Reports of Cases

OPINION OF ADVOCATE GENERAL
HOGAN
delivered on 26 November 2020[1]

Case C-851/19 P

DK
v

European External Action Service (EEAS)

(Appeal – Civil service – Corruption – Criminal conviction before national courts – Requirement to pay compensation in civil proceedings before national courts for non-material damage caused to the image of the Union – Disciplinary proceedings – Penalty of withholding an amount from the pension – Article 9(1)(h) of Annex IX to the Staff Regulations of the Officials of the European Union – Severity of the disciplinary penalty – Article 10(b) of Annex IX to the Staff Regulations – Possibility to take into account the extent to which the misconduct adversely affects the integrity, reputation or interests of the institutions)

I. Introduction

1. The present appeal was lodged at the Registry of the Court of Justice of the European Union on 19 November 2019 by DK ('the appellant') against 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) ('the judgment under appeal').

2. In the judgment under appeal, the General Court dismissed the appellant's action under Article 270 TFEU seeking, inter alia, the annulment of a decision of the European External Action Service (EEAS) of 23 May 2017 which imposed a disciplinary penalty on the appellant in accordance with Article 9(1)(h) of Annex IX to the Staff Regulations of Officials of the European Union, ('the Staff Regulations') thereby reducing his or her pension rights.

3. In the present appeal proceedings, the appellant does not challenge that reduction of his or her pension rights per se, but rather the criteria on which that reduction was based. The appellant accordingly claims that the General Court erred in its interpretation of Article 10(b) of Annex IX to the Staff Regulations.

4. The appellant claims, in essence, that the General Court erred, in the circumstances of the case before it, in considering that account could be taken in disciplinary proceedings under the Staff Regulations relating to his or her misconduct of the adverse effects of such misconduct on the integrity, reputation or interests of the institutions when assessing the disciplinary penalty to be

1 Original language: English.

imposed. In particular, the appellant considers that the damage to the integrity, reputation or interests of the institutions cannot be taken into consideration in disciplinary proceedings where that damage has already been compensated for by means of a specific order to this effect in civil proceedings before the national courts.

5. It is this legal point that I will address in this Opinion. Before examining this appeal, it is first necessary to set out the relevant legislative texts.

II. Legal context

A. The Staff Regulations of Officials of the European Union

6. Title II of the Staff Regulations) is entitled 'Rights and obligations of officials'. Article 22 thereof provides:

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

…'[2]

7. Article 86 of the Staff Regulations, which is found in Title VI of those regulations entitled 'Disciplinary measures', provides:

'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.'

8. Annex IX to the Staff Regulations as indicated by its title concerns disciplinary proceedings. Section 3 of that annex is entitled 'Disciplinary measures', and Article 9 thereof 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;

2 See also the fourth paragraph of Article 340 TFEU.

(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.'

9. Article 10 of Annex IX to the Staff Regulations provides:

'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.'

10. Section 7 of Annex IX to the Staff Regulations is entitled 'Parallel criminal prosecution'. Article 25 thereof 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.'

III. Background to the dispute

11. The appellant entered the service of the European Commission as an official in 1994. In 1999, while working at the Commission's Directorate-General (DG) for External Relations, he or she was entrusted with the management of the Commission's buildings in third countries. From 1 January 2011, the appellant was posted to the EEAS. On 1 January 2016 the appellant took early retirement.

A. Criminal proceedings before the Belgian courts

12. From July 2004 to February 2016, the appellant was subject to criminal proceedings before the Belgian courts and was charged with acts of corruption from 1999 to 2005 in relation to the management of public procurements. These charges related to allegations of corruption in the course of the exercise of his or her functions in public procurement matters involving the Union. The European Union, which was represented by the Commission, was a civil party in those proceedings.

13. 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 sentences on the appellant in relation to several offences committed in the performance of his or her duties:

– two years' imprisonment, which was suspended for five years;

– a fine of EUR 27 500;

– an order disqualifying him or her from acting as a director, manager or auditor of a commercial company for a period of 10 years;

– the confiscation of the sum of EUR 176 367.15.

