Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

15 July 2021 *

(Appeal – Civil service – Disciplinary proceedings – Disciplinary penalty – Determination of that penalty – Withholding of an amount from the pension – Criminal conviction and civil sanction before national courts – Compensation, in whole or in part, for non-material damage caused to the European Union – Lack of relevance of that compensation – Article 10 of the Staff Regulations of Officials of the European Union – Principle of equal treatment – Principle of proportionality)

In Case C-851/19 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 19 November 2019,

DK, represented initially by S. Orlandi and T. Martin, and subsequently by S. Orlandi, avocats,

appellant,

the other party to the proceedings being:

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

defendant at first instance,

THE COURT (Second Chamber),

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

Advocate General: G. Hogan,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 26 November 2020,

gives the following

* Language of the case: French.

Judgment

1 By his appeal, DK seeks to have set aside the judgment of the General Court of the European Union of 10 September 2019, *DK* v *EEAS* (T-217/18, not published, EU:T:2019:571), by which the General Court dismissed his action seeking, first, annulment of the decision of the European External Action Service (EEAS) of 23 May 2017 imposing on him a disciplinary penalty ('the decision at issue') and, second, compensation for the harm which he claims to have suffered as a result of the EEAS' alleged infringement of his rights of defence in the criminal proceedings brought against him in Belgium.

Legal context

2 Article 22 of the Staff Regulations of Officials of the European Union, in the version applicable to the dispute ('the Staff Regulations'), which appears in Title II thereof, entitled 'Rights and obligations of officials', provides in its first paragraph:

'An official may be required to make good, in whole or in part, any damage suffered by the [European] Union as a result of serious misconduct on his part in the course of or in connection with the performance of his duties.'

3 Article 86 of the Staff Regulations, which is found in Title VI thereof, entitled 'Disciplinary measures', is worded as follows:

'1. Any failure by an official or former official to comply with his obligations under these Staff Regulations, whether intentionally or through negligence on his part, shall make him liable to disciplinary action.

2. Where the Appointing Authority or [the European Anti-Fraud Office (OLAF)] becomes aware of evidence of failure within the meaning of paragraph 1, they may launch administrative investigations to verify whether such failure has occurred.

3. Disciplinary rules, procedures and measures and the rules and procedures covering administrative investigations are laid down in Annex IX.'

4 Annex IX to the Staff Regulations concerns, in accordance with its title, 'Disciplinary proceedings'. Article 9 of that annex, which features in Section 3 thereof, entitled 'Disciplinary measures', provides:

'1. The Appointing Authority may impose one of the following penalties:

(a) a written warning;

(b) a reprimand;

(c) deferment of advancement to a higher step for a period of between one and 23 months;

(d) relegation in step;

(e) temporary downgrading for a period of between 15 days and one year;

(f) downgrading in the same function group;

(g) classification in a lower function group, with or without downgrading;

(h) removal from post and, where appropriate, reduction *pro tempore* of a pension or withholding, for a fixed period, of an amount from an invalidity allowance; the effects of this measure shall not extend to the official's dependants. In case of such reduction, however, the former official's income may not be less than the minimum subsistence figure laid down in Article 6 of Annex VIII, with the addition of any family allowances payable.

2. Where the official is in receipt of a retirement pension or an invalidity allowance, the Appointing Authority may decide to withhold an amount from the pension or the invalidity allowance for a given period; the effects of this measure shall not extend to the official's dependants. The official's income may not, however, be less than the minimum subsistence figure laid down in Article 6 of Annex VIII, with the addition of any family allowances payable.

3. A single case of misconduct shall not give rise to more than one disciplinary penalty.'

5 Under Article 10 of that annex:

'The severity of the disciplinary penalties imposed shall be commensurate with the seriousness of the misconduct. To determine the seriousness of the misconduct and to decide upon the disciplinary penalty to be imposed, account shall be taken in particular of:

(a) the nature of the misconduct and the circumstances in which it occurred,

(b) the extent to which the misconduct adversely affects the integrity, reputation or interests of the institutions,

(c) the extent to which the misconduct involves intentional actions or negligence,

(d) the motives for the official's misconduct,

(e) the official's grade and seniority,

(f) the degree of the official's personal responsibility,

(g) the level of the official's duties and responsibilities,

(h) whether the misconduct involves repeated action or behaviour,

(i) the conduct of the official throughout the course of his career.'

