Reports of Cases

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

31 May 2018 *

(Law governing the institutions — European Parliament — Rules of Procedure of the Parliament — Statement adversely affecting the dignity of the Parliament and the smooth conduct of parliamentary business — Disciplinary sanctions of forfeiture of entitlement to the subsistence allowance and temporary suspension from participation in all activities of the Parliament — Freedom of expression — Obligation to state reasons — Error of law)

In Case T-352/17,

Janusz Korwin-Mikke, residing in Józefów (Poland), represented by M. Cherchi, A. Daoût and M. Dekleermaker, lawyers,

applicant,

v

European Parliament, represented by N. Görlitz, S. Seyr and S. Alonso de León, acting as Agents,

defendant,

APPLICATION, first, based on Article 263 TFEU and seeking annulment of the decision of the President of the Parliament of 14 March 2017 and of the decision of the Bureau of the Parliament of 3 April 2017 imposing on the applicant the penalty of forfeiture of entitlement to the subsistence allowance for a period of 30 days, temporary suspension from participation in all activities of the Parliament for a period of 10 consecutive days and prohibition of representing the Parliament for a period of one year and, secondly, based on Article 268 TEU and seeking compensation for the harm allegedly suffered by the applicant as a result of those decisions,

THE GENERAL COURT (Sixth Chamber, Extended Composition),

composed of G. Berardis, President, S. Papasavvas (Rapporteur), D. Spielmann, Z. Csehi and O. Spineanu-Matei, Judges,

Registrar: G. Predonzani, Administrator,

having regard to the written part of the procedure and further to the hearing on 29 November 2017,

gives the following

* Language of the case: French.

Judgment

Background to the dispute

1 The applicant, Mr Janusz Korwin-Mikke, is a Member of the European Parliament.

2 At the plenary session of the Parliament of 1 March 2017 ('the plenary session of 1 March 2017') on the 'Gender pay gap', the applicant addressed a question to a Member of the European Parliament in the following terms:

'Do you know which was the place in the Polish theoretical physics Olympiad, the first place of women, of girls? I can tell you: 800th. Do you know how many women are in the first 100 chess players? I can tell you: not one. Of course women must earn less than men because they are weaker, they are smaller, they are less intelligent, and they must earn less. That is all.'

3 On 3 March 2017, the President of the Parliament sent the applicant a letter informing him, first, that the comments he had made at the plenary session of 1 March 2017 adversely affected the dignity of the Parliament and the values set out in Rule 11 of its Rules of Procedure ('the Rules of Procedure') and, secondly, that disciplinary proceedings had been initiated against him under Rule 166(1) of the Rules of Procedure, and inviting him to submit his observations.

4 By letter of 7 March 2017, the applicant sent his observations to the President of the Parliament.

5 By decision of 14 March 2017 ('the decision of the President'), the President of the Parliament imposed on the applicant the following penalties:

– forfeiture of his entitlement to the subsistence allowance for a period of 30 days;

– temporary suspension from participation in all activities of the Parliament for a period of 10 consecutive days, without prejudice to the right to vote in plenary session;

– prohibition from representing the Parliament on an inter-parliamentary delegation, inter-parliamentary conference or any inter-institutional forum, for a period of one year.

6 On 27 March 2017, the applicant lodged an internal appeal before the Bureau of the Parliament against the decision of the President, seeking annulment of the penalties imposed on him, in accordance with Rule 167 of the Rules of Procedure.

7 By decision of 3 April 2017 ('the decision of the Bureau'), the Bureau of the Parliament maintained the penalties imposed on the applicant by the decision of the President.

Procedure

8 By application lodged at the Registry of the General Court on 2 June 2016, the applicant brought the present action.

9 On a proposal from the Sixth Chamber, the Court decided, pursuant to Article 28 of the Rules of Procedure of the General Court, to assign the case to a Chamber sitting in extended composition.

10 On a proposal from the Judge-Rapporteur, the Court (Sixth Chamber, Extended Composition) decided to open the oral part of the procedure and, by way of measures of organisation of procedure provided for in Article 89 of the Rules of Procedure of the General Court, requested that the parties reply to a question. The parties complied with that request within the prescribed period.

11 The parties presented oral argument and replied to oral questions put by the Court at the hearing on 29 November 2017.

Forms of order sought

12 The applicant claims that the Court should:

– annul the decision of the Bureau;

– annul the decision of the President;

– order compensation of the pecuniary and non-pecuniary harm caused by the decisions of the President and of the Bureau, quantified in the amount of EUR 19 180;

– order the Parliament to pay the costs.

13 The Parliament contends that the Court should:

– dismiss the claim for annulment of the decision of the President as inadmissible;

– dismiss the claim for annulment of the decision of the Bureau as partly inadmissible and partly unfounded,

– dismiss the claim for damages as partly inadmissible and partly unfounded;

– order the applicant to pay the costs.