14. The Tribunal de première instance francophone de Bruxelles (Brussels Court of First Instance (French-speaking)), in the civil proceedings, also ordered the appellant to pay EUR 25 000 to the Union as compensation for the non-material damage to its reputation. [3]

15. Following an appeal brought by the appellant, the cour d'appel de Bruxelles (Court of Appeal, Brussels, Belgium), by judgment of 30 June 2015, upheld the judgment of the tribunal de première instance francophone de Bruxelles (Brussels Court of First Instance (French-speaking)). It also increased the term of imprisonment to three years, which was suspended for five years, and set the amount, by way of compensation for the non-material damage suffered by the Union, at EUR 38 814.

16. By judgment of 10 February 2016, the Cour de cassation (Court of Cassation, Belgium) dismissed the appellant's appeal.

B. Disciplinary proceedings pursuant to the Staff Regulations

17. The appellant was the subject of three internal investigations by OLAF, which were opened on 12 July 2004, 19 May 2005 and 18 October 2005 respectively.

3 It would appear from the file before the Court that the liability in question was held jointly and severally with other persons.

18. By decision of 2 May 2007, the Appointing Authority of the Commission initiated disciplinary proceedings against the appellant pursuant to Article 86 of the Staff Regulations. Those proceedings were, however, suspended pursuant to Article 25 of Annex IX to the Staff Regulations pending the final outcome of the national criminal proceedings brought against the appellant in respect of the same acts.

19. By decision of 12 July 2016, the EEAS resumed the disciplinary proceedings against the appellant and, subsequently, the Disciplinary Board heard the appellant pursuant to Article 16 of Annex IX to the Staff Regulations.

20. In its reasoned opinion of 12 December 2016, adopted pursuant to Article 18 of Annex IX to the Staff Regulations, the Disciplinary Board observed, inter alia, that 'the facts are established by the national criminal courts', 'the official's conduct constitutes a breach of Articles 11, 11a, 12 and 21 of the Staff Regulations' and 'the only possible sanction [consists] in withholding an amount of the pension'.

21. The Disciplinary Board considered that the serious nature of the facts and the appellant's lack of remorse were aggravating circumstances. The Board also held, however, that the positive assessments of the appellant and the lack of a methodological framework governing his or her tasks constituted extenuating circumstances. It also took into account the appellant's 'financial, family and health situation (in particular [his or her] life expectancy)' and 'the fact that the national courts have already ordered the [appellant] to pay financial and non-material compensation'.

22. 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 the appellant's net pension for a period of three years.

23. After hearing the appellant, the Appointing Authority, by decision of 23 May 2017 imposed on him or her a disciplinary penalty pursuant to Article 9(2) of Annex IX to the Staff Regulations ('the contested decision'). The effect of this decision was that the net amount of his or her old-age pension was reduced by 20% for a period of just over eight years. As a result, the appellant's pension was reduced by EUR 1 015 per month until 30 September 2025.[4]

24. On 23 August 2017, the appellant lodged a complaint against the contested decision under Article 90(2) of the Staff Regulations. By decision of 20 December 2017, the Appointing Authority rejected that complaint.

IV. The procedure before the General Court and the judgment under appeal

25. By application lodged at the Registry of the General Court on 28 March 2018, the appellant brought an action under Article 270 TFEU seeking the annulment of the contested decision by which the Appointing Authority imposed on him or her a disciplinary penalty and, in the alternative, compensation for the harm allegedly suffered by the appellant as a result of the EEAS' infringement of his or her rights of defence in the criminal proceedings brought against him or her before the Belgian courts.

26. The appellant relied on two pleas in support of his or her action before the General Court, relating, respectively to the determination of the penalty and the taking into account of mitigating circumstances.

4 I would note that at paragraphs 17, 78, 119 and 142 of the judgment under appeal, the General Court referred to an amount of EUR 1 105.

27. By the judgment under appeal, the General Court dismissed the appellant's action and ordered him or her to pay the costs.

V. Forms of order sought and the procedure before the Court of Justice

28. The appellant submits that the Court should:

– set aside the judgment under appeal;

– annul the contested decision;

– order the EEAS to pay the costs of the proceedings before the General Court and these appeal proceedings.