6 Article 25 of that annex, set out in Section 7 thereof, entitled 'Parallel criminal prosecution', provides:

'Where the official is prosecuted for those same acts, a final decision shall be taken only after a final judgment has been handed down by the court hearing the case.'

Background to the dispute

7 DK entered the service of the Commission of the European Communities as an official in 1994. In 1999, he was entrusted with the management of that institution's buildings in third countries. As from 1 January 2011, he was posted to the EEAS. On 1 January 2016, DK took early retirement.

Criminal proceedings brought against DK in Belgium

8 In 2004, criminal proceedings were brought against DK in Belgium in respect of acts of corruption in relation to the management of public procurements, beginning in 1999 and spanning a period of several years. The European Union, which was represented by the Commission, was a civil party in those proceedings.

9 By judgment of 16 May 2014, the tribunal de première instance francophone de Bruxelles (Brussels Court of First Instance (French-speaking), Belgium) imposed the following penalties on DK in relation to several offences committed in the performance of his duties:

– a term of imprisonment of two years, suspended for five years;

– a fine of EUR 27 500;

– a prohibition on taking up the post of director, manager or auditor of a commercial company for a period of 10 years;

– the confiscation of EUR 176 367.15.

10 That court also ordered DK, in the civil proceedings, to pay, jointly and severally, EUR 25 000 as compensation for non-material damage caused to the European Union as a result of the harm which the person concerned had caused to its image.

11 By judgment of 30 June 2015, the cour d'appel de Bruxelles (Court of Appeal, Brussels, Belgium) upheld the judgment of that lower court, at the same time increasing the term of imprisonment imposed on DK to three years, suspended for five years, and set at EUR 38 814 the amount which DK was ordered to pay as compensation for the non-material damage which he had caused to the European Union.

12 On 10 February 2016, the Cour de cassation (Court of Cassation, Belgium) dismissed the appeal on a point of law brought by DK against the judgment of that appeal court.

Disciplinary proceedings pursuant to the Staff Regulations

13 By decision of 2 May 2007, the Appointing Authority of the Commission initiated disciplinary proceedings against DK.

14 Those disciplinary proceedings were suspended pending the final outcome of the national criminal proceedings brought against the person concerned in respect of the same acts; the EEAS resumed, by decision of 12 July 2016, the disciplinary proceedings brought against DK.

15 On 12 December 2016, having heard DK, the Disciplinary Board adopted a reasoned opinion which was notified to the person concerned. In that opinion, the Disciplinary Board stated, inter alia, that 'the facts [were] established by the national criminal courts', that 'the official's conduct [constituted] a breach of Articles 11, 11a, 12 and 21 of the Staff Regulations' and that 'the only possible sanction [consisted] in withholding an amount of the pension'. In its assessment of various aggravating and extenuating circumstances, the Disciplinary Board took into consideration, inter alia, 'the fact that the national courts [had] already ordered the official to pay financial and non-material compensation'. On that basis, the Disciplinary Board recommended that the Appointing Authority adopt a disciplinary measure consisting of a monthly deduction of EUR 400 from the amount of DK's net pension for a period of three years.

16 By the decision at issue, the Appointing Authority, having heard DK, imposed on him 'the penalty of withholding EUR 1 105 from the monthly pension until 30 September 2025 pursuant to Article 9(2) of Annex IX to the Staff Regulations'.

17 On 20 December 2017, the Appointing Authority rejected the complaint which DK had lodged against the decision at issue.

The procedure before the General Court and the judgment under appeal

18 By application lodged at the Registry of the General Court on 28 March 2018, DK brought an action seeking, first, annulment of the decision at issue and, second, compensation for the harm which he claimed to have suffered as a result of the EEAS' alleged infringement of his rights of defence in the criminal proceedings brought against him in Belgium.