14 At the hearing, the applicant stated that he was discontinuing the action in so far as it concerned the decision of the President, since that decision had been replaced by that of the Bureau, which constitutes Parliament's final position, of which formal notice was taken in the minutes of the hearing.

Law

The claim for annulment

15 The applicant puts forward two pleas in support of his claim for annulment, alleging, in essence, first, infringement of the general principle of freedom of expression, of Rule 166 of the Rules of Procedure and of the obligation to state reasons and, secondly, infringement of the principle of proportionality and of the obligation to state reasons.

16 Although in the heading of those pleas in law, as it is set out in the application, reference is made to other complaints, alleging inter alia an infringement of Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter') and a misuse of powers, it is clear from the substance of the applicant's line of argument that he criticises the Parliament for having infringed his right to freedom of expression as guaranteed by Article 11 of the Charter and Article 10 of the European Convention for the protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 ('the ECHR') (first part of the first plea), for having committed a manifest error of

assessment and for having disregarded the scope of Rule 166 of the Rules of Procedure (second part of the first plea), for having infringed its obligation to state reasons under Article 296 TFEU (third part of the first plea and second part of the second plea) and, finally, for having infringed the principle of proportionality with regard to the disciplinary sanctions imposed (first part of the second plea).

The first plea, alleging infringement of the general principle of freedom of expression, Rule 166 of the Rules of Procedure and the obligation to state reasons

17 It is appropriate to examine, first of all, the third part and then, jointly, the first and second parts of the first plea.

– *The third part, alleging infringement of the obligation to state reasons*

18 The applicant claims that the statement of reasons for the decision of the Bureau does not allow him to ascertain whether he created any exceptionally serious disorder in the plenary session of 1 March 2017, or to determine which principles set out in Rule 11 of the Rules of Procedure were infringed or to understand why the increased freedom of expression he enjoys as a Member of Parliament was not taken into account.

19 The Parliament disputes that line of argument.

20 It must be borne in mind that the obligation to provide a statement of reasons is an essential procedural requirement, as distinct from the question whether the reasons given are correct, which goes to the substantive legality of the contested measure (see judgment of 22 May 2012, *Internationaler Hilfsfonds* v *Commission*, T-300/10, EU:T:2012:247, paragraph 180 and the case-law cited). The reasoning of a decision consists in a formal statement of the grounds on which that decision is based. The grounds may be adequate even though they set out reasons which are incorrect (see order of 12 July 2012, *Dover* v *Parliament*, C-278/11 P, not published, EU:C:2012:457, paragraph 36 and the case-law cited).

21 Moreover, it is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see judgment of 22 May 2012, *Internationaler Hilfsfonds* v *Commission*, T-300/10, EU:T:2012:247, paragraph 181 and the case-law cited).

22 In this case, the decision of the Bureau consists of three sections. The first (paragraphs 1 to 16 of the decision) sets out the facts which led to the imposition of the penalties at issue, the previous statements of the applicant for which penalties had already been imposed and the internal appeal procedure initiated by him against the decision of the President. The second (paragraphs 17 to 23 of the decision) sets out the applicable legal framework and the third (paragraphs 24 to 37 of the decision) contains a legal assessment seeking to establish an infringement by the applicant of Rule 11 of the Rules of Procedure and, accordingly, of Rule 166 of the Rules of Procedure.

23 In particular, in paragraphs 26 to 28 of its decision, after recalling the importance of the principle of equality between men and women, enshrined in Article 2 TEU and recognised by the Charter, the Bureau of the Parliament, first, stated that, by his discriminatory, insulting and certainly premeditated comments, presented, moreover, as being supported by biased statistical data, the applicant had undermined one of the fundamental values of the European Union. Furthermore, the applicant undeniably intended to provoke and insult women, but also the Parliament as an institution, which is the guardian of European values promoting equality between the sexes. In addition, those comments are claimed to have prompted media interest and reactions on social media, thus tarnishing the image of the Parliament and MEPs among citizens of the European Union.

24 Next, while recalling the importance of the freedom of expression recognised by the first subparagraph of Rule 11(4) of the Rules of Procedure and by various international legal instruments concerning human rights, the Bureau of the Parliament pointed out that, according to those texts and according to the interpretation of that freedom by the case-law, the exercise of that freedom could be limited if it infringed other rights, 'in particular when it causes harm or offence to others' or 'for the protection of the rights or reputation of others' (paragraphs 29 and 30 of the decision of the Bureau). Also, in paragraph 31 of that decision, the Bureau of the Parliament stated that the principle of freedom of speech, guaranteed to all MEPs, was not applicable to 'insulting, offensive or disrespectful language' or to 'behaviour to the detriment of the dignity of the … Parliament and in breach of the fundamental values and principles upon which the Union is founded'.