The EEAS submits that the Court should;

– dismiss the appeal as unfounded;

– order the appellant to pay the costs.

VI. The appeal

29. The appellant raises a single ground of appeal which is directed in paragraphs 28 to 53 of the judgment under appeal. The General Court, in the paragraphs in question, examined the first part of the appellant's first plea in which he or she claimed that the Appointing Authority had erred by taking into account, when determining the disciplinary penalty to be imposed on him or her, the non-material damage caused to the Union. In that regard, the appellant claimed, in essence, that compensation had already been paid in respect of the damage in question in the context of civil measures ordered by the national courts.

30. The General Court dismissed the first part of the appellant's first plea.

31. In the present appeal, the appellant claims in his or her single ground of appeal that the General Court erred in its interpretation of Article 10(b) of Annex IX to the Staff Regulations by allowing non-material damage, in respect of which compensation had already been paid, to be taken into account in order to justify the imposition by the Appointing Authority of a more severe disciplinary penalty on an official as compared to the penalty recommended by the Disciplinary Board. [5]

32. The appellant's single ground of appeal is divided into three parts.

33. First, the appellant claims that the General Court erred in law in paragraph 52 of the judgment under appeal in holding that the Appointing Authority did not commit a manifest error of assessment, when applying Article 10 of Annex IX to the Staff Regulations, by deciding that it was not necessary to take into account compensation awarded by a national court for damage caused to the Union. The appellant considers that in accordance with Article 25 of Annex IX to the Staff Regulations, the Appointing Authority was bound by the findings of fact of the national criminal courts and the principle that damage in respect of which has compensation has been paid is deemed never to have existed.

5 See paragraph 2 of appeal.

34. Secondly, the appellant claims, in substance, that in paragraph 34 of the judgment under appeal, the General Court breached the requirement of proportionality of disciplinary penalties and the general principle of law, common to the legal systems of the Member States, that damage which has been fully compensated is deemed to never have existed, by holding that the Appointing Authority could rely, pursuant to Article 10(b) of Annex IX to the Staff Regulations, on such damage.

35. Thirdly, the appellant claims, in essence, that the General Court, in paragraphs 39 to 41 of the judgment under appeal, breached the general principle of equality by holding that, when determining the penalties to be imposed in disciplinary proceedings pursuant to Article 10 of Annex IX to the Staff Regulations, the fact that the damage caused to the Union has been compensated, in whole or in part, is essentially irrelevant. In that regard, the appellant considers that the misconduct of an official should be treated differently depending on the extent of the damage caused to the institution. According to the appellant, he or she is not in the same position as an official who has not previously compensated the Union for damage caused.

36. As requested by the Court, this Opinion will focus on the second and third parts of the single plea raised by the appellant in this appeal. I consider that it is opportune to examine together both parts of the single plea in question. The alleged breach of the principles of proportionality and equality are both based on the premiss that the reputational damage to the image of the Union for which compensation has been paid before the national courts cannot be taken into account in disciplinary proceedings in the light of the provisions of Article 10(b) of Annex IX to the Staff Regulations. As I will indicate in this Opinion, I believe that this premiss is flawed as it fails to take into account the distinct nature and objectives of civil actions for compensation and disciplinary proceedings under the Staff Regulations. Given that the second and third parts of the single plea are, I suggest, based on a false premiss, they must be rejected as unfounded.

VII. Analysis

A. Claim of inadmissibility

37. While the EEAS has not formally raised a plea to that effect, it argues in its pleadings that the present appeal is partially inadmissible.

38. In that regard, the EEAS considers that the appellant's argument that the Appointing Authority increased the penalty by taking into account damage for which compensation had already been paid is not intended to demonstrate that the General Court erred, but rather calls into question the Appointing Authority's assessment and its justification for deviating from the reasoned opinion of the Disciplinary Board. According to the EEAS, the appellant seeks to clarify or reformulate his or her first plea raised at the first instance on the existence of an alleged manifest error of assessment by the Appointing Authority. Such a reformulation of a plea raised at first instance is inadmissible on appeal.

39. In my view, the present ground of inadmissibility raised by the EEAS should be rejected as unfounded.

40. The appeal is clearly directed at an alleged error in law in the judgment under appeal and the appellant has not raised any new pleas or grounds which were not previously raised before the General Court.