19 In support of his claim for annulment, DK raised two pleas in law, concerning, respectively, the determination of the disciplinary penalty to be imposed and the taking into account of extenuating circumstances in that context.

20 By the judgment under appeal, the General Court dismissed the action brought by DK as unfounded in so far as it sought annulment of the decision at issue, and as inadmissible and, in any event, unfounded in so far as it sought compensation for harm allegedly suffered. The General Court also ordered DK to bear the costs.

21 In particular, as regards the claim for annulment of the decision at issue, the General Court, in paragraphs 28 to 53 of the judgment under appeal, rejected the first part of the first plea raised by DK, which had alleged a manifest error of assessment in taking into account damage which had already given rise to compensation. The General Court held, in essence, that the Appointing Authority was not required, when applying Article 10 of Annex IX to the Staff Regulations, to take into account compensation for damage caused to the European Union which had already been awarded at national level.

Forms of order sought

22 DK claims that the Court of Justice should:

– set aside the judgment under appeal;

– annul the decision at issue; and

– order the EEAS to pay the costs of both sets of proceedings.

23 The EEAS contends that the Court should:

– dismiss the appeal as unfounded and

– order DK to pay the costs.

The appeal

Arguments of the parties

24 DK raises a single ground in support of the appeal. By that ground, he submits that the General Court erred in law, in paragraph 52 of the judgment under appeal, by interpreting Article 10, second sentence, point (b), of Annex IX to the Staff Regulations as allowing the Appointing Authority to rely on non-material damage caused to the European Union in order to justify the imposition of a more severe disciplinary penalty as compared with the one recommended by the Disciplinary Board, even though that damage had already given rise to compensation at national level.

25 That ground of appeal is divided into three parts.

26 First, DK submits, in essence, that the General Court erred in law in holding, in paragraph 52 of the judgment under appeal, that the Appointing Authority had not committed a manifest error of assessment by deciding that, under Article 10, second sentence, point (b), of Annex IX to the Staff Regulations, the Appointing Authority was not required to take into account compensation for non-material damage caused to the European Union which had already been awarded at national level. He considers that, in accordance with Article 25 of Annex IX to the Staff Regulations, the Appointing Authority was bound by the findings of fact made at national level and by the principle that damage which has given rise to compensation in full is deemed never to have existed.

27 Second, DK claims, in essence, that, in finding, in paragraph 52 of the judgment under appeal, that the Appointing Authority was not required to take into account compensation for non-material damage caused to the European Union which had already been awarded at national level, the General Court also breached the requirement of proportionality of disciplinary penalties and the principle that damage which has given rise to compensation in full is deemed never to have existed. Referring to the case-law deriving from the judgment of 9 September 1999, *Lucaccioni* v *Commission* (C-257/98 P, EU:C:1999:402, paragraphs 19 and 20), DK submits that, contrary to what the General Court held in paragraph 34 of the judgment under appeal, that latter principle is not only enshrined in Belgian law but is a general principle of law common to the legal systems of the Member States, prohibiting double compensation in respect of the same harm.

28 Third, DK states that, in paragraph 38 of the judgment under appeal, the General Court, in his view, correctly held that Article 10 of Annex IX to the Staff Regulations reflects the EU legislature's concern not to breach the general principle of equal treatment by treating officials who have engaged in misconduct differently depending on the extent of the damage caused to the EU institution to which they belong. Nevertheless, he asserts that, in paragraphs 39 to 41 of that judgment, the General Court breached that principle by holding that the fact that the

damage to the European Union had already given rise, in whole or in part, to compensation is irrelevant for the purpose of determining the disciplinary penalties to be imposed on the basis of Article 10. According to DK, an official who has made good the damage caused to the European Union is not in the same situation as an official who has not provided such compensation.

