



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

4 April 2019*

(Appeal — Civil service — Staff of the European Investment Bank (EIB) — Sexual harassment — Investigation carried out in the context of the ‘Dignity at work’ programme — Rejection of a complaint alleging harassment — Application for annulment of the decision of the President of the EIB rejecting the complaint — Compensation for damage)

In Case C-558/17 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 14 September 2017,

OZ, residing in Luxembourg (Luxembourg), represented by B. Maréchal, avocat,

appellant,

the other party to the proceedings being:

European Investment Bank (EIB), represented by K. Carr and G. Faedo, acting as Agents, and A. Dal Ferro, avvocato,

defendant at first instance,

THE COURT (Third Chamber),

composed of M. Vilaras, President of the Fourth Chamber, acting as President of the Third Chamber, J. Malenovský (Rapporteur), L. Bay Larsen, M. Safjan and D. Šváby, Judges,

Advocate General: J. Kokott,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 26 September 2018,

after hearing the Opinion of the Advocate General at the sitting on 21 November 2018,
gives the following

Judgment

- 1 By her appeal, OZ asks the Court of Justice to set aside the judgment of the General Court of the European Union of 13 July 2017, *OZ v EIB* (T-607/16, not published, ‘the judgment under appeal’, EU:T:2017:495), by which the General Court dismissed her action seeking, first, annulment of the

* Language of the case: English.

report of the Investigation Panel of the European Investment Bank (EIB) of 14 September 2015 and the decision of the President of the EIB of 16 October 2015 not to take action on her complaint alleging sexual harassment ('the decision at issue') and, second, compensation for the damage which she claims to have suffered as a result of that report and that decision.

Legal context

The Staff Regulations of Officials of the European Union

- 2 The Staff Regulations of Officials of the European Union were established by Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to Officials of the Commission (OJ, English Special Edition 1968(I), p. 30).
- 3 The first paragraph of Article 24 of the Staff Regulations of Officials of the European Union, as amended by Regulation (EU, Euratom) No 1023/2013 of the European Parliament and the Council of 22 October 2013 (OJ 2013 L 287, p. 15), 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.'

The Staff Regulations of the EIB

- 4 The Staff Regulations of the European Investment Bank, adopted on 20 April 1960 by the Board of Directors of the EIB, in the version amended by the decision of the Board of Directors of the EIB of 4 June 2013, which entered into force on 1 July 2013, provide, in Article 41:

'Disputes of any nature between the Bank and individual members of staff shall be brought before the Court of Justice of the European Union. Any proceedings instituted by a member of staff in respect of an action of the Bank which would adversely affect him must be brought within three months.

In addition to proceedings being instituted before the Court of Justice ..., an amicable settlement shall be sought, prior to the institution of any proceedings, before the Bank's Conciliation Board in respect of disputes other than such as arise from application of the disciplinary measures provided for under Article 38.

The request for conciliation must be made within three months ... of the occurrence of the facts or of the notification of the actions giving rise to the dispute. ...'

The policy of the EIB on dignity at work

- 5 The internal rules 'Policy on dignity at work' ('the policy on dignity at work'), adopted by the EIB on 18 November 2003, provide:

'Investigation procedure

...

The investigation procedure shall contain the following provisions:

...

- an Investigation Panel composed of three independent persons shall be formed ...
- the Investigation Panel shall hold a number of hearings in order to hear separately both parties, any witnesses and any other person that it wishes to question,
- both parties shall have the right to be heard by the Investigation Panel,
- both parties shall have the right to be represented or accompanied,
- the hearings and deliberations of the Investigation Panel shall lead to a recommendation submitted to the President,
- the President shall decide what measures are to be taken.

Tasks and composition of the Investigation Panel

The Panel's task shall be to provide a structure that guarantees an objective, independent investigation on one or more incidents, resulting in a recommendation to the President who shall decide what measures are to be taken.

...

The procedure

...