41. While it is true that the appellant has made numerous references in his or her appeal to the contested decision and has compared the approach of the Disciplinary Board and that of the Appointing Authority as regards the criteria used in order to impose a disciplinary penalty on the appellant, it is clear that the appellant's single ground of appeal is directed at the General Court's

conclusion in paragraph 52 of the judgment under appeal[6] and the General Court's legal assessment in paragraphs 28 to 51 of the judgment under appeal which led to that conclusion, rather than at the contested decision.

42. The references in the appeal to the contested decision, in my view, merely add context and detail to the appellant's claims on appeal. Indeed, I would note that the EEAS itself made numerous references to specific paragraphs in the contested decision in order to rebut the appellant's arguments.

43. As regards the EEAS's claim that the appellant has reformulated the pleas raised before the General Court, it is clear from paragraphs 43 to 52 of the appellant's application before the General Court that he or she claimed that while the Disciplinary Board had taken into account the fact that the national courts had already ordered him or her to pay compensation, the Appointing Authority increased the disciplinary sanction imposed by holding that his or her behaviour affected the image of the institution and cast doubt on the independence of its staff. The appellant further submitted before the General Court that the institutions of the Union can no longer claim that they suffered damage where the Union has already received compensation in full in the context of the criminal proceedings in which it was a civil party. Thus according to the appellant, the Appointing Authority erred manifestly in its assessment by taking into consideration the damage in question.

44. I therefore do not consider that the appellant, in the present appeal proceedings, has reformulated a plea raised before the General Court[7] and that such a reformulation could be considered a new plea, inadmissible on appeal.

B. Substance

1. Preliminary remarks – Scope of the appeal

45. The EEAS disputes the correctness of appellant's claims in paragraphs 12 and 19 of the appeal. In those paragraphs, the appellant claims that the General Court erred in law in its interpretation of Article 10(b) of Annex IX to the Staff Regulations as permitting damage in respect of which compensation has been made to be taken into consideration by the Appointing Authority to justify the imposition of a more severe disciplinary penalty than that recommended by the Disciplinary Board in its reasoned opinion.

46. The EEAS considers that the Appointing Authority did not treat the damage in question as an aggravating circumstance.[8]

6 See paragraph 25 of the appeal. In paragraph 52 of the judgment under appeal, the General Court held that the Appointing Authority did not commit a manifest error of assessment in deciding that, when applying Article 10 of Annex IX to the Staff Regulations, it is not necessary to take into account compensation for damage caused to the Union which had already been granted by the national courts. Moreover, in paragraph 39 of the judgment under appeal, the General Court stated that within the context of a disciplinary proceeding, it was irrelevant that the compensation had been paid in whole or in part for the damage, as the purpose of Article 10(b) of Annex IX to the Staff Regulations is not to grant compensation but rather to impose a penalty.

7 Other than the fact than the fact that appeal is clearly directed at the judgment under appeal rather than the contested decision.

8 According to the EEAS, paragraphs 35 to 38 of the contested decision demonstrate that, contrary to the appellant's claims, the Appointing Authority did not base its decision to depart from the reasoned opinion of the Disciplinary Board on Article 10(b) of Annex IX to the Staff Regulations 'in particular'. The EEAS claims that the Appointing Authority stated in the contested decision that the requirement under national law to compensate the Union had no bearing on the assessment of the seriousness of the misconduct. The Appointing Authority imposed a higher penalty, as compared to that proposed by the Disciplinary Board, taking into account all the criteria (overall assessment). According to the EEAS, Article 10 of Annex IX to the Staff Regulations does not specify the weight to be accorded to the different criteria.

47. Article 10 of Annex IX to the Staff Regulations requires that any disciplinary penalty imposed on an official be proportionate to the seriousness or gravity of the misconduct of the official and, in that regard, it lays down a number of non-exhaustive criteria which must be taken into account when deciding on the penalty. [9]

48. The list in question contains a number of indicative criteria which could, depending on the particular facts, be considered aggravating, mitigating or, indeed, neutral circumstances and no particular weight or importance is granted to any specific criteria. In addition, given the broad nature of the listed criteria, it is clear that they are not necessarily relevant in each and every case. These criteria are also intended to be indicative and are non-exhaustive in nature.

