of the judgment under appeal, that the right to be heard did not entail an obligation to disclose to the appellant the records of the witness hearings prior to the adoption of the decision at issue. In that regard, the General Court found that, in principle, in order to ensure effective application of the prohibition of any form of psychological harassment at the workplace, it was permissible for the administration to provide for the possibility of assuring witnesses who agreed to provide their accounts of the facts at issue in an alleged case of harassment that their testimony would remain confidential vis-à-vis both the alleged harasser and the alleged victim.
- 60 The Court has previously held that, in a dispute concerning harassment involving European officials, the person who lodged a complaint of harassment with the Director-General for Personnel is entitled, in order to be able effectively to submit his observations to the institution concerned before it takes a decision, to receive a summary, at the very least, of the statements made by the person accused of harassment and the various witnesses heard during the investigation procedure and that such a summary must be disclosed while respecting, if necessary, the principle of confidentiality. The Court noted that that was the case as the statements had been used in the report which had been submitted to the authority that had taken the decision not to pursue the complaint and included recommendations on the basis of which that authority had made its decision (see, to that effect, judgment of 4 April 2019, *OZ v EIB*, C-558/17 P, EU:C:2019:289, paragraph 57).
- 61 In the present case, it is apparent from paragraphs 80 and 89 of the judgment under appeal that, for the purpose of ruling on the request for assistance, the AECE had at its disposal not only the opinion of the Advisory Committee, but also the records of the witness hearings, which provided a comprehensive and detailed view of the accuracy of the facts and the perception of those facts by the various members of staff of the unit at issue.

- 62 As the Advocate General observed in point 62 of his Opinion, as records of witness hearings were taken into account by the AECE for the purpose of adopting the decision at issue, it was important that the appellant be given the opportunity to state her position on those records. Accordingly, the appellant was entitled, in order to be able effectively to present her observations, to disclosure of, at the very least, a summary of both the opinion of the Advisory Committee and the records of witness hearings, since the AECE based the decision at issue on those documents.
- 63 However, those documents should have been disclosed to the appellant while respecting legitimate expectations as regards confidentiality, which must therefore be balanced against the right to be heard (see, to that effect, judgment of 4 April 2019, *OZ v EIB*, C-558/17 P, EU:C:2019:289, paragraph 57).
- 64 The General Court held, in paragraph 83 of the judgment under appeal, that it was permissible for the administration to provide for the possibility of assuring witnesses heard in an inquiry that their testimony would remain confidential.
- 65 The possibility thus granted to the administration is not necessarily incompatible with respecting the right to be heard of a person who has reported acts of harassment.
- 66 In order to ensure that witness statements remain confidential and that the objectives of such confidentiality are respected, while ensuring that the appellant is properly heard before a decision adversely affecting her is adopted, as the Advocate General noted in point 71 of his Opinion, certain techniques may be used, such as anonymisation, or even disclosure of the substance of the witness statements in the form of a summary, or the redaction of some of the content of those statements (see, to that effect, judgment of 4 April 2019, *OZ v EIB*, C-558/17 P, EU:C:2019:289, paragraph 59).
- 67 The General Court held that the AECE had not infringed the appellant's right to be heard by refusing to disclose to her the records of the witness hearings prior to the adoption of the decision at issue, without examining whether it would have been possible to reconcile respect for the legitimate interests of confidentiality with that right.
- 68 Furthermore, it should be pointed out that techniques such as those referred to in paragraph 66 above were indeed used in the proceedings before the General Court, which ordered the Parliament to produce an anonymised version of the reports in question with redactions.
- 69 Accordingly, as the Advocate General observed in point 76 of his Opinion, the General Court erred in law by failing to find that it was contrary to the requirements of Article 41 of the Charter that the appellant had not been given, at the very least, an anonymised summary of the statements of the various witnesses and was not heard on the subject of those statements, with the effect that she was not put in a position effectively to submit observations on their content before the Director-General for Personnel took the decision at issue, which adversely affected her.
- 70 It follows from the foregoing that the first ground of the main appeal must be upheld and, on that basis, the judgment under appeal must be set aside in its entirety, without there being any need to examine the other arguments put forward by the appellant in that ground of appeal or the other grounds of the main appeal.

The action before the General Court

- 71 In accordance with the second sentence of the first paragraph of Article 61 of the Statute of the Court of Justice, if the decision of the General Court is set aside, the Court of Justice may itself give final judgment in the matter where the state of the proceedings so permits.

- 72 It should be borne in mind that, according to settled case-law, an infringement of the rights of the defence, in particular the right to be heard, results in the annulment of the decision taken at the end of a procedure only if, had it not been for such an irregularity, the outcome of the procedure might have been different (judgments of 10 September 2013, *G. and R.*, C-383/13 PPU, EU:C:2013:533, paragraph 38, and of 4 April 2019, *OZ v EIB*, C-558/17 P, EU:C:2019:289, paragraph 76).
- 73 In the present case, as is apparent from paragraph 69 above, the fact that the appellant was not given, at the very least, an anonymised summary of the statements of the various witnesses and was not heard on the subject of those statements, with the effect that she was not put in a position effectively to submit observations on their content before the Director-General for Personnel took the decision at issue, which adversely affected her, amounts to a breach of Article 41 of the Charter. As the Advocate General observed in points 121 to 123 of his Opinion, that failure as regards disclosure constitutes an irregularity that inevitably affected both the opinion of the Advisory Committee and the decision at issue. If the appellant had been given the opportunity to be properly heard, she might have persuaded the Director-General for Personnel that a different assessment of the facts and of the various contextual factors, which were decisive in that decision, was possible and that a different weight should be applied to them.
- 74 It cannot therefore be ruled out that the decision of the Director-General for Personnel on the request for assistance submitted by the appellant might have been positive.
- 75 Accordingly, the decision at issue must be annulled.
- 76 As regards the appellant's claim for compensation for the damage allegedly suffered, the annulment of the decision at issue constitutes appropriate compensation for any non-material damage which the appellant may have suffered in the present case.
- 77 The heads of claim seeking compensation for such non-material harm are therefore devoid of purpose and there is no need to adjudicate on them (see, to that effect, judgment of 4 April 2019, *OZ v EIB*, C-558/17 P, EU:C:2019:289, paragraph 81).
- 78 In those circumstances, the appellant's claim for compensation for damage must be rejected.

Costs

- 79 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to the costs.
- 80 Under Article 138(1) of those rules, 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.
- 81 Since the Parliament has essentially been unsuccessful, it must be ordered to bear its own costs and to pay those incurred by the appellant relating, in accordance with the form of order sought by the latter, to both the proceedings at first instance and the appeal proceedings.

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

1. **Sets aside the judgment of the General Court of the European Union of 29 June 2018, *HF v Parliament* (T-218/17, EU:T:2018:393);**

- 2. Annuls the decision of the Director-General for Personnel of the European Parliament, acting in his capacity as the authority empowered to conclude contracts of employment for that institution, of 3 June 2016, rejecting the request for assistance, within the meaning of Article 24 of the Staff Regulations of Officials of the European Union, submitted by HF;**
- 3. Dismisses the appeal as to the remainder;**
- 4. Orders the European Parliament to bear its own costs and to pay those incurred by HF in the proceedings at first instance and the appeal proceedings.**

[Signatures]