2. The Director General of the Personnel Directorate, in agreement with the Staff Representatives, shall suggest the composition of the Panel to the President and set a date for the beginning of the investigation, at the latest 30 calendar days after the complaint is received.
3. The Director General of the Personnel Directorate shall immediately acknowledge receipt of the staff member's memorandum and confirm the initiation of an investigation procedure.
4. Once the complainant's memorandum has been received, the Director General of the Personnel Directorate shall

...

- d. indicate that the investigation will begin within 30 calendar days of the complaint being officially lodged with the Director General of the Personnel Directorate and that both parties will be notified of the date, time and location of their individual hearing, their right to be represented or accompanied and the composition of the Panel.

...

The Hearing

The purpose of the hearing shall be to establish exactly what happened and collate the facts to enable a reasoned recommendation to be drawn up. The parties shall not have the right to cross-examine as they shall be heard separately. They shall not be obliged to repeat unpleasant or embarrassing details as that is absolutely unnecessary. All parties involved in the investigation and the hearings, including assistants and witnesses, are reminded that they are bound by a duty of confidentiality.

... The Panel may adopt whichever procedure that it considers appropriate. In general, the hearing shall take the form of a series of separate meetings held in the following order:

- first, the complainant
- any witnesses mentioned by the complainant
- the alleged harasser
- any witnesses mentioned by the alleged harasser
- if deemed necessary by the Panel, both parties may be called for new separate hearings.

If required, the Panel may also question again the persons involved and possibly summon other members of staff or request information or copies of documents if, collectively, it considers that this is justified and relevant. If there is any uncertainty, the President shall have the last word on matters concerning access to files and data or recourse to other investigation methods, having consulted the Data Protection Officer if necessary. The Panel shall notify the complainant in the event of additional investigations.

Outcome of the investigation

Once all parties have been heard and any other appropriate investigations have been conducted, the Panel is expected to be able to make a decision and propose a reasoned recommendation. It shall not have any decision-making powers.

The Panel may recommend either that:

- the case be dropped because the two parties have been able to clarify the situation and a solution for the future, which is acceptable to both parties, has been found,
- the case not be considered to constitute intimidation or harassment but a dispute at work that must be examined in greater detail or monitored,
- the complaint be rejected,
- the necessary measures be taken should it find the complaint to be unfounded or malicious,
- the disciplinary procedure be initiated.

The Panel's written recommendation shall be made within five days of the end of the investigation and sent to the President to decide what measures are to be taken.

Decision by the President ...

Within five working days of the recommendation being sent to the President at the latest, both parties shall be informed in writing of the President's reasoned decision. The Panel's recommendation shall be enclosed with this decision.'

Background to the dispute

- 6 On 1 December 2008, OZ was recruited by the EIB.
- 7 At the end of 2009, Mr F joined one of the EIB Directorates as a supervisor of staff, including OZ.
- 8 On 16 September 2012, OZ moved to another post.
- 9 In January 2014, OZ stated to her Head of Division that that transfer to another post was connected with sexual harassment which she considered she had experienced at the hands of Mr F. since 2011.
- 10 On 20 May 2015, OZ filed with the Director-General of the Personnel Directorate of the EIB a complaint in which she claimed to have been sexually harassed by Mr F.
- 11 On 18 June 2015, the Director-General informed OZ that, following her complaint, a formal investigation procedure ('the investigation procedure') had been initiated pursuant to the policy on dignity at work.
- 12 On 19 June 2015, the President of the EIB approved the proposed composition of the Investigation Panel responsible for conducting the investigation procedure ('the Investigation Panel').
- 13 On 26 June 2015, the Investigation Panel was officially appointed and OZ was informed that hearings would take place on 20 July 2015.
- 14 On 17 September 2015, the Investigation Panel submitted its report containing its reasoned recommendations ('the Investigation Panel's report') to the President of the EIB.
- 15 In its report, the panel explained that it had not been possible to confirm OZ's allegations because there were no witnesses to the alleged acts. On the other hand, all the witnesses had agreed that OZ's health was a cause for concern. She had experienced a traumatic break-up with her former partner and had subsequently lost a lot of weight. OZ was also eager to advance in her career and her behaviour was manipulative, which was likely to be harmful to others. She also had difficulty in accepting any form of criticism. Finally, the Investigation Panel recommended that OZ show better team spirit and adopt a more positive attitude.
- 16 On 16 October 2015, the President of the EIB adopted the decision at issue on the basis of the recommendations of the Investigation Panel; the Investigation Panel's report was attached to that decision.
- 17 Following the adoption of the decision at issue, the President of the EIB sought further clarification from the Investigation Panel with a view to the possible institution of disciplinary proceedings. The panel submitted its final observations on 12 January 2016. The appellant subsequently lodged a request for conciliation pursuant to Article 41 of the Staff Regulations of the EIB, as amended.
- 18 On 29 June 2016, following the findings of the Conciliation Board of 22 April 2016, the President of the EIB stated that the conciliation procedure had failed.