29 As a preliminary point, the EEAS submits that DK's argument that the Appointing Authority increased the penalty imposed on him by taking into account damage which had allegedly already given rise to compensation is inadmissible at the appeal stage, inasmuch as that argument does not seek to demonstrate a potential error of law on the part of the General Court, but calls into question the Appointing Authority's assessment and is a reformulation of a plea raised at first instance. Furthermore, according to the EEAS, if DK pleaded a breach of the principle of equal treatment, that argument would also call into question the Appointing Authority's assessment and not the judgment under appeal. Furthermore, in its view, DK has put forward those arguments for the first time at the appeal stage.

30 As regards the substance, the EEAS contends that the single ground of appeal must be rejected. In its view, the General Court did not err in law by holding that compensation for non-material damage caused to the European Union, such as had been established at national level, has no bearing on the assessment of the seriousness of the disciplinary misconduct under Article 10 of Annex IX to the Staff Regulations.

Assessment of the Court

The plea of inadmissibility raised by the EEAS

31 The plea of inadmissibility raised by the EEAS is, in the first place, based on the ground that the arguments relied on by DK do not seek to demonstrate a potential error of law on the part of the General Court, but to call into question the Appointing Authority's assessment and are, moreover, a reformulation of a plea raised at first instance.

32 In that regard, it follows from Article 256 TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union and Article 168(1)(d) and Article 169 of the Rules of Procedure of the Court of Justice that an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal. According to the Court's settled case-law, that requirement is not satisfied by an appeal which, without even including an argument specifically identifying the error of law allegedly vitiating the judgment under appeal, merely reproduces the pleas in law and arguments which have previously been submitted to the General Court. Such an appeal amounts in reality to no more than a request for re-examination of the application submitted to the General Court, which the Court of Justice does not have jurisdiction to undertake (judgment of 16 December 2020, *Council and Others* v *K. Chrysostomides & Co. and Others*, C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P, EU:C:2020:1028, paragraph 127 and the case-law cited).

33 However, provided that an 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. If an appellant could not thus base his or her appeal on pleas in law and arguments already relied on before the General Court, an appeal would be deprived of part of its purpose

(judgments of 9 July 2020, *Haswani* v *Council*, C-241/19 P, EU:C:2020:545, paragraph 50, and of 9 December 2020, *Groupe Canal +* v *Commission*, C-132/19 P, EU:C:2020:1007, paragraph 19 and the case-law cited).

34 In the present case, it must be noted that, by the appeal, DK criticises the General Court's conclusion, in paragraph 52 of the judgment under appeal, that the Appointing Authority had not committed a manifest error of assessment by deciding that, in the application of Article 10 of Annex IX to the Staff Regulations, it was not necessary to take into account compensation for damage caused to the European Union which had already been awarded at national level, and the legal analysis which led the General Court to reject the first part of the first plea raised before it. Furthermore, although the appeal refers to the Appointing Authority's assessment, it does so only in so far as that assessment has been upheld by the General Court and in order to challenge alleged errors of law committed by the latter, and does not merely reproduce the pleas in law and arguments which have previously been submitted to the General Court.

35 As regards, in the second place, the EEAS' argument that DK has invoked a breach of the principle of equal treatment for the first time at the appeal stage, it should be recalled that, in an appeal, the Court of Justice's jurisdiction is confined to a review of the findings of law on the pleas and arguments argued before the General Court. However, where a ground of appeal is admissible, it is in principle for the appellant to set out arguments in support of it as he or she sees fit, whether by relying on arguments already used before the General Court or by developing new arguments, in particular in relation to the positions adopted by that Court. Otherwise, the appeal procedure would be deprived of part of its purpose (see, to that effect, judgments of 18 January 2007, *PKK and KNK* v *Council*, C-229/05 P, EU:C:2007:32, paragraphs 61 and 64, and of 19 December 2019, *HK* v *Commission*, C-460/18 P, EU:C:2019:1119, paragraphs 26 and 27).