25 Following that account, the Bureau of the Parliament found, in paragraph 32 of its decision, that the applicant's conduct constituted an infringement of Rule 11(3) of the Rules of Procedure, since it undermined the values and principles set out in the Treaties, including the Charter, and did not respect the dignity of the Parliament. Moreover, it pointed out that that conduct could not be justified under Rule 11(4) of the Rules of Procedure, since the use of offensive and insulting language could not be covered by freedom of speech. It concluded that, in those circumstances, the applicant had disrupted the business of Parliament in breach of the principles set out in Rule 11 of the Rules of Procedure, for the purposes of Rule 166 thereof.

26 Finally, in paragraphs 33 to 35 of its decision, the Bureau of the Parliament pointed out that the applicant had previously used inappropriate language, in infringement of Rule 11(3) of the Rules of Procedure, which had led the President of the Parliament, on three occasions, to impose penalties on him which had subsequently been confirmed by the Bureau of the Parliament. It therefore concluded that the applicant's conduct should be considered to be serious and recurrent and that the fact that he had not made any apologies, but had, on the contrary, repeated his remarks, further justified the severity of the penalty imposed.

27 It follows that, without prejudice to the examination of its merits, which will be carried out in the context of the first and second parts of the present plea, the decision of the Bureau contains a statement of reasons complying with the requirements of Article 296 TFEU.

28 Consequently, the third part of the first plea must be rejected.

– The first and second parts, alleging, respectively, a violation of freedom of expression and an infringement of Rule 166 of the Rules of Procedure

29 The applicant submits, in essence, that the Parliament has not established that the conditions required for the application of Rule 166(1) of the Rules of Procedure were fulfilled and that it thus imposed on him a disciplinary sanction in violation of the enhanced freedom of expression which he enjoys as a Member of Parliament, in accordance with the settled case-law of the European Court of Human Rights ('the ECtHR').

30 In that regard, he submits, in the first place, that the decision of the Bureau is vitiated by an error of law, in that it does not take sufficient account of the fact that his comments, made in the course of the exercise of his parliamentary functions within the Parliament, were an element of his political expression.

31 In the second place, he takes the view that, in seeking to impose a penalty in connection with the content of his comments, and not any possible infringement of a rule of parliamentary debate, the Parliament committed a manifest error of assessment and disregarded the scope of Rule 166 of the Rules of Procedure. On the one hand, he submits that it is clear from the grounds for that decision that his speech during the plenary session of 1 March 2017 was lawful, so it is appropriate to ask

whether his comments truly caused serious disorder or disruption of parliamentary debate. On the other hand, he notes that the 'vague and imprecise' nature of the wording: 'serious cases of disorder or disruption of Parliament in violation of the principles laid down in Rule 11', set out in Rule 166 of the Rules of Procedure, requires the Parliament to demonstrate, in practice, that his comments indeed fell within the scope of that provision, which was not the case here.

32 In the third place, the applicant submits that the decision of the Bureau fails to show that his comments actually caused disorder in the plenary session of 1 March 2017 or that they seriously disrupted the business of Parliament in breach of Rule 11 of the Rules of Procedure, so that it might be considered that the substantive conditions referred to in Rule 166 of the Rules of Procedure were actually fulfilled.

33 In the fourth place, the applicant argues that the Parliament has failed to show that the decision of the Bureau is capable of being regarded as a permitted derogation from the right to freedom of expression.

34 The Parliament argues, first of all, that an examination of the validity of the decision of the Bureau must be undertaken solely in the light of the fundamental rights guaranteed by the Charter and, in particular, in the light of Article 11 thereof, which enshrines freedom of expression, and its interpretation by the EU judicature. The case-law of the ECtHR relied on by the applicant is therefore not applicable to the present case, but could, at most, serve as a source of inspiration. Even if it were applicable, it does not follow that his freedom of speech is unlimited.

35 The Parliament points out, next, that in exercising the powers provided for in Rules 166 and 167 of the Rules of Procedure, its President and, where appropriate, the Bureau of the Parliament have a certain margin of discretion. The Court's review should therefore be limited to examining whether the exercise of such powers is vitiated by a manifest error of assessment or misuse of powers and whether the procedural guarantees were respected.

36 Lastly, as regards the infringement of Rule 166 of the Rules of Procedure, relied on in the context of the second part of the first plea, the Parliament claims that it is not sufficiently clear from the application whether the applicant is criticising the decision of the Bureau for having been adopted in breach of that rule or whether he is challenging the legality of that rule as the legal basis for that decision, so that the part in question is inadmissible. Nevertheless, for the sake of completeness, the Parliament defends itself by stating that it agrees with the applicant's reading of the *ratio legis* of Rule 166 of the Rules of Procedure and by maintaining that that provision covers precisely the situation in the present case, since, by his comments, the applicant caused disorder during the debates and business of Parliament in breach of the principles set out in Rule 11 of the Rules of Procedure, to the detriment of the dignity of the Parliament, and was, accordingly, penalised. The Parliament adds, referring to paragraph 27 of the decision of the Bureau, that the applicant's statements provoked an immediate reaction by certain MEPs and prompted reactions in the media and on social media, thereby seriously undermining the reputation of the institution.