The procedure before the General Court and the judgment under appeal

- 19 By application lodged at the Registry of the Civil Service Tribunal on 22 July 2016, the appellant brought the present action, initially registered as Case F-37/16.

- 20 Pursuant to Article 3 of Regulation (EU, Euratom) 2016/1192 of the European Parliament and of the Council of 6 July 2016 on the transfer to the General Court of jurisdiction at first instance in disputes between the European Union and its servants (OJ 2016 L 200, p. 137), the present case was transferred to the General Court as it stood on 31 August 2016. It was registered as Case T-607/16.
- 21 OZ claimed that the General Court should:
- annul the decision at issue and the Investigation Panel’s report (including the deletion of certain parts of that report);
 - order the EIB to pay her the sum of EUR 20 000 as compensation for the non-material damage suffered;
 - order the EIB to pay her the sum of EUR 977 [including value added tax (VAT)] and a provisional amount of EUR 5 850 to cover the medical fees incurred following that damage;
 - order the EIB to reimburse the expenses incurred in the present proceedings, corresponding to the sum of EUR 35 100 (including VAT), and
 - remit the present case to the EIB in order that the Dignity at Work procedure may be reopened and a new decision drafted by its President, using wording specified by the appellant.
- 22 In support of her action, OZ relied, in essence, on two pleas in law.
- 23 The first plea alleged infringement of the rules governing the investigation procedure and infringement of the appellant’s procedural rights under Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (‘the ECHR’), and Article 47 of the Charter of Fundamental Rights of the European Union (‘the Charter’), on account of a failure to comply with several stages of the investigation procedure.
- 24 The second plea alleged infringement of Article 8 of the ECHR and Article 7 of the Charter, on the basis of the appellant’s claim that the Investigation Panel’s report and the decision at issue contained, according to OZ, justifications relating to her private life, in particular regarding her psychological health, which were irrelevant in the light of the subject matter of the investigation.
- 25 On 13 July 2017, the General Court delivered the judgment under appeal, by which it dismissed OZ’s action and ordered her to pay the costs.
- 26 In its judgment, the General Court rejected in their entirety the appellant’s heads of claim seeking compensation, holding that none of the appellant’s complaints related to an unlawful act which could be attributed to the EIB. As a result, given that the appellant argued that the unlawful acts alleged in support of her claim seeking annulment corresponded to the conduct attributed to the EIB for the purpose of her heads of claim seeking compensation, the General Court concluded that it was also necessary to reject the claim seeking annulment and, as a result, the action in its entirety.

Forms of order sought by the parties to the appeal

- 27 By her appeal, OZ claims that the Court should:
- set aside the judgment under appeal in its entirety;
 - annul the decision at issue and the report of the EIB’s Investigation Panel;

- order the EIB to pay her the sum of EUR 977 (including VAT) to cover the medical fees incurred to date as a result of the damage suffered and EUR 5 850 to cover future medical fees;
- order the EIB to pay her damages in relation to the non-material damage suffered, in the amount of EUR 20 000;
- order the EIB to reimburse the expenses incurred in the present proceedings, in the amount of EUR 35 100 (including VAT);
- order the EIB to reimburse the expenses incurred in the present appeal proceedings and in the proceedings before the General Court, and
- remit the present case to the EIB in order that the Dignity at Work procedure may be reopened and/or a new decision drafted by its President using wording specified by the appellant.