36 In the present case, it must be noted that the interpretation of Article 10 of Annex IX to the Staff Regulations and its application in the context of damage to the European Union which has already given rise to compensation were argued before the General Court in the proceedings at first instance. The arguments relied on by DK, alleging a breach of the principle of equal treatment, are intended to challenge the General Court's analysis of the first part of the first plea in the action brought before it. In the context of that analysis, the General Court, in paragraphs 38 to 41 of the judgment under appeal, focused on the fact that misconduct on the part of EU officials had to be treated differently depending on the extent of the damage caused, and at the same time held that the fact that that damage had already given rise, in whole or in part, to compensation is irrelevant for the purpose of determining the seriousness of the misconduct, for the purposes of that provision. Thus, those arguments are intended to challenge in detail the interpretation and application made by the General Court of that provision, in those paragraphs of the judgment under appeal, and do not constitute a new plea the introduction of which at the appeal stage would be prohibited (see, by analogy, judgments of 18 January 2007, *PKK and KNK* v *Council*, C-229/05 P, EU:C:2007:32, paragraph 63, and of 19 December 2019, *HK* v *Commission*, C-460/18 P, EU:C:2019:1119, paragraph 28).

37 Accordingly, the plea of inadmissibility raised by the EEAS must be rejected.

Substance

38 In the context of the first part of the single ground of appeal, alleging infringement of Article 10, second sentence, point (b), of Annex IX to the Staff Regulations, read in conjunction with Article 25 of that annex to the Staff Regulations, DK submits, in essence, that damage which has

given rise to compensation in full cannot be taken into account for the purpose of assessing the seriousness of the disciplinary misconduct, on the ground that, in accordance with that provision, the Appointing Authority is bound by the findings of fact made by the national criminal courts and by the principle that damage which has given rise to compensation in full is deemed never to have existed.

39 In that regard, it must be noted that, pursuant to the first sentence of Article 10 of Annex IX to the Staff Regulations, the severity of the disciplinary penalties imposed must be commensurate with the seriousness of the misconduct. The second sentence of Article 10 of that annex sets out, in a non-exhaustive manner, in points (a) to (i), a number of factors which, 'in particular', are to be taken into account in order to determine the seriousness of the misconduct and to decide upon the disciplinary penalty to be imposed. Those factors include, according to Article 10, second sentence, point (b), of that annex, 'the extent to which the misconduct adversely affects the integrity, reputation or interests of the institutions'.

40 In addition, it must be recalled that, in accordance with Article 25 of Annex IX to the Staff Regulations, where the official concerned is prosecuted for the same acts as those in respect of which he or she is the subject of disciplinary proceedings, a final decision is to be taken only after a final judgment has been handed down by the court hearing the case. That provision, first, addresses the concern not to affect the situation of the official in question in the context of the criminal proceedings brought against him or her for acts which are also the subject of disciplinary proceedings within his or her institution and, second, allows the findings of fact of the national criminal court to be taken into consideration in those disciplinary proceedings once that court's decision has become final.

41 That provision does not specify whether the findings of fact made by the national criminal court are capable of binding the Appointing Authority in the context of those disciplinary proceedings. In any event, the legal characterisation of the facts in the light of the relevant provisions of EU law, such as Article 10 of Annex IX to the Staff Regulations, is a matter for the competent EU authorities alone. Those authorities cannot be bound by any characterisation of those facts made in the context of the national criminal proceedings (see, by analogy, as regards disciplinary proceedings concerning a Member of the Commission, judgment of 11 July 2006, *Commission* v *Cresson*, C-432/04, EU:C:2006:455, paragraph 121). Since Article 10 does not expressly refer to the law of the Member States for the purpose of determining its meaning and scope, it must be given an autonomous and uniform interpretation within the EU legal order, in order to ensure the equal treatment of officials when applying the provisions of the Staff Regulations (see, by analogy, as regards Article 85a of the Staff Regulations, judgment of 15 October 2015, *Axa Belgium*, C-494/14, EU:C:2015:692, paragraphs 21 and 23 to 25).