37 From the outset, it should be noted, first, that, contrary to the Parliament's assertions and as is apparent from paragraphs 16 and 29 to 33 above, the substance of the applicant's arguments, relating to the second part of the first plea, is set out in the application with sufficient clarity, so that the Parliament was able properly to defend itself in its pleadings (see paragraph 36 above) and at the hearing. Indeed, at that hearing, and as is apparent from the minutes relating to it, the Parliament stated in full its position on the conditions for the application of Rule 166 of the Rules of Procedure, linked to Rule 11 thereof, to which that provision refers. Consequently, the plea of inadmissibility put forward by the Parliament must be rejected.

38 Secondly, the Parliament cannot dispute the relevance, in the present case, of the ECHR and the case-law of the ECtHR, for the purposes of examining the infringement of Rule 166 of the Rules of Procedure.

39 While it is true that the ECHR does not constitute, as long as the European Union has not acceded to it, a legal instrument which has been formally incorporated into European Union law (judgments of 26 February 2013, *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraph 44, and of 3 September 2015, *Inuit Tapiriit Kanatami and Others* v *Commission*, C-398/13 P, EU:C:2015:535, paragraph 45) and that, consequently, an examination of the validity of an act of EU secondary legislation must be undertaken solely in the light of the fundamental rights guaranteed by the Charter (judgment of 15 February 2016, *N.*, C-601/15 PPU, EU:C:2016:84, paragraph 46), it should be recalled, on the one hand, that, under Article 6(3) TEU, fundamental rights recognised by the ECHR constitute general principles of EU law and, on the other hand, that it follows from Article 52(3) of the Charter that the rights contained in the Charter which correspond to rights guaranteed by the ECHR are to have the same meaning and scope as those laid down by the ECHR. According to the explanations relating to that provision, which, in accordance with the third subparagraph of Article 6(1) TEU and Article 52(7) of the Charter, have to be taken into consideration for the purpose of interpreting it, the meaning and scope of the guaranteed rights are determined not only by the text of the ECHR, but also, in particular, by the case-law of the ECtHR (see judgment of 30 June 2016, *Toma and Biroul Executorului Judecătoresc Horațiu-Vasile Cruduleci*, C-205/15, EU:C:2016:499, paragraph 41 and the case-law cited). It is also apparent from those explanations that Article 52(3) of the Charter is intended to ensure the necessary consistency between the rights contained in the Charter and the corresponding rights guaranteed by the ECHR, without thereby adversely affecting the autonomy of EU law and that of the Court of Justice of the European Union (judgment of 28 July 2016, *JZ*, C-294/16 PPU, EU:C:2016:610, paragraph 50). Moreover, it must be pointed out that that equivalence between the freedoms guaranteed by the Charter and those guaranteed by the ECHR has been formally expressed in relation to freedom of expression (judgment of 4 May 2016, *Philip Morris Brands and Others*, C-547/14, EU:C:2016:325, paragraph 147).

40 As regards, in particular, freedom of expression, it is important to recall that it occupies an essential place in democratic societies and, as such, constitutes a fundamental right guaranteed in particular by Article 11 of the Charter, Article 10 of the ECHR and Article 19 of the International Covenant on Civil and Political Rights adopted by the General Assembly of the United Nations on 16 December 1966 (see, to that effect, the judgment of 6 September 2011, *Patriciello*, C-163/10, EU:C:2011:543, paragraph 31).

41 In that regard, it should be recalled that it is clear from the case-law of the ECtHR that, subject to Article 10(2) of the ECHR, freedom of expression is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no democratic society (ECtHR, 7 December 1976, *Handyside v. United Kingdom*, CE:ECHR:1976:1207JUD000549372, § 49).

42 The right to freedom of expression does not, however, constitute an unfettered prerogative and its exercise may, under certain circumstances, be subject to restrictions.

43 However, in the light of the fundamental importance of freedom of expression, restrictions on it must be interpreted strictly and, as is clear from both Article 10(2) of the ECHR and Article 52(1) of the Charter, interferences with the freedom of expression are permitted only if they satisfy three conditions. First, the limitation must be 'provided for by law'. In other words, the EU institution adopting measures liable to restrict a person's freedom of expression must have a legal basis for its actions. Secondly, the limitation in question must be intended to achieve an objective of general interest, recognised as such by the European Union. Thirdly, the limitation in question must not be excessive, which means, on the one hand, that it must be necessary and proportionate to the aim sought, and, on the other hand, that the essence of the freedom in question must not be impaired (see, to that effect, judgment of 15 June 2017, *Kiselev* v *Council*, T-262/15, EU:T:2017:392, paragraphs 69 and 84 and the case-law cited).