28 The EIB claims that the Court should:

- dismiss the appeal, and
- order the appellant to pay the costs.

Admissibility

- 29 The appellant claims that the Court should, inter alia, remit the present case to the EIB in order that the investigation procedure may be reopened and a new decision drafted by the President of the EIB using wording specified by her.
- 30 However, it is clear that the appellant has not put forward any ground of appeal in support of that head of claim. In addition, the appeal cannot be interpreted in such a way that the reasoning it contains might be construed as constituting a ground of appeal or arguments raised against the judgment under appeal.
- 31 Therefore, that head of claim is inadmissible.
- 32 Moreover, the EIB is of the view that the appeal is inadmissible in its entirety, in that it does not refer to any specific paragraph of the judgment under appeal and the appellant merely reproduces arguments that have already been put forward in her action at first instance.
- 33 In that regard, it should be borne in mind that, according to settled case-law, it follows from, inter alia, Article 168(1)(d) and Article 169(2) of the Rules of Procedure of the Court of Justice that an appeal must indicate precisely the contested elements of the decision which the appellant seeks to have set aside and the legal arguments specifically advanced in support of the appeal. An appeal which merely repeats or reproduces verbatim the pleas in law and arguments previously submitted to the General Court does not satisfy the requirements relating to the duty to state reasons under those provisions (see, to that effect, judgment of 17 May 2017, *Portugal v Commission*, C-338/16 P, EU:C:2017:382, paragraph 19 and the case-law cited, and judgment of 20 December 2017, *Comunidad Autónoma de Galicia and Retegal v Commission*, C-70/16 P, EU:C:2017:1002, paragraph 48 and the case-law cited).
- 34 However, provided that the appellant challenges the interpretation or application of EU 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 an appellant could not thus base his appeal on pleas in law and arguments already

relied on before the General Court, an appeal would be deprived of part of its purpose (judgment of 17 May 2017, *Portugal v Commission*, C-338/16 P, EU:C:2017:382, paragraph 20 and the case-law cited).

- 35 In the present case, contrary to the EIB's claims, the appeal does not merely repeat the arguments already raised at first instance. Those arguments are in fact directed against the reasoning of the judgment under appeal, which is being challenged on the basis of respect for fundamental rights relied on by the appellant, and, as a result, they enable the Court to carry out its review. Moreover, contrary to the EIB's claims, the appeal does indicate the paragraphs of the judgment under appeal challenged by the appellant.
- 36 Therefore, with the exception of the head of claim referred to in paragraph 29 above, the appeal is admissible.

Substance

- 37 The appellant raises three grounds in support of her appeal, alleging, first, infringement of Article 47 of the Charter and Article 6 of the ECHR, secondly, infringement of Article 7 of the Charter and Article 8 of the ECHR and, thirdly, a denial of justice.
- 38 At the outset, it should be borne in mind that, as the European Union is not a party to the ECHR, it cannot incur liability pursuant to it. Nonetheless, it is apparent from Article 52(3) of the Charter that the meaning and scope of the rights guaranteed by the Charter are the same as those conferred by the corresponding articles of the ECHR.
- 39 In those circumstances, the first to third grounds of appeal must be examined in the light of the Charter alone.