49. In that regard, it is settled case-law that pursuant to Article 10 of Annex IX to the Staff Regulations, the penalty to be imposed is to be determined on the basis of an overall assessment by the Appointing Authority of all the concrete facts and matters appertaining to each individual case. In that regard, it may be observed that the Staff Regulations do not specify any fixed relationship between the disciplinary measures listed therein and the various types of misconduct on the part of officials and, moreover, do not state the extent to which aggravating or mitigating circumstances are to be taken into account in the choice of penalty. [10]

50. In addition, it must be noted that once the truth of allegations against an official has been established, it is for the Appointing Authority to choose the appropriate disciplinary penalty. The General Court, and the Court of Justice on appeal, cannot substitute its own judgment for that of the Appointing Authority except in the case of manifest error or misuse of powers. [11]

51. It is clear from paragraphs 28 to 52 of the judgment under appeal that the General Court did not specifically assess whether the Appointing Authority considered that the payment of compensation for non-material damage in civil proceedings constituted an aggravating circumstance [12]. The General Court merely found in paragraph 52 of the judgment under appeal that the Appointing Authority did not err in considering that it was not necessary to take account of such compensation when applying the criteria laid down in Article 10 of Annex IX to the Staff Regulations. [13]

52. The appellant has not alleged that the General Court erred by failing to assess the actual weight given by the Appointing Authority to the fact that the damage in question was the subject of a compensation order. I consider that the scope of the present appeal must be limited to whether, in those circumstances, the criterion laid down in Article 10(b) of Annex IX to the Staff Regulations – and thus the damage to the integrity, reputation or interest of the Union – can be taken into account in any overall assessment of the case in order to determine the seriousness of the misconduct and, subsequently, to decide upon the disciplinary penalty to be imposed when the non-material damage in question has already been compensated for in proceedings before the national courts.

9 In paragraph 115 of the judgment of 17 July 2012, *BG* v *Ombudsman* (F-54/11, EU:F:2012:114), the Civil Service Tribunal stated that according to Article 10 of Annex IX to the Staff Regulations, the disciplinary penalty imposed must be commensurate with the seriousness of the misconduct. That article also lays down some of the criteria to be taken into account by the Appointing Authority when deciding on a penalty.

10 See, judgment of 5 February 1987, *F.* v *Commission* (403/85, EU:C:1987:70, paragraph 26). See also judgment of the Civil Service Tribunal of 17 July 2012, *BG* v *Ombudsman* (F-54/11, EU:F:2012:114, paragraph 116).

11 See, judgments of 5 February 1987, *F.* v *Commission* (403/85, EU:C:1987:70, paragraph 18), and of 19 November 2014, *EH* v *Commission* (F-42/14, EU:F:2014:250, paragraph 92).

12 See, in that regard, the arguments raised by the parties in points 31 and 45 of the present Opinion.

13 I would note that in paragraph 136 of the judgment under appeal, the General Court found that the Appointing Authority in the contested decision had considered that the appellant's actions were particularly serious taking into account, inter alia, the damage to the integrity, reputation or interests of the institutions. In paragraphs 140 and 141 of the judgment under appeal, the General Court found that the Appointing Authority considered that the remedy already provided at national level 'should not prevent it from imposing a disciplinary penalty commensurate with the misconduct committed' (paragraph 37 of the contested decision), and that, 'even if the claimant has made good the damage linked to the damage to the institution's image following [his or her] conviction by the Belgian courts, the fact remains that [he or she] has exposed the image of the institution and cast doubt on the integrity of its staff members'. These findings by the General Court relate to the appellant's second plea at first instance and have not been challenged in these appeal proceedings.

53. In that regard, it must be stressed that the appellant does not call into question in the present appeal proceedings the fact that he or she may be subject to disciplinary measures pursuant to Article 9 of Annex IX to the Staff Regulations, despite the fact that he or she has also been subject to both criminal and civil measures. Nor does the appellant call into question the specific disciplinary penalty chosen, which was monetary in nature and which resulted in a reduction of his or her pension rights pursuant to Article 9(1)(h) of Annex IX to the Staff Regulations.[14] Moreover, what is in question is not the actual amount of the reduction of the appellant's pension as such, but rather the criteria which may be taken into consideration when imposing such a reduction.