44 It is also important to state that an interference with or restriction on the freedom of expression can be regarded as being 'provided for by law' only if the provision is formulated with sufficient precision to be predictable in its effects and to enable the persons addressed to adjust their conduct accordingly (see, to that effect, ECtHR, 17 February 2004, *Maestri v. Italy*, CE:ECHR:2004:0217JUD003974898, § 30).

45 It should also be noted that, in a democracy, Parliament or such comparable bodies are the essential fora for political debate. Very weighty reasons must be advanced to justify interfering with the freedom of expression exercised therein (ECtHR, 17 December 2002, *A. v. United Kingdom*, CE:ECHR:2002:1217JUD003537397, § 79).

46 Moreover, as the ECtHR has consistently held in its case-law, the freedom of expression of members of parliament is of particular importance. While freedom of expression is important for everybody, it is especially so for an elected representative of the people. He represents his electorate, draws attention to their preoccupations and defends their interests. Accordingly, interferences with the freedom of expression of an opposition member of parliament, like the applicant, call for the closest scrutiny on the part of the courts (ECtHR, 23 April 1992, *Castells v. Spain*, CE:ECHR:1992:0423JUD001179885, § 42).

47 It is therefore appropriate to conclude that the freedom of expression of members of parliament must be afforded greater protection in the light of the fundamental importance which Parliament plays in a democratic society.

48 However, while emphasising that speech in Parliament enjoys an elevated level of protection, the ECtHR has recently acknowledged, in view of the close nexus between an effective political democracy and the operation of Parliament, that the exercise of free speech in Parliament may have to yield on occasions to the legitimate interests of protecting the orderly conduct of parliamentary business as well as the protection of the rights of other members of parliament (ECtHR, 17 May 2016, *Karácsony and Others v. Hungary*, CE:ECHR:2016:0517JUD004246113, §§ 138 to 141).

49 It is important to point out that the ECtHR, on the one hand, linked the possibility of a parliament's penalising one of its members for his conduct to the need to ensure that parliamentary business is conducted in an orderly fashion and, on the other hand, recognised that parliaments have considerable autonomy to regulate the time, place and manner of speeches by members of parliament (the ECtHR's scrutiny being correspondingly limited) but, by contrast, very limited latitude in regulating the content of parliamentary speech (the ECtHR's scrutiny being correspondingly stricter). In its case-law, the ECtHR refers, in that regard, only to 'some regulation … necessary in order to prevent forms of expression such as direct or indirect calls for violence' (ECtHR, 17 May 2016, *Karácsony and Others v. Hungary*, CE:ECHR:2016:0517JUD004246113, § 140).

50 It follows that, first, the rules of procedure of a parliament can provide for the possibility of penalising members for their comments only in the event that those comments undermine the proper functioning of the parliament or pose a serious threat to society, such as incitement to violence or racial hatred.

51 Secondly, the power, granted to parliaments, to impose disciplinary sanctions in order to ensure the proper conduct of their business or the protection of certain fundamental rights, principles or freedoms should be reconciled with the need to ensure respect for the freedom of expression of members of parliament.

52 Accordingly, it is necessary to ascertain, taking into account the particular importance of the freedom of expression of members of parliament and the strict limits within which restrictions may be imposed on that freedom, in accordance with the principles established by the case-law of the ECtHR in that context, whether, by imposing the disciplinary sanction at issue, the Parliament fulfilled the requirements provided for in Rule 166(1) of its Rules of Procedure.

53 In the present case, the Rules of Procedure, in the version in force at the material time as applied by the Bureau of the Parliament, lay down, in Chapter 4 of Title VII entitled 'Measures to be taken in the event of non-compliance with the standards of conduct of Members', measures for immediate application which may be taken by the President of the session to restore order (Rule 165 of the Rules of Procedure) and disciplinary sanctions which may be imposed by the President of Parliament on an MEP (Rule 166 of the Rules of Procedure).

54 Under the first subparagraph of Rule 166(1) of the Rules of Procedure which were applied in the present case, the President of the Parliament is to adopt a reasoned decision imposing the appropriate penalty 'in serious cases of disorder or disruption of Parliament [by an MEP] in violation of the principles laid down in Rule 11 ...'.

55 It should be pointed out that the wording of the first subparagraph of Rule 166(1) of the Rules of Procedure differs among the language versions of the Rules of Procedure. Thus, unlike the French version of that provision, as well as, in particular, the versions in the German, Italian, Spanish, Dutch and Greek languages, the English language version does not refer to the disruption 'of the business' ('des travaux') or 'of the activities' ('de l'activité') of Parliament, but uses the expression 'disruption of Parliament'. According to the Parliament, that expression relates not only to parliamentary business within the Chamber, but covers a wider context than the session, including also the impact on its reputation or dignity as an institution.