The first ground of appeal, alleging infringement of Article 47 of the Charter

Arguments of the parties

- 40 By the first ground of the appeal, divided into four parts, the appellant claims that the General Court (i) incorrectly assessed the scope of her procedural rights (ii) failed to take action on non-compliance with the time limits governing the investigation procedure (iii) incorrectly assessed whether the composition of the Investigation Panel was fair and (iv) rejected the appellant's arguments calling into question the confidential treatment of her complaint.
- 41 By the first part of the first ground of appeal, alleging an incorrect assessment of the scope of her procedural rights, the appellant claims, in essence, that the General Court failed to have regard, in paragraphs 52 to 54 of the judgment under appeal, to the principle of the right to a fair trial, in particular the adversarial principle and the principle of equality of arms, in holding that it was not unlawful for the Investigation Panel not to allow her to acquaint herself with the statements made by the person accused of harassment and by the various witnesses heard in the course of the investigation, or to submit observations on those statements, which served as the basis for the decision rejecting her complaint, whilst a summary of the appellant's statements was provided to that person in order to enable him to submit his comments.
- 42 In the second place, the appellant complains that the General Court erred in law in finding that the Investigation Panel was in no way required to hear all the witnesses summoned in the course of the investigation.

- 43 In the third place, the appellant claims that the General Court erred in law in holding that it was lawful for the Investigation Panel to disregard the medical reports provided by the appellant.
- 44 The EIB disputes the validity of those arguments, contending, in essence, first of all, that the principle of equality of arms applies only when parties are involved in judicial proceedings. However, the procedure provided for under the policy on dignity at work is an administrative procedure. Moreover, the General Court correctly held that the status of the complainant and that of the person accused of harassment are not comparable and, as a result, their respective procedural rights are different.
- 45 The EIB next submits that, as the procedure followed before the Investigation Panel was not a judicial procedure, there is no requirement for that panel to summon specific witnesses or inform the party who requested that those witnesses be called that they are not available.
- 46 Finally, as regards the medical reports submitted by the appellant, the EIB claims that they have no evidential value, as the doctors had no direct knowledge of the facts and were merely relying on the appellant's contentions.

Findings of the Court

- 47 It should be noted that the appellant is incorrect to claim that the Investigation Panel, which submits a recommendation forming the basis of the President of the EIB's decision, and the President himself are bodies that can be equated with a 'tribunal' for the purposes of Article 47 of the Charter.
- 48 It is clear that neither the Investigation Panel, an ad hoc body the members of which are appointed by the President of the EIB and make non-binding recommendations at the end of an investigation, nor the President of the EIB fulfil the criteria established by the Court in its case-law for the purpose of defining a 'tribunal' within the meaning of Article 47 of the Charter (see, inter alia, regarding the definition of 'tribunal', judgment of 27 February 2018, *Associação Sindical dos Juizes Portugueses*, C-64/16, EU:C:2018:117, paragraph 38 and the case-law cited). Therefore, they cannot be regarded, either individually or collectively, as a 'tribunal previously established by law' within the meaning of Article 47 of the Charter.
- 49 It follows that, in the present case, Article 47 of the Charter is not applicable and, as a result, the appellant cannot rely on an infringement of that article in support of the first part of her first ground of appeal.
- 50 However, as is apparent from paragraphs 52 and 53 of the judgment under appeal, the General Court observed that, in a procedure such as that at issue in the present case, the alleged victim of harassment can rely on the right to be heard, by virtue of the principle of good administration.
- 51 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.
- 52 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.