2. Assessment

54. It is clear from the judgment under appeal that the appellant was the subject of criminal, civil and disciplinary measures or penalties in respect of his or her actions. The appellant does not, however, raise any *ne bis in idem* plea[15] in respect of the criminal, civil[16] and disciplinary measures or penalties imposed.

55. The question raised in this appeal is rather whether damage to the integrity, reputation or interest of the Union (and in respect of which the Union received compensation in civil proceedings before national courts) can also be taken into consideration in order to determine the seriousness of an official's misconduct and to decide upon the disciplinary penalty to be imposed pursuant to Article 10 of Annex IX to the Staff Regulations.

56. In my view, the civil and disciplinary proceedings in question and their corresponding remedies or penalties are clearly distinct[17] from one another and, more importantly, pursue very different aims.[18]

57. The purpose of the civil proceedings which were brought by the Union before the national courts would appear to be to compensate the Union for the non-material damage caused to its public or external reputation by the actions of the appellant. In that regard, civil compensation seeks to indemnify the aggrieved party and thus to restore their position prior to the infringing behaviour. An award of compensation or damages is thus designed to compensate the victim in respect of this delictual or other form of non-contractual liability. Viewed thus, this form of non-contractual liability is generally not punitive in nature. It does not seek to sanction, penalise or reprimand[19] conduct which is considered objectionable.[20]

14 Indeed, given that the appellant had retired, it was the only disciplinary penalty available to the Appointing Authority.

15 See, Article 50 of the Charter of Fundamental Rights of the European Union which prohibits the prosecution or the imposition of criminal penalties on the same person more than once for the same offence. See also, Article 9(3) of Annex IX to the Staff Regulations which provides that a 'single case of misconduct shall not give rise to more than one disciplinary penalty'. For an overview of the relationship between criminal proceedings/penalties and disciplinary proceeding/penalties in the context of the Staff Regulations, see judgment of 8 July 2008, *Franchet and Byk* v *Commission* (T-48/05, EU:T:2008:257, paragraphs 341 to 343).

16 In paragraph 33 of judgment of 20 March 2018, *Garlsson Real Estate and Others* (C-537/16, EU:C:2018:193), the Court stated that a measure that merely repairs the damage caused by the offence at issue is not criminal in nature. In effect, such a reparatory or compensatory measure is not punitive in nature.

17 As regards, for example, the applicable rules, standards of proof, procedures and fora.

18 The possibility that an official may be required, in accordance with Article 22 of the Staff Regulations, to make good, in whole or in part, any damage suffered by the 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 is distinct from the disciplinary regime laid down by those regulations in Article 86 and Annex IX. Moreover, the Staff Regulations and, in particular, Article 10 of Annex IX thereto do not specifically require compensation awarded against an official for misconduct in the course of his or her statutory duties to be taken into account in disciplinary proceedings.

19 It is true that in many legal systems the court can, in special and exceptional cases, award punitive, aggravated or exemplary damages. In such cases the award of damages is designed either to punish the wrongdoer or to show the court's displeasure in respect of highhanded or oppressive conduct on the part of the defendant. There is, however, no suggestion in this instance that the damages awarded by the Belgian courts fall into any of these categories.

20 See by analogy, Opinion of Advocate General Wahl in *Lazar* (C-350/14, EU:C:2015:586, point 30).

58. By contrast, disciplinary proceedings under the Staff Regulations seek to ensure compliance by officials with rules and obligations intended to guarantee the proper working of an institution.[21] Such compliance[22] is ultimately assured by the imposition of disciplinary penalties[23] or sanctions pursuant to the exhaustive list contained in Article 9 of Annex IX to the Staff Regulations.

59. Given the inherently different nature and objectives of the civil action in question and the disciplinary proceedings under the Staff Regulations and the corresponding remedies and penalties, the mere fact that damages were awarded against the appellant in respect of non-material damage to the reputation of the Union does not prevent the imposition of disciplinary penalties on the appellant. Indeed, as indicated in point 53 of this Opinion, the appellant does not dispute this matter.