56 In that regard, it is important to recall that, according to the settled case-law, the need for a uniform interpretation of a provision means that, where there is divergence between the various language versions of the provision, the latter must be interpreted by reference to the context and purpose of the rules of which it forms part (see, to that effect, judgment of 23 November 2016, *Bayer CropScience and Stichting De Bijenstichting*, C-442/14, EU:C:2016:890, paragraph 84 and the case-law cited).

57 It follows that the Parliament's approach at the hearing, according to which the English version of Rule 166 of the Rules of Procedure should be relied upon to interpret the legislature's intention and all the language versions, cannot succeed.

58 In the light of its context and purpose, Rule 166 of the Rules of Procedure provides for cases where there is a disruption of the proper functioning of the Parliament or the orderly conduct of parliamentary business and therefore seeks to penalise an MEP for behaviour which may seriously disrupt the conduct of a parliamentary session or parliamentary business in which he is participating. Moreover, such an interpretation, as was pointed out in paragraphs 49 to 51 above, is consistent with the objective generally pursued by a parliament's disciplinary rules, which the ECtHR has recognised as legitimate (see, to that effect, ECtHR, 17 May 2016, *Karácsony and Others v. Hungary*, CE:ECHR:2016:0517JUD004246113, §§ 138 to 140).

59 Furthermore, it should be pointed out that the wording of Rule 166 of the Rules of Procedure suggests that penalties may be imposed in two situations, namely cases of 'disorder … in violation of the principles laid down in Rule 11' or cases of 'disruption of Parliament in violation of the principles laid down in Rule 11'.

60 It is important to note, in that regard, that neither the decision of the Bureau nor the parties' pleadings show that the comments made by the applicant before the Parliament at the plenary session of 1 March 2017 created any disorder during that session, for the purposes of the first alternative referred to in the first subparagraph of Rule 166(1) of the Rules of Procedure. In that regard, as is clear from the responses to the questions put by the Court, the only immediate reaction to the applicant's comments was that of the MEP to whom he had put a question by means of a blue card. She expressed her indignation in the following terms: 'Sir, according to you, according to your theories, I should not even have the right to be here as a Member of the European Parliament. I know

that that hurts you. I know that you are not at all happy that women today have the right to represent citizens under the same conditions, with the same rights as you. And I am a woman and I defend the rights of women against men like you'. However, that reaction cannot be characterised as the occurrence of serious disorder of the plenary session of 1 March 2017 or a serious disruption of the business of Parliament. Moreover, such an assessment does not follow from the decision of the Bureau, which forms the subject matter of the review of legality presently before the Court.

61 Furthermore, both in the context of its responses to the Court's written questions and at the hearing, the Parliament confirmed that no disorder or disruption of business, a fortiori of a serious nature, occurred within Parliament at the plenary session of 1 March 2017 or in the context of the related debates, following the applicant's speech. However, the Parliament maintained that the applicant's case nonetheless fell within the second alternative referred to in the first subparagraph of Rule 166(1) of the Rules of Procedure, that is to say 'the disruption of business', which was the direct consequence of infringement of the principles referred to in Rule 11 of the Rules of Procedure, establishing standards of conduct for MEPs. In that regard, the Parliament claimed that the 'disruption' justifying the imposition of disciplinary sanctions on the applicant had arisen outside Parliament, through harm to its reputation and its dignity as an institution. The Parliament further stated that the disruption of business referred to in the first subparagraph of Rule 166(1) of the Rules of Procedure was not limited to debates or business within the Parliament, but should be given a broader meaning, encompassing the Parliament in its entirety, its dignity, its reputation and therefore its functioning.

62 That line of argument cannot succeed.

63 First, it must be stated that the Parliament's assertion at the hearing that the applicant's situation fell within the second alternative referred to in the first subparagraph of Rule 166(1) of the Rules of Procedure, that is to say the disruption of the business of Parliament, is not apparent from the decision of the Bureau, which does not provide details of which specific infringement, of those referred to in that provision, was committed in the present case. In that regard, that decision merely states, in paragraph 32, that the applicant's conduct constitutes an infringement of the principles set out in Rule 11(3) of the Rules of Procedure, in that it infringed the values and principles defined in the EU Treaties and in that it does not respect the dignity of the Parliament, and infers from this the existence of a 'disruption of Parliament' within the meaning of Rule 166 of the Rules of Procedure. Contrary to what the Parliament argued at the hearing, a different reading of paragraph 32 of the decision of the Bureau cannot follow from the grounds contained in paragraphs 26 and 27 of that decision, in the light of which it should be interpreted. Those paragraphs merely state that the provocative, premeditated, insulting and discriminatory comments, in respect of both women and the Parliament as an institution, constituted an infringement of a fundamental value of the European Union and was likely to have contributed to a negative public perception of Parliament and its Members. Therefore, although those assessments could, at most, be interpreted as establishing an infringement of Rule 11 of the Rules of Procedure, they in no way indicate a disruption of the business of Parliament, as required by Rule 166 of the Rules of Procedure.