- 53 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, *inter alia*, judgments of 22 November 2012, *M.*, C-277/11, EU:C:2012:744, paragraph 87, and of 11 December 2014, *Boudjlida*, C-249/13, EU:C:2014:2431, paragraph 36).
- 54 It therefore falls to the Court of Justice to ascertain whether the General Court erred in law in ruling, in paragraph 54 of the judgment under appeal, that the Investigation Panel did not act unlawfully regarding the right to be heard by virtue of the principle of good administration.
- 55 In that regard, it must be held that, as the decision at issue rejected the appellant's complaint, it constitutes an individual measure which concerns her and would affect her adversely within the meaning of Article 41(2) of the Charter.
- 56 It follows that the Investigation Panel, before forwarding its recommendations to the President of the EIB, and, in any event, the latter, before adopting a decision that would adversely affect the appellant, were required to respect her right to be heard as a complainant.
- 57 More specifically, the appellant was entitled, in order to be able effectively to submit her observations, to disclosure of a summary, at the very least, of the statements made by the person accused of harassment and the various witnesses heard, as those statements were used by the Investigation Panel in its report in order to make recommendations to the President of the EIB on which the latter based the decision at issue, and such a summary should have been disclosed while respecting, if necessary, legitimate expectations as regards confidentiality.
- 58 In the present case, it is common ground that the appellant was heard only at the beginning of the investigation procedure. On the other hand, she was not heard either before the Investigation Panel made its recommendations to the President of the EIB or before the latter adopted the decision at issue.
- 59 It follows that the General Court erred in law in failing to find that the fact that a summary, at the very least, of the statements made by the person accused of harassment and the various witnesses heard was not disclosed to the appellant, and that she 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 Investigation Panel sent its recommendations to the President of the EIB and, in any event, before the latter adopted the decision at issue, which adversely affected her, was in breach of the requirements flowing from Article 41 of the Charter.
- 60 Without it being necessary to examine the other arguments raised by the appellant in the first part of the first ground of appeal or the other parts of that ground of appeal, the judgment under appeal must be set aside in so far as it rejected the appellant's heads of claim seeking damages on the basis that the EIB is liable for alleged unlawful acts committed during the investigation procedure, including the failure to respect the appellant's right to a fair hearing, and the head of claim seeking annulment.

The second and third grounds of appeal, alleging infringement of Article 7 of the Charter

- 61 The second ground of appeal alleges that the General Court erred in law in finding that the Investigation Panel had not infringed Article 7 of the Charter in including certain details of the appellant's private life in its investigation report. The third ground of appeal alleges that, in so doing, the General Court denied the appellant justice.
- 62 As both those grounds are based on arguments that overlap in part, it is appropriate to examine them together.

Arguments of the parties

- 63 The appellant claims, in essence, that the General Court erred in its interpretation of Article 7 of the Charter, relating to the respect for private life, in that it erred in finding that the EIB did not act wrongly in failing to delete, from the Investigation Panel's report and the decision at issue, references to matters pertaining to her private life, which are excessive, irrelevant and outside the scope of the Investigation Panel's powers. In that regard, the appellant mentions, inter alia, the fact that the report refers to her complicated relationship with her head of division at the relevant time, her difficulty in accepting any form of criticism and her eagerness to advance in her career; in her opinion, those matters are not directly necessary for the purpose of determining whether she had been a victim of sexual harassment. She maintains that those comments have, moreover, had a negative impact on her health, as is clearly apparent from a new medical report.
- 64 The EIB disputes all of those allegations.

Findings of the Court

- 65 The right to respect for private life, enshrined in Article 7 of the Charter, is not absolute. That right can be subject to restrictions such as those in question in the present case, provided that the restrictions in fact correspond to objectives of general interest pursued by the European Union and do not constitute, with regard to the objectives pursued, a disproportionate interference.
- 66 In that regard, it is common ground that the procedure at issue corresponds to an objective of general interest, that is, the identification of conduct which may constitute harassment, sexual harassment in particular, which is detrimental to human dignity.
- 67 It is therefore appropriate to examine whether the inclusion of allegedly excessive and irrelevant matters pertaining to the appellant's private life in the Investigation Panel's report and the decision at issue constitutes, in the light of the objective pursued, a disproportionate interference with the right to private life.
- 68 In that regard, first of all, the General Court observed, in paragraph 71 of the judgment under appeal, that those various matters were direct references to witness statements and the references to those statements had made it possible to identify the matters on which the Investigation Panel had relied when setting out its recommendations.
- 69 Next, in paragraph 72 of that judgment, the General Court found that, contrary to the appellant's submissions, the Investigation Panel had not come to any conclusions or made any assertions regarding her state of health, but had confined itself to reproducing statements made by witnesses. However, the panel had drawn from this no conclusions of a medical nature.
- 70 Finally, in paragraph 74 of that judgment, the General Court found that, in any event, the Investigation Panel's report is an internal document which is addressed only to the President of the EIB and the two parties concerned and is thus not intended for distribution.
- 71 Having regard to the foregoing, the references to matters pertaining to the appellant's private life included in the Investigation Panel's report and the decision at issue do not appear to be excessive and irrelevant.
- 72 Consequently, the General Court did not err in law, in the light of Article 7 of the Charter, in holding that the inclusion in that report and that decision of the matters referred to above did not constitute an unlawful act on the part of the EIB.