42 In the present case, it is apparent from paragraphs 8, 10 and 11 of the present judgment that the tribunal de première instance francophone de Bruxelles (Brussels Court of First Instance (French-speaking)) and, on appeal, the cour d'appel de Bruxelles (Court of Appeal, Brussels) ordered DK to pay compensation, in the amount of EUR 38 814, for the non-material damage which he had caused to the European Union, according to the findings of those criminal courts, through acts of corruption in relation to the management of public procurements in the period from 1999 to 2005.

43 Nevertheless, the determination, by those criminal courts, in the context of the national law, of the extent of the non-material damage suffered by the European Union and the resulting compensation does not in any way prejudge the taking into consideration of that damage and any

potential compensation thereof for the purpose of determining the seriousness of the disciplinary misconduct on the part of the person concerned, since such an exercise does not constitute a point of fact, but falls within the legal characterisation of the facts which it is for Appointing Authority to make in the light of the provisions of Article 10 of Annex IX to the Staff Regulations, without the Appointing Authority being bound, in that regard, by any characterisation made in the context of the criminal proceedings at national level.

44 Nothing in the wording of Article 10, second sentence, point (b), of Annex IX to the Staff Regulations makes the determination of the seriousness of the misconduct of the official concerned and the disciplinary penalty to be imposed on him or her, having regard to the extent of the damage caused to the integrity, reputation or interests of the EU institutions as a result of the misconduct, subject to the condition that that damage has not yet given rise to compensation. As the General Court correctly stated in paragraph 39 of the judgment under appeal, in disciplinary proceedings under Article 10 of Annex IX to the Staff Regulations, it is irrelevant that the damage has given rise, in whole or in part, to compensation, such a circumstance being immaterial, as the purpose of the provision is not to arrange compensation, but to impose a penalty. In any event, in the light of the considerations set out in paragraphs 40 and 41 of the present judgment, it cannot be inferred from Article 25 of Annex IX to the Staff Regulations that the civil-law principle of a Member State according to which damage which has given rise to compensation in full is deemed never to have existed may be applied *mutatis mutandis* in disciplinary proceedings.

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

46 By the third part of the single ground of appeal, which it is appropriate to examine in the second place, DK submits, in essence, that the General Court breached the principle of equal treatment by holding, in paragraphs 39 to 41 of the judgment under appeal, that it is irrelevant, in the determination of the seriousness of the disciplinary misconduct, that the damage caused to the European Union has already given rise, in whole or in part, to compensation.

47 In that regard, it must be recalled that the principle of equal treatment requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (judgments of 7 March 2017, *RPO*, C-390/15, EU:C:2017:174, paragraph 41, and of 25 June 2020, *SatCen* v *KF*, C-14/19 P, EU:C:2020:492, paragraph 90 and the case-law cited).

48 In accordance with settled case-law of the Court, the factors which distinguish different situations, and the question whether those situations are comparable, must be determined and assessed in the light of the subject matter of the provisions in question and of the aim pursued by them, whilst account must be taken for that purpose of the principles and objectives of the field in question (judgments of 7 March 2017, *RPO*, C-390/15, EU:C:2017:174, paragraph 42 and the case-law cited, and of 6 September 2018, *Piessevaux* v *Council*, C-454/17 P, not published, EU:C:2018:680, paragraph 79).

49 In the present case, DK submits that an official who has made good damage to the European Union is not in the same situation as an official who has not paid such compensation, with the result that, in his view, the damage caused by the former official should not be taken into consideration when Article 10, second sentence, point (b), of Annex IX to the Staff Regulations is being applied.

50 It has been recalled, in paragraph 39 of the present judgment, that that Article 10 governs the determination of the disciplinary penalties to be imposed and provides that the severity of those penalties must be commensurate with the seriousness of the misconduct, account being taken in particular of the extent of the damage caused to the European Union. As the General Court pointed out, in essence, in paragraph 37 of the judgment under appeal, it follows from the very wording of that Article 10 that the subject matter of the disciplinary penalties provided therein is the sanctioning of misconduct. In accordance with Article 86(1) of the Staff Regulations, such misconduct results from any failure by the official concerned to comply with his or her obligations under the Staff Regulations. Therefore, as the Advocate General observed in point 58 of his Opinion, the Staff Regulations seek to ensure compliance with the rules and obligations intended to guarantee the proper working of an EU institution, through the imposition of disciplinary penalties.

51 By contrast, by acting as a civil party in the criminal proceedings brought against DK in Belgium, the European Union sought compensation for the non-material damage to its reputation. As the Advocate General observed, in essence, in point 57 of his Opinion, the purpose of the award of such compensation is not to sanction the misconduct of the official concerned, but to obtain civil compensation such as to restore the situation prior to that conduct.

52 It follows from the foregoing that the subject matter and aim, on the one hand, of the disciplinary penalty imposed on DK and, on the other, of the compensation for damage caused to the European Union relied on by DK, are different.

53 That is all the more so since, while Article 86(1) of the Staff Regulations establishes as a principle that any failure by an official to comply with his or her obligations under the Staff Regulations is liable to result in a disciplinary penalty being imposed on the person concerned, the first paragraph of Article 22 of the Staff Regulations provides that an official may be required to make good, in whole or in part, any damage suffered by the European Union as a result of serious misconduct on his or her part in the course of or in connection with the performance of his or her duties, with the result that the imposition of a disciplinary penalty and the compensation for damage caused to the European Union are independent of one another.

54 Thus, the fact that an official has made good non-material damage which he or she has caused to the European Union is not such as to place that official in a situation that differs from that of an official who has not paid such compensation for the purpose of determining the seriousness of his or her misconduct and the disciplinary penalty to be imposed on him or her in the light of, in particular, the extent of the damage caused to the European Union, pursuant to Article 10, second sentence, point (b), of Annex IX to the Staff Regulations.

55 Accordingly, the General Court did not breach the principle of equal treatment by holding, in paragraphs 39 to 41 of the judgment under appeal, that, when determining the seriousness of the disciplinary misconduct of an official and the disciplinary penalty to be imposed on him or her on the basis of that provision, it is irrelevant that the damage caused to the European Union has already given rise, in whole or in part, to compensation.

56 Accordingly, the third part of the single ground of appeal must be rejected as unfounded.

57 As regards, lastly, the second part of the single ground of appeal, alleging a breach of the principle of proportionality, it must be noted that, although the Appointing Authority imposed a financial penalty on DK, given the considerations set out in paragraph 50 of the present judgment, neither

the subject matter of that penalty nor the aim pursued by it concerns compensation for damage caused to the European Union, but rather the sanctioning of DK's disciplinary misconduct in failing to comply with his obligations under the Staff Regulations. Thus, contrary to what DK claims, the application of such a penalty cannot be regarded as tantamount to making good that damage twice, in breach of the principle of proportionality. It follows that the question as to whether the principle referred to in paragraph 26 of the present judgment is not only a principle of Belgian civil law but constitutes, as the appellant submits, a general principle of law common to the legal systems of the Member States, prohibiting double compensation for the same harm, is not relevant in the present case.

58 That conclusion cannot be called into question by the case-law deriving from the judgment of 9 September 1999, *Lucaccioni* v *Commission* (C-257/98 P, EU:C:1999:402, paragraphs 19 and 20), relied on by DK in support of the third part of the single ground of appeal, in so far as that judgment did not concern, as the present case does, the overlapping of compensation and a disciplinary penalty, but related to the overlapping of different forms of compensation for harm caused to an official following an accident or illness.

59 Accordingly, the third part of the single ground of appeal must also be rejected as unfounded.

60 In the light of all of the foregoing considerations, the appeal must be dismissed in its entirety as unfounded.

Costs

61 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court is to make a decision as to the costs. Article 138(1) of the Rules of Procedure, which applies to appeal proceedings by virtue of Article 184(1) thereof, provides that the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

62 Since the EEAS has applied for costs and DK has been unsuccessful in his single ground of appeal, DK must be ordered to pay the costs.

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

1. Dismisses the appeal;

2. Orders DK to pay the costs.

[Signatures]