64 It is sufficient to point out in that regard that it is actually Rule 166 of the Rules of Procedure, and not Rule 11 thereof, which specifies the conditions under which a penalty may be imposed on an MEP. Rule 11 of the Rules of Procedure contains standards of conduct setting out the principles and values to be observed by MEPs in their conduct, which, according to the first subparagraph of Rule 11(3) of the Rules of Procedure, must not compromise the smooth conduct of parliamentary business, the maintenance of security and order on Parliament's premises or the functioning of Parliament's equipment. Moreover, the second subparagraph of Rule 11(3) of the Rules of Procedure provides that in parliamentary debates, Members are not to resort to defamatory, racist or xenophobic language or behaviour. On the other hand, as regards the possible consequences of failure to comply with those standards of conduct, the fourth subparagraph of Rule 11(3) of the Rules of Procedure merely states that it 'may' lead to the application of 'measures' in accordance with Rules 165, 166 and 167 of the Rules of Procedure. Consequently, the conclusion drawn in paragraph 32 of the decision of the

Bureau that an infringement of the principles and values set out in Rule 11 of the Rules of Procedure would *ipso facto* lead to a finding that there was serious disorder during the session or a serious disruption of the business of Parliament by no means follows from that provision.

65 The fact that Rule 11(3) of the Rules of Procedure, in the version applicable to the present dispute, contains, in the second subparagraph thereof, a reference to 'defamatory, racist or xenophobic language or behaviour' cannot invalidate that conclusion. In that regard, it is important to note that, although, as in its previous version, Rule 166(1) of the Rules of Procedure refers to the principles set out in Rule 11 thereof, on a literal interpretation of the first of those provisions that infringement of those principles constitutes not an independent ground for imposing a penalty, but an additional condition, necessary in order to penalise the serious disorder during the session or the disruption of the business of Parliament, as the Parliament indeed confirmed at the hearing. It follows that an infringement of the principles set out in Rule 11 of the Rules of Procedure, if it were established, can, of itself, be penalised not as such but only where it is accompanied by serious disorder or disruption of the business of Parliament, as the Parliament also confirmed at the hearing.

66 Secondly, contrary to the Parliament's assertions at the hearing, the disruption of the business of Parliament referred to in the first subparagraph of Rule 166(1) of the Rules of Procedure, which occurred outside Parliament, as a result of the repercussions which the applicant's comments had beyond the Parliament, cannot be understood as being harm to the reputation or the dignity of the Parliament as an institution. Indeed, the fact, referred to in paragraph 27 of the decision of the Bureau, that, subsequent to the plenary session of 1 March 2017, the applicant's comments attracted media and social media attention and was 'likely' to have contributed to a negative public perception of Parliament and its Members is irrelevant, since it does not support the view that the Parliament has established the existence of a disruption of its business for the purposes of Rule 166 of the Rules of Procedure. Moreover, the decision of the Bureau does not contain any assessment relating to the criteria which might have led the Bureau of the Parliament to find that harm had been caused to the dignity of the Parliament. Furthermore, since no objective criteria for assessing the existence of such harm have been defined and in view of the, to say the least, vague nature of the concept of 'dignity of Parliament' and of harm to it, as well as the Parliament's considerable margin of discretion in that matter, such an interpretation would have the effect of arbitrarily restricting the freedom of expression of MEPs.

67 In addition, it must be pointed out that Rule 166(2) of the Rules of Procedure covers the conduct of MEPs and provides that, for the purpose of its assessment, account must be taken of its exceptional, recurrent or permanent nature and of its seriousness. On the other hand, comments, remarks and speeches are not referred to and are therefore not likely to be subject, as such, to penalties.

68 It follows that, even if comments made in the course of parliamentary functions could be treated in the same way as conduct (which, in accordance with the first subparagraph of Rule 11(3) of the Rules of Procedure, must, inter alia, be based on certain values and not compromise the smooth conduct of parliamentary business) and that those comments could, on that basis, constitute an infringement of the principles and values set out in that provision, they could not be subject to a penalty in the absence of any serious disorder or serious disruption of the business of Parliament.

69 Moreover, the distinction drawn in the second subparagraph of Rule 166(2) of the Rules of Procedure for the purposes of assessing the conduct of MEPs in the exercise of their parliamentary functions between, on the one hand, actions of a visual nature which may be tolerated in certain circumstances and, on the other hand, 'those which actively disrupt parliamentary activity' does not support the view that comments made in parliamentary session may be included in that latter category of conduct and, on that basis, penalised, in the absence of a finding that there has been serious disorder during the session or a disruption of the business of Parliament.

70 In view of all the foregoing, as well as the particular importance of the freedom of expression of Members of Parliament and the strict limits on which restrictions may be imposed on that freedom, recalled in paragraphs 37 to 51 above, Rules 11 and 166 of the Rules of Procedure must be interpreted as preventing an MEP from being penalised for comments made in the course of his parliamentary functions, in the absence of serious disorder during the session or a serious disruption of the business of Parliament.

71 In those circumstances, and in spite of the particularly shocking nature of the words used by the applicant in his speech during the plenary session of 1 March 2017, the Parliament could not, in the circumstances of the present case, impose on him a disciplinary sanction under Rule 166(1) of its Rules of Procedure.

72 Furthermore, even if it were to be held that the disruption of business need not be strictly limited to the Chamber, since the reference to 'séance' ('session') in Rule 166(1) of the French version of the Rules of Procedure relates only to the first alternative set out, that is to say serious disorder, a meaning as broad as that advocated by the Parliament cannot be upheld for the reasons set out in paragraph 66 above.

73 In view of all the foregoing, it is necessary, on the one hand, to uphold the first plea in so far as it seeks to establish an infringement of Rule 166 of the Rules of Procedure as well as the first head of claim and, on the other hand, to annul the decision of the Bureau without there being any need to consider the second plea raised in support of the claim for annulment.

The claim for damages

74 In support of his claim for damages, the applicant submits that annulment of the decision of the Bureau will not permit him to obtain compensation for all the damage suffered. Accordingly, he seeks, on the one hand, compensation of EUR 9 180 for the pecuniary damage resulting from forfeiture of entitlement to the subsistence allowance. On the other hand, he asks that the Parliament be ordered to pay a sum of EUR 10 000 in compensation for the non-material damage resulting from the suspension of his participation in the activities of the Parliament, the prohibition of representing the Parliament and the damage to his reputation and to his good name.

75 The Parliament maintains that the claim for compensation for pecuniary damage is inadmissible. Moreover, it considers that annulment of the decision of the Bureau would constitute adequate compensation for the non-material damage suffered by the applicant. In the alternative, it takes the view that a maximum of EUR 1 000 would be appropriate.

76 In the present case, as regards, first, the claim for compensation for the pecuniary damage resulting from forfeiture of entitlement to the subsistence allowance, it is sufficient to point out that the applicant fails to explain how, even if the decision of the Bureau is annulled, the fact that he has already been subject to the penalty at issue will prevent him from obtaining compensation for all of his loss, all the more so since he confines himself to requesting payment of the amount corresponding to the allowance he would have received in the absence of the penalty imposed, that is to say EUR 9 180. However, given the annulment of the decision of the Bureau and in accordance with Article 266 TFEU, it will be for the Parliament to take the necessary measures to comply with this judgment, which will entail reimbursing the amounts corresponding to the suspended subsistence allowance.

77 It follows that the claim for compensation for pecuniary damage must be rejected.

78 As regards, secondly, the claim for compensation for the non-material damage allegedly suffered by the applicant, it must be borne in mind that, according to settled case-law, the annulment of an unlawful act may in itself adequately and, in principle, sufficiently compensate for any non-material damage

which that act may have caused (judgments of 9 July 1987, *Hochbaum and Rawes* v *Commission*, 44/85, 77/85, 294/85 and 295/85, EU:C:1987:348, paragraph 22, and of 9 November 2004, *Montalto* v *Council*, T-116/03, EU:T:2004:325, paragraph 127), unless the applicant demonstrates that he has suffered non-material damage which is separable from the unlawfulness giving rise to the annulment and which cannot be fully compensated for by the annulment (see judgment of 25 June 2015, *EE* v *Commission*, F-55/14, EU:F:2015:66, and the case-law cited).

79 In the present case, there is nothing in the case file to suggest that the decision of the Bureau was adopted in circumstances which could have caused non-material damage to the applicant independently of the annulled measure. Accordingly, the claim for compensation for non-material damage must be rejected.

Costs

80 Under Article 134(3) of the Rules of Procedure of the General Court, where each party succeeds on some and fails on other heads, the parties are to bear their own costs. In the present case, in so far as only the claim for annulment has been upheld, it is appropriate to order each party to bear its own costs.

On those grounds,

THE GENERAL COURT (Sixth Chamber, Extended Composition)

hereby:

1. Annuls the decision of the Bureau of the European Parliament of 3 April 2017;

2. Dismisses the claim for damages;

3. Orders Mr Janusz Korwin-Mikke and the Parliament each to bear their own respective costs.

Berardis Papasavvas Spielmann

Csehi Spineanu-Matei

Delivered in open court in Luxembourg on 31 May 2018.

[Signatures]