73 In the third place, as regards the allegedly detrimental nature of certain comments relating to the appellant's health, the latter refers to a new medical report prepared by a psychotherapist in July 2016, that is, after the Investigation Panel's report was drawn up. In that regard, it is sufficient to note that, in her appeal, the appellant does not criticise the General Court for having failed to take that medical report into consideration.

74 It follows that the second and third grounds of the appeal must be rejected.

The action before the General Court

75 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.

76 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 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, paragraph 79).

77 In the present case, it should be noted that, as is apparent from paragraph 59 above, the General Court erred in law in failing to find that the fact that a summary, at the very least, of the statements made by the person accused of harassment and the various witnesses heard was not disclosed to the appellant, and that she 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 Investigation Panel sent its recommendations to the President of the EIB and, in any event, before the latter adopted the decision at issue, which adversely affected her, was in breach of the requirements flowing from Article 41 of the Charter.

78 That unlawful act inevitably affected both the content of the Investigation Panel's report and that of the decision at issue, so that it is reasonable to conclude that that report and that decision could have had a different outcome.

79 However, given that the report is merely an act preparatory to the decision, which cannot therefore be regarded as an act open to challenge and hence cannot be annulled, the decision at issue alone must be annulled.

80 Regarding the heads of claim for damages referred to in paragraph 60 above, it should be noted that, first, the annulment of the decision at issue constitutes sufficient compensation for any non-material harm that the appellant may have suffered in the present case.

81 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 9 July 1987, *Hochbaum and Rawes v Commission*, 44/85, 77/85, 294/85 and 295/85, EU:C:1987:348, paragraph 22).

82 Secondly, as regards the claim that the EIB should be ordered to pay the appellant the sum of EUR 977 (including VAT) and a provisional amount of EUR 5 850 to cover medical fees incurred, no causal link between the unlawful act committed by the EIB, established in paragraph 77 above, and those medical fees has been established or even alleged. Indeed, in her application at first instance, the appellant alleges that those medical fees are the 'direct consequence' of the sexual harassment she claims to have

suffered. Moreover, regarding the ‘provisional amount’ of EUR 5 850 to cover future medical fees claimed by the appellant, that head of claim is, in any event, premature, as such fees have not yet been incurred.

- 83 In those circumstances, the heads of claim seeking damages, referred to in the previous paragraph, must be rejected.

Costs

- 84 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 costs.
- 85 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.
- 86 Since the EIB has been essentially unsuccessful, it must be ordered to bear its own costs and to pay those incurred by OZ 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 (Third Chamber) hereby:

- 1. Sets aside the judgment of the General Court of the European Union of 13 July 2017, *OZ v EIB* (T-607/16, not published, EU:T:2017:495), in so far as it rejected, first, the heads of claim seeking damages set out by OZ in her application based on the liability of the European Investment Bank (EIB) for alleged unlawful acts committed during the investigation procedure, including the failure to respect the appellant’s right to a fair hearing, and, second, the head of claim seeking annulment set out in the application;**
- 2. Dismisses the appeal as to the remainder;**
- 3. Annuls the decision of the President of the European Investment Bank of 16 October 2015 to take no further action on the complaint alleging sexual harassment made by OZ;**
- 4. Dismisses the action as to the remainder;**
- 5. Orders the European Investment Bank to bear its own costs and to pay those incurred by OZ relating to the proceedings at first instance and the appeal proceedings.**

Vilaras

Malenovský

Bay Larsen

Safjan

Šváby

Delivered in open court in Luxembourg on 4 April 2019.

A. Calot Escobar
Registrar

K. Lenaerts
President