60. Moreover, the fact that the appellant has paid compensation for non-material damage to the Union as a result of proceedings brought at the initiative of the latter does not affect – and, by extension, is thus irrelevant to the determination of – pursuant to Article 10 of Annex IX to the Staff Regulations, the *seriousness* of his or her misconduct under the Staff Regulations which predated those proceedings.

61. I consider, in particular, that when determining the gravity of an official's misconduct, the fact that it adversely affected the reputation of the Union in accordance with Article 10(b) of Annex IX to the Staff Regulations can be taken into consideration in any overall assessment of that conduct, irrespective of any compensation subsequently paid in that respect following legal proceedings brought by the Union.

62. The classification of the seriousness of that misconduct may thus, in my view, be assessed independently of such compensation.[24] Institutional damage of this nature cannot simply be wiped clean by the payment of a monetary sum as compensation, even if this is the result of a court order.

63. As regards the assessment of the *disciplinary penalty to be imposed*, there is a factual nexus in the context of the present proceedings between the damage to the Union's (public or external) reputation (which, admittedly, has been the subject of an award of compensation in legal proceedings before the national courts) and the criterion laid down in Article 10(b) of Annex IX to the Staff Regulations which also relates to damage to the Union's (public or external) image. This type of institutional damage was among the criteria taken into account when assessing the type and level of the disciplinary penalty to be imposed on the appellant.[25]

21 Judgment of 1 April 2004, *N* v *Commission* (T-198/02, EU:T:2004:101, paragraph 98).

22 Even the lighter or less severe penalties such as a written warning or a reprimand are clearly aimed at ensuring that an official does not contravene the Staff Regulations.

23 Indeed the very word itself 'penalties' (English), 'sanciones' (Spanish), 'Strafen' (German), 'sanctions' (French), 'sanzioni' (Italian), 'sanções' (Portuguese), , in Article 9 of Annex IX to the Staff Regulations clearly denotes their repressive or punitive nature.

24 See by analogy, paragraph 115 of the judgment of 19 November 2014, *EH* v *Commission* (F-42/14, EU:F:2014:250).

25 Moreover, the Union was the beneficiary of the civil compensation awarded by the national courts for the non-material damage to its image in the amount of EUR 38 814 and the disciplinary penalties, which were monetary in nature, ensured that the Union did not have to disburse certain funds in respect of the appellant's pension.

64. Aside from the fact that Article 10(b) of Annex IX to the Staff Regulations lays down only one among many criteria which may be taken into account in any overall assessment of the disciplinary penalty to be imposed, one should observe that civil and disciplinary proceedings and the ensuing remedies or penalties imposed are separate and differ in their aims from one another and do not give rise to overlapping penalties or compensation. [26]

65. I therefore consider that the appellant has failed to establish as claimed in the second and third parts of its single plea that the General Court breached the principle of proportionality and the principle of equality.

VIII. Conclusion

66. In the light of the foregoing considerations, I propose that the Court should:

– Reject as unfounded the second and third parts of the appellant's single plea.

26 In that regard, in paragraph 195 of the judgment of 7 December 2017, *Missir Mamachi di Lusignano and Others* v *Commission* (T-401/11 P RENV-RX, EU:T:2017:874), the General Court stated that a common principle can be identified in the laws of the Member States under which there cannot be double-compensation for non-material damage suffered. It is clear from the judgment of 9 September 1999, *Lucaccioni* v *Commission* (C-257/98 P, EU:C:1999:402, paragraphs 19 and 20), that this principle also applies in the context of the relationship between an official and an institution of the Union. Thus while the latter case ensures that an official cannot obtain double compensation, I consider that this general principle also extends to the Union itself and ensures that the Union cannot obtain double compensation against an official. I would stress however, that in the case at hand I consider that there is no question of double compensation given the distinct nature of the civil and disciplinary proceedings in question and their corresponding remedies or penalties. Penalties imposed pursuant to Article 9 of Annex IX to the Staff Regulations do not seek to compensate the Union for any damage caused to